

### Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action does 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 final regulatory action would affect are school districts and IHEs applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the final priorities, requirements, and definitions, would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the final priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in mental health providers.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in this notice of final priorities, regulations, and definitions at the end of the affected sections of the requirements.

The final priorities, requirements, and definitions contain information

collection requirements that are approved by OMB. The final priorities, requirements, and definitions do not affect the currently approved data collection. An FY 2022 competition would require applicants to complete and submit an application for Federal assistance using Department standard application forms. We estimate that for the FY 2022 MHSP competition and later competitions, each applicant will spend approximately 40 hours of staff time to address these priorities, requirements, and definitions. We estimate that we will receive approximately 500 applications for these funds. The total number of burden hours for all applicants to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the application is estimated to be 20,000 hours.

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

This document provides early notification of our specific plans and actions for this program.

*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 this Department published in the **Federal Register** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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your search to documents published by the Department.

**James F. Lane,**

*Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office Elementary and Secondary Education.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter II

[Docket ID ED-2021-OESE-0122]

### Final Priorities, Requirements, and Definitions—School-Based Mental Health Services Grant Program

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

**ACTION:** Final priorities, requirements, and definitions.

**SUMMARY:** The Department of Education (Department) announces final priorities, requirements, and definitions under the School-Based Mental Health Services (SBMH) Grant Program, Assistance Listing Number (ALN) 84.184H. We may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2022 and later years. These final priorities, requirements, and definitions are designed to direct funds to increase the number of credentialed school-based mental health services providers (as defined in 20 U.S.C. 7112(6)) in local educational agencies (LEAs) with demonstrated need (as defined in this document), in order to meet student mental health needs.

**DATES:** These priorities, requirements, and definitions are effective November 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Amy Banks, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E357, Washington, DC 20202. Telephone: (202) 453-6704. Email: [OESE.School.Mental.Health@ed.gov](mailto:OESE.School.Mental.Health@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

### SUPPLEMENTARY INFORMATION:

#### Executive Summary

*Purpose of this Regulatory Action:* As defined by the Centers for Disease Control and Prevention (CDC), “Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It

also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.”<sup>1</sup>

The Novel Coronavirus Disease 2019 (COVID-19) pandemic brought on challenges for children and youth that impacted their overall emotional, psychological, and social well-being and their ability to fully engage in learning. The disruptions in routines, relationships, and the learning environment have led to increased stress and trauma, social isolation, and anxiety.

These final priorities, requirements, and definitions are intended to support the provision of timely and necessary mental health supports to children and youth by (1) increasing the number of credentialed school-based mental health services providers in LEAs with demonstrated need through recruitment and retention-related incentives for school-based mental health services providers; (2) promoting the respecialization and certification of existing mental health services providers to qualify them for work in LEAs with demonstrated need; and (3) increasing the diversity, and cultural and linguistic competency, of school-based mental health services providers, including competency in providing identity-safe services. Summary of the Major Provisions of this Regulatory Action: Through this regulatory action, we establish four priorities, program and application requirements, and definitions.

*Costs and Benefits:* The final priorities, requirements, and definitions will impose minimal costs on entities that receive assistance through the SBMH program. Application submission and participation in this program are voluntary. The Secretary believes that the costs imposed on applicants by the final priorities are limited to paperwork burden related to preparing an application for an SBMH grant competition that uses one or more of the final priorities. Because the costs of carrying out program activities will be paid for with grant funds, the costs of implementation will not impose financial burdens on any eligible applicants, including small entities.

We believe that the benefits of this regulatory action outweigh any associated costs because it will result in the submission of a greater number of high-quality discretionary grant

applications likely to result in the achievement of program objectives.

*Purpose of Program:* The SBMH program provides competitive grants to State educational agencies (SEAs) (as defined in 20 U.S.C. 7801(49)), LEAs (as defined in 20 U.S.C. 7801(30)), and consortia of LEAs to increase the number of credentialed (as defined in this document) school-based mental health services providers providing mental health services to students in LEAs with demonstrated need.

*Program Authority:* 20 U.S.C. 7281. We published a notice of proposed priorities, requirements, and definitions (NPP) in the **Federal Register** on August 2, 2022 (87 FR 47152). The NPP contained background information and our reasons for proposing the priorities, requirements, and definitions. As discussed in the Analysis of Comments and Changes section of this document, we made substantive changes to Priorities 1, 2 and 3. We made both substantive and editorial changes to the application requirements and definitions, and we made minor substantive changes to the Regulatory Impact Analysis (RIA).

*Public Comment:* In response to our invitation in the NPP, 17 parties submitted comments addressing the proposed priorities, as well as the requirements and definitions. We group major issues according to subject. Generally, we do not address technical and other minor changes or suggested changes that the law does not authorize us to make under the applicable statutory authority.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

#### General Comments

*Comment:* Several commenters expressed general support for the SBMH program and priorities. One commenter also expressed support for the Department's efforts to expand and make mental health services more inclusive for children, while another commenter offered support for the commitment to building and expanding a diverse and culturally competent school-based mental-health services provider workplace.

*Discussion:* We appreciate the support for the program and for the specific emphasis on creating a more diverse services provider workforce and efforts to promote more inclusive practices within provider preparation programs.

*Changes:* None.

*Comment:* One commenter suggested revising the background section of the

NFP to include an explanation and data to describe the confluence of gun and other community violence, structural racism in the United States, and the COVID-19 pandemic to better substantiate specific aspects of the program.

*Discussion:* We thank the commenter for this suggestion. However, we do not include a background section in the NFP, nor is the background section considered part of the final priorities, requirements, and definitions. Therefore, we are not making any changes in response to this comment.

*Changes:* None.

*Comment:* One commenter suggested encouraging the strategy of using young adult peer support specialists to expand services related to mental health and substance use prevention, early intervention, treatment, and recovery support services.

*Discussion:* We appreciate this comment and agree with the need for substance use and misuse support services. To the extent young adult peer support specialists meet the definition of a school-based mental health services provider, these individuals could be available to provide the specified services to students under the SBMH program.

*Changes:* None.

#### Priorities

*Comment:* Several commenters expressed general support for the priorities. Some commenters suggested additional priorities. For example, one commenter suggested adding a priority related to incorporating trauma-informed care and learner-centered approaches to provider preparation programs. This same commenter also suggested adding a priority for projects that propose to partner with nonprofits with expertise in these same areas.

A second commenter recommended adding a priority or requirement to increase the capacity of school personnel, beyond school-based mental health services providers, to attend to mental health needs.

A third commenter suggested adding a priority or requirement to align systems of support by coordinating mental health services that are provided in and out of school.

A fourth commenter suggested incentivizing applicants to partner with Minority-Serving Institutions (MSIs), Hispanic-Serving Institutions (HSIs), or Historically Black Colleges and Universities (HBCUs)—particularly when the LEA serves high percentages of minority, Hispanic, or Black children and youth.

<sup>1</sup> Centers for Disease Control and Prevention. [www.cdc.gov/mentalhealth/learn/index.htm](http://www.cdc.gov/mentalhealth/learn/index.htm). Accessed on September 17, 2022.

*Discussion:* We do not think it is necessary to add priorities that prescribe specific practices, such as trauma-informed care. We note that these practices are allowable under the program, and we believe that applicants should propose the recruitment, retention, and respecialization strategies that they believe will best accomplish the goals of their projects.

We also do not believe that a stand-alone priority requiring a partnership with a nonprofit is necessary given that community organizations referenced in application requirement (g) include nonprofits, making this type of partnership already permissible.

We agree with the importance of aligning systems of support by coordinating mental health services provided in and out of school. We believe paragraph (g) addresses collaboration of efforts within and outside of school (e.g., collaboration with local and school-based health centers). Nevertheless, we made a small change to (g) to specifically reference “school-based” efforts whereby applicants must describe how they collaborate and coordinate.

We also agree with the importance of partnerships with MSIs (as defined in this notice), but do not agree that further incentives are required to promote such partnerships. However, we revised application requirement (g) to clarify that applicants may propose to collaborate and coordinate with HBCUs (as defined in this notice), MSIs (which include HSIs), and Tribal Colleges and Universities (TCUs) (as defined in this notice) to achieve plan goals and objectives.

*Changes:* We revised application requirement (g) to specifically reference school-based efforts and to reference HBCUs, MSIs, and TCUs as entities with which LEAs may collaborate and coordinate.

*Comment:* One commenter recommended revising Priority 2 to align with the definition of “retention.” Specifically, the commenter suggests using the phrase “stay in their position” in both the priority and the definition to underscore that the goal is for services providers to remain in their position within a school in order for children and youth to have ongoing access to the same services provider, thus increasing the likelihood of realizing the most therapeutic benefit from the services.

*Discussion:* The Department thanks the commenter for this suggestion and agrees it is important to make this change for the reasons stated by the commenter.

*Change:* The Department has revised Priorities 1 and 2 to align the language

with the definition of “retention” and to clarify the intent of the language.

*Comment:* Two commenters suggested revising how we describe respecialization in Priority 3, specifically to require that respecialization plans be developed in collaboration with and endorsed by a relevant state or national professional organization and that references to incremental training in respecialization plans be removed in order to focus respecialization on increasing pathways to meet existing credentialing standards, rather than revising existing standards to be less rigorous.

*Discussion:* We agree with revising the description of respecialization in Priority 3 for the reasons noted by the commenter. And, while we encourage applicants to collaborate with relevant organizations in developing their respecialization plans, only SEAs or other credentialing bodies establish the credentialing requirements for serving as a school-based mental health services provider.

*Changes:* We revised Priority 3 to clarify how we refer to respecialization and the outcome to which respecialization must lead.

*Comment:* One commenter suggested broadening Priority 3 beyond the goal of increasing the number of services providers to also include increasing access to needed training.

*Discussion:* The purpose of this program is to increase the number of school-based mental health services providers. General training that does not lead to a degree or credential as a school-based mental health services provider is not consistent with the purpose of this program.

*Change:* None.

#### *Application Requirements*

*Comment:* Three commenters recommended adding new application requirements. One commenter suggested requiring applicants to describe how they would incorporate school leaders in the development, implementation, and evaluation of the project. The same commenter recommended allowing applicants to reserve a percentage of funding for training teachers and school leaders on general mental health supports, while another commenter suggested requiring that providers be trained in trauma-informed practices. The third commenter recommended requiring grantees to continuously monitor and evaluate their outcomes and noted the importance of planning for these activities at the outset of the grant.

*Discussion:* The Department agrees with the importance of leadership

engagement with the project and will modify requirement (i) (Plan for prompt delivery of services) to require applicants to describe how leaders at each level of the project (including school leaders) will be engaged in the implementation and evaluation of the project.

The Department declines to allow applicants to set aside funding for training on general mental health supports and requiring that providers be trained in trauma-informed approaches. Training that does not lead to a credential as a school-based mental health services provider is not consistent with the purpose of this grant program.

Additionally, the Department does not prescribe specific approaches or practices within this program. Rather, applicants should propose how they will best address the application requirements and selection criteria in order to accomplish the goals of their projects.

Last, the Department agrees with the commenter about the importance of planning for monitoring and evaluation activities at the beginning of a grant. We have added application requirement (d) (Logic model), which requires applicants to describe their theory of action using a logic model that identifies key project components and relevant outcomes.

*Change:* We modified application requirement (h) (Use of grant funds) asking applicants to describe how leaders across all levels of the project will be engaged. We have also added application requirement (d) for a logic model.

*Comment:* One commenter recommended adding an annual reporting requirement for grantees to help measure the extent to which disparities in access to mental health services were reduced.

*Discussion:* The Department appreciates the commenter’s point related to the importance of using data to determine the impact of the program on disparities in access to mental health services. We include performance measures in a grant competition’s notice inviting applications. Additionally, we are developing our evidence-building strategy; that is, our strategy to collect and analyze program data and conduct a program evaluation to share what works with the field, which will include considerations of equitable access to mental health services.

*Change:* None.

*Comment:* Four commenters recommended requiring applicants to include additional data in their description of the importance and

magnitude of the problem in application requirement (c). For example, commenters suggested requiring data on incidents of traumatic events, student substance use, school discipline, and the perspectives and needs of school leaders. Two of the four commenters also suggested requiring disaggregated data by student demographics, and one of these commenters recommended requiring disaggregated data by services provider.

*Discussion:* We appreciate these recommendations; however, we do not believe such additional data are necessary to achieve program purposes. Rather, we encourage applicants, in addressing the application requirement and responding to the selection criteria, to include the data they think best describes the problem they wish to address.

*Change:* None.

*Comment:* One commenter requested the Department to release desired ratios of school-based mental health services providers to students to help LEAs in determining whether they meet the criteria.

*Discussion:* The Department supports the following ratios recommended by national professional associations such as the National Association of School Psychologists: student-to-counselor 250:1, student-to-psychologist 500:1, student-to-social worker 250:1.<sup>2 3 4</sup>

*Change:* None.

*Comment:* One commenter raised concerns about sustainability of the mental health services provider positions after the grant ends given that grant funds can be used to pay for salaries. In response, the commenter suggested that only matching funds be used for salaries. Another commenter suggested adding language to application requirement (h) requiring applicants to address sustainability beyond the life of the grant.

*Discussion:* We believe paying for salaries with grant funds is a key strategy for achieving the goals of the program, so we decline to limit paying for salaries out of matching funds. However, we appreciate the

commenters' concerns about sustainability of projects beyond the life of the grants and agree that applicants should consider at the onset of the grant how they will sustain the project after the budget period ends.

*Change:* The new requirement for a logic model requires applicants to describe how they will sustain the project beyond the life of the grant.

*Comment:* Three commenters suggested revisions to application requirement (f) (Number of providers). Two of the three commenters suggested revising how the Department collects data on the number of services providers in application requirement (f) to ensure that telehealth is considered a method of service delivery and not a substitute for in-person services. The third commenter recommended adding a requirement to submit data on the diversity of the existing and planned new providers and whether it aligns with student demographics.

*Discussion:* The Department agrees with the comment to clarify the language about providers offering telehealth services for the reasons stated by the commenter.

We do not believe, given how broadly diversity can be defined, it is necessary to collect data on the diversity of providers at the outset of the grant. However, we encourage applicants, in addressing application requirement (f) and responding to the selection criteria, to include the data they think best describes their diversity goals.

*Change:* We revised application requirement (f), by clarifying that data on services providers offering telehealth services should be provided if this service delivery method was used.

*Comment:* Four commenters had comments on application requirement (g) (A plan for collaboration). One of the four commenters expressed concern about the difficulties LEAs would have collaborating and coordinating to the degree required in the proposed application requirement. One of the four commenters suggested requiring collaboration with nonprofit organizations, while another commenter suggested adding the Department's Regional Educational Laboratories and Comprehensive Centers to the list of entities with which applicants may coordinate. The fourth commenter stressed that collaboration with colleges and universities looks different than collaboration with professional organizations.

*Discussion:* The Department understands the challenges often associated with coordination and collaboration with other agencies, particularly for small or rural LEAs. To

ease the burden on applicants, we have streamlined and clarified this requirement, while maintaining the overall purpose of coordinating efforts with Federal, State, and local organizations to maximize mental health services. And, while we do not think it is necessary to have a stand-alone requirement to partner with a nonprofit organization, or to call out specific Department-funded technical assistance centers and grantees, we encourage applicants to coordinate with these entities, if appropriate.

*Change:* We revised application requirement (g) by clarifying the requirements for an applicant's plan for collaboration and coordination with related Federal, State, local, and school-based organizations and efforts.

*Comment:* Three commenters expressed concern about the challenges of hiring qualified services providers given current shortages and how these challenges will affect the applicant's ability to address application requirement (i) to provide services immediately.

*Discussion:* The desire is for students to receive mental health supports as soon as reasonably possible. However, we agree that the requirement, as framed in the NPP, may not account fully for the potential impact of current provider shortages and have revised the language to better state the Department's expectations.

*Change:* We revised the title and language of application requirement (i) to clarify that services should start as soon as possible, but no later than 180 days from award.

*Comment:* One commenter recommended requiring applicants to provide, in application requirement (i), their plans to increase the pipeline of individuals seeking recertification or training to become a school-based mental health services provider.

*Discussion:* We appreciate the commenter's suggestion. We anticipate that Priority 3 will accomplish this desired outcome. Additionally, the new requirement in application requirement (d) for a logic model will require applicants to describe how they plan to sustain the project beyond the life of the grant.

*Change:* Added a new application requirement for logic models in application requirement (d).

#### Definitions

*Comment:* Overall, 10 commenters commented on the proposed definitions. One commenter suggested explicitly referencing services providers for substance use disorders as part of the mental health workforce.

<sup>2</sup> "School Counselor Roles and Ratios." American School Counselor Association Home Page. <https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios>. Accessed June 29, 2022.

<sup>3</sup> "Research Summary: Shortages in School Psychology." National Association of School Psychologists. <https://www.nasponline.org/research-and-policy/policy-priorities/critical-policy-issues/shortage-of-school-psychologists>. Accessed March 28, 2022.

<sup>4</sup> "NASW Standards for School Social Work Services." National Association of Social Workers. <https://www.socialworkers.org/Practice/School-Social-Work>. Accessed September 8, 2022.

*Discussion:* We appreciate the commenter's suggestion. We do not think any changes are necessary, nor does the Department have the authority to change the definition of school-based mental health services provider in the Elementary and Secondary Education Act of 1965, as amended. Services providers for substance use disorders that meet this definition are allowable under this program.

*Change:* None.

*Comment:* Three commenters recommended omitting the terms and definitions of "certified," "certification," and "licensed" because the commenters believe the terms incorrectly imply that one credential is higher than another. Alternatively, the commenters recommend adopting a revised definition of "credentialed" in lieu of these terms.

*Discussion:* We thank the commenters for this comment and will make these changes. We believe the word "credentialed" is an appropriate umbrella term that captures the various terms States might use as part of their credentialing systems. We also believe the term "credentialed" adequately reflects the meaning of "qualified" services provider and therefore, deleted references to the term "qualified" as well.

*Change:* We removed the definitions of "licensed," "certified," and "certification" and have omitted references to these terms, and the term "qualified," from the purpose of the program, and the priorities, requirements, and definitions.

We also revised the definition of "credentialed" to explicitly state the need for possessing a valid license or certificate awarded by the State or other relevant body.

*Comment:* Five commenters suggested changes to the definition of "respecialization." Four commenters recommended changes to ensure that professionals engaging in school-based mental health service delivery are properly credentialed. Two of the four commenters also recommended requiring development of respecialization plans to include collaboration with and endorsement by a relevant state or national professional organization. A fifth commenter suggested defining the term to mean, in part, that strategies are evidence-based.

*Discussion:* We agree with the importance of ensuring that school-based mental health services providers are properly credentialed and have made revisions accordingly. However, we do not believe it is appropriate to require endorsement of respecialization plans by professional associations, given

that credentialing requirements are established by SEAs or another credentialing body, not specific organizations. Additionally, we decline to define "respecialization" to mean evidence-based strategies, given that this program is part of an effort to build evidence in this area. The use of logic models in this program reflects the approach to evidence that the Department considers to be appropriate in light of the available body of evidence.

*Change:* We made changes to how we refer to "respecialization" in the definition and the outcomes to which respecialization must lead.

*Comment:* One commenter recommended adding a sixth option, related to collaboration with institutions of higher education (IHEs) to expand candidate opportunities, to the list of strategies that applicants can consider for respecialization.

*Discussion:* We do not believe it is necessary to add this sixth option. We encourage partnerships with IHEs to help candidates obtain the desired school-based mental health services credential.

*Change:* None.

*Comment:* One commenter recommended adding language to the respecialization definition about diversification of services providers who are representative of an applicant's student population.

*Discussion:* We agree with the importance of developing a more diverse services provider workforce. Rather than change the definition of respecialization, we think the language added to the definition of "recruitment" regarding recruitment and support of underrepresented populations and the final priority in this notice about increasing the number of services providers who are from diverse backgrounds addresses the commenter's suggestion.

*Change:* None.

*Comment:* Two commenters suggested revising the definition of "recruitment" to include recruitment of underrepresented populations as an incentive for mitigating shortages.

*Discussion:* Recruitment of providers from diverse backgrounds is a priority for this program, and we agree that focusing recruitment in this area is helpful. We believe providing additional supports to underrepresented populations would also be helpful.

*Change:* We have revised the definition of "recruitment" to include recruitment and support of underrepresented populations.

*Comment:* One commenter suggested defining recruitment to mean, in part,

that strategies are evidence-based. The same commenter suggested adding evidence-based strategies to the definition of "retention."

*Discussion:* We decline the recommendation to define "recruitment" and "retention" to mean evidence-based strategies, given that there is not yet a large body of evidence in these areas. We will consider using available funds for evaluation of this program to build this body of evidence.

*Change:* None.

*Comment:* Four entities commented on the definition of "LEA with demonstrated need." One commenter thanked the Department for including instances of community violence and traumatic events in the definition. Another commenter expressed support for the definition and urged the Department to focus on LEAs with demonstrated need because of high rates of community violence, poverty, and suicide. The third commenter requested adding a variable for a significant number of students that have witnessed or experienced a traumatic event. The final commenter recommended a variable specific to school discipline.

*Discussion:* We appreciate the comments we received in support of the definition. We do not believe it is necessary to add a variable for witnessing or experiencing a traumatic event because we generally think such experiences would be covered under the reference to community violence in paragraph (2) or under the reference to adverse childhood experiences in paragraph (3) of the definition. We agree with the comment to include discipline data as a possible variable, given the disproportionate impact discipline policies can have on underserved students.

*Change:* We revised the definition of LEA with demonstrated need to include repeated disciplinary exclusions as an example of an adverse childhood experience.

#### *Regulatory Impact Analysis*

*Comment:* One individual commented on the Regulatory Impact Analysis (RIA). Specifically, the commenter questioned the clarity of the analysis for Priority 3 and suggested that incremental training was not an adequate representation of the needed retraining. The commenter also asked for guidance on documenting financial hardships for SEAs and LEAs.

*Discussion:* We appreciate the commenter's review and comment on this section of the NPP. We revised the RIA to better clarify what we meant about Priority 3.

Additionally, we recognize funding for education is limited in many States. The purpose of SBMH is to provide additional resources to help increase the number of credentialed school-based mental health services providers and help schools recruit and retain such individuals. In order to assist SEAs and LEAs to implement grant activities and reach this goal, we explicitly allow the use of grant funds for administrative costs to offset the financial hardships they may be experiencing.

*Change:* We revised the summary of the potential costs and benefits to clarify what we meant in our description of the benefit of Priority 3.

### Final Priorities

*Priority 1—SEAs Proposing To Increase the Number of Credentialed School-Based Mental Health Services Providers in LEAs With Demonstrated Need.*

To meet this priority, an SEA must propose to increase the number of credentialed school-based mental health services providers by implementing plans that address recruitment (defined in this document) and retention (defined in this document) of services providers in LEAs with demonstrated need. Applicants must propose plans that include both of the following:

(a) Recruitment. An applicant must propose a plan to increase the number of credentialed services providers serving students in LEAs with demonstrated need.

(b) Retention. An applicant must also propose a plan to increase the likelihood that credentialed services providers providing services in LEAs with demonstrated need stay in their position over time.

*Priority 2—LEAs or Consortia of LEAs With Demonstrated Need Proposing To Increase the Number of Credentialed School-Based Mental Health Services Providers.*

To meet this priority, an LEA or consortium of LEAs with demonstrated need must propose measures to increase the number of credentialed school-based mental health services providers, including plans to address the recruitment and retention of credentialed services providers in the LEA(s). Applicants must propose plans that include both of the following:

(a) Recruitment. An applicant must propose a plan to increase the number of credentialed services providers serving students in the LEA(s) with demonstrated need.

(b) Retention. An applicant must also propose a plan to improve the likelihood that credentialed services providers providing services in the

LEA(s) with demonstrated need stay in their position over time.

*Priority 3—SEAs Proposing Respecialization, Professional Retraining, or Other Preparation Plan for Existing Mental Health Services Providers To Qualify Them for Work in LEAs With Demonstrated Need.*

To meet this priority, an applicant must propose a respecialization (defined in this document), professional retraining, or other preparation plan that leads to a state credential as a school psychologist, school social worker, school counselor, or other school-based mental health services provider (as defined in 20 U.S.C. 7112(6)) and that is designed to increase the number of services providers qualified to serve in LEAs with demonstrated need.

*Priority 4—Increasing the Number of Credentialed School-Based Mental Health Services Providers in LEAs With Demonstrated Need Who Are From Diverse Backgrounds or From Communities Served by the LEAs With Demonstrated Need.*

To meet this priority, applicants must propose a plan to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from communities served by the LEAs with demonstrated need.<sup>5</sup>

Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the LEA with demonstrated need will help increase access to mental health services for students within the LEA with demonstrated need and best meet the mental health needs of the diverse populations of students to be served.

#### 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 Requirements

The following are program requirements and several application requirements for this program. We may apply one or more of these requirements in any year in which the program is in effect.

*Eligible Applicants:* One or both of SEAs, as defined in 20 U.S.C. 7801(49), or LEAs, as defined in 20 U.S.C. 7801(30), including consortia of LEAs.

#### Program Requirements:

(a) Applicants that receive an award under this program must ensure that any school-based mental health services provider hired under this grant, including any services provider that offers telehealth services, is qualified by the State to work in an elementary school (as defined in 20 U.S.C. 7801(19)) or secondary school (as defined in 20 U.S.C. 7801(45)).

(b) Applicants that receive an award under this program must ensure that any school-based mental health services provider offering services (including telehealth services) does so in an equitable manner and consistent with the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as well as all other applicable Federal, State, and local laws and profession-specific ethical obligations.

#### Application Requirements:

(a) Describe the LEAs with demonstrated need designated by the SEA to be served by the proposed project.

SEA applicants must describe the LEAs with demonstrated need designated to benefit from the SBMH program.

(b) Describe how the LEA, or each LEA in the proposed consortium (if applicable), meets the definition of an LEA with demonstrated need.

To meet this requirement, an LEA applicant or the lead LEA submitting an application on behalf of a consortium must describe how the LEA or each LEA

<sup>5</sup> All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

in the consortium meets the definition of an “LEA with demonstrated need.”

(c) *Describe the importance and magnitude of the problem.*

Applicants must describe the lack of school-based mental health services providers and its effect on students in the LEA(s) to be served by the grant. This must include a description of the nature of the problem for the LEA(s), based on information including, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the LEA(s), or for SEA applicants, the LEAs designated by the SEA to benefit from the SBMH program. These data must be provided in the aggregate and disaggregated by profession (e.g., school social workers, school psychologists, school counselors) as compared to local, State, or national data. The description may also include LEA-level or school-level demographic data (including rates of poverty; rates of chronic absenteeism; the percentage of students involved in the juvenile justice system, experiencing homelessness, or in foster care; and discipline data), school climate surveys, school violence/crime data, data related to suicide rates, and descriptions of barriers to hiring and retaining credentialed school-based mental health services providers in the LEA.

(d) *Logic model.*

The applicant must describe its approach to increase the number of credentialed school-based mental health services providers using a logic model (as defined in 34 CFR 77.1), including the key project components and relevant outcomes (as defined in 34 CFR 77.1). The description should indicate how the proposed approach taken under this program will improve or expand on any previous approaches, how the new approach will address barriers, and how the applicant will sustain the increased number of school-based mental health services providers after the performance period has ended.

(e) *Detailed project budget, including matching funds.*

To promote the sustainability of the school-based mental health services, all applicants must include non-Federal matching funds in one of the following amounts, as determined by the Secretary in the notice inviting applications:

(1) At least 10 percent of their budgets.

(2) At least 15 percent of their budgets.

(3) At least 20 percent of their budgets.

(4) At least 25 percent of their budgets.

Budgets must describe how the applicant will meet the matching

requirement for each budget period awarded under this grant and must indicate the source of the funds, such as State, local, or private resources. The Secretary may consider decreasing or waiving the matching requirement post award, on a case-by-case basis, if an applicant demonstrates a significant financial hardship.

Budgets must also specify the portion of funds that will be used for respecialization, if applicable.

Administrative costs for SEA applicants may not exceed 10 percent of the annual grant award. This includes funding for State-level or LEA-level administrative costs that promote respecialization, if applicable. Administrative costs for applicants that are LEAs and consortia of LEAs may not exceed 5 percent of the annual grant award.

(f) *Number of providers.*

Applicants must include the most recent available data on the number of school-based mental health services providers in the identified LEA(s), disaggregated by profession (e.g., school social workers, school psychologists, school counselors), and the projected number of school-based mental health services providers that will be placed into employment in the identified LEA(s) for each year of the plan using funds from this grant or matching funds. If applicable, applicants should provide data on the current and projected unduplicated numbers of school-based mental health services providers disaggregated by profession (e.g., school social workers, school psychologists, school counselors), offering telehealth services.

(g) *A plan for collaboration and coordination with related Federal, State, and local organizations, and school-based efforts.*

Applicants must propose a plan describing how they will collaborate and coordinate with related Federal, State, and local organizations, and school-based efforts (e.g., professional associations; colleges or universities, including HBCUs, MSIs, and TCUs; local mental health; public health; child welfare; or other community agencies, including school-based health centers), to achieve plan goals and objectives of increasing the number of school-based mental health services providers in LEAs with demonstrated need. The plan must include a description of how such collaboration and coordination will promote program success across multiple programs.

(h) *Use of grant funds to supplement, and not supplant, existing school-based mental health services funds and to*

*expand, not duplicate, efforts to increase the number of providers.*

Applicants must describe how project funds will supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this program.

Applicants must describe how they will use the SBMH program funds to expand, rather than duplicate, existing or new efforts to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need and how they will integrate existing funding streams and efforts to support the plan.

(i) *Plan for prompt delivery of services to students.*

For SEA applicants, applicants must describe their plan to ensure the prompt delivery of services to students (i.e., as soon as possible, but no later than 180 days from award), including via subgrants to LEAs, as appropriate. For LEA applicants and consortia of LEAs, applicants must describe their plan to ensure the prompt delivery of services to students (i.e., as soon as possible, but no later than 180 days from award). Additionally, SEA and LEA applicants must describe how leaders across all levels of the project will be engaged in the implementation and evaluation of the project.

## Final Definitions

The Department establishes the following definitions of “credentialed,” “LEA with demonstrated need,” “recruitment,” “respecialization,” “retention,” and “telehealth” for use in this program. We may apply these definitions in any year in which this program is in effect.

*Credentialed* means an individual who possesses a valid license or certificate from the SEA or relevant regulatory body as a school psychologist, school counselor, or a school social worker, or other mental health services provider, approved by the State to provide school-based mental health services.

*LEA with demonstrated need* means an LEA that has a significant need for additional school-based mental health services providers based on—

(1) High student to mental health services provider ratios as compared to other LEAs statewide or nationally;

(2) High rates of community violence (including hate crimes), poverty, substance use (including opioid use), suicide, or trafficking; or

(3) A significant number of students who are migratory, experiencing homelessness, have a family member deployed in the military or with a military-service connected disability



(including veterans), have experienced a natural or manmade disaster or a traumatic event, or have other adverse childhood experiences, such as repeated disciplinary exclusions from the learning environment.

*Recruitment* means strategies that help attract and hire credentialed school-based mental health services providers, including by doing at least one of the following:

(1) Providing an annual salary or stipend for school-based mental health services providers who maintain an active national certification.

(2) Providing payment toward the school loans accrued by the school-based mental health services provider.

(3) Creating pathways to grant cross-State credentialing reciprocity for school-based mental health services providers.

(4) Providing incentives and supports to help mitigate shortages. These may include, for example, increasing pay; offering monetary incentives for relocation to high-need areas; providing services via telehealth; creating hybrid roles that allow for leadership, academic, or research opportunities; developing induction programs; developing paid internship programs; focusing on recruitment and support of underrepresented populations; and offering service scholarship programs, such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years.

*Respecialization* means strategies that provide opportunities for professional retraining and alternative pathways to obtain a State credential, aligned with the standards of the relevant professional organization, as a school-based mental health services provider for individuals who hold, at a minimum, a degree in a related field (e.g., special education, clinical psychology, community counseling), including by doing one or more of the following:

(1) Revising, updating, or streamlining requirements for such individuals so that additional training or other requirements focus only on training needed to obtain a credential as a school-based mental health services provider.

(2) Providing a stipend or making a payment to support the training needed to obtain a credential as a school-based mental health services provider.

(3) Offering flexible options for completing training that leads such professionals to meet State credentialing requirements as a school-based mental health services provider.

(4) Establishing a provisional, time limited, and nonrenewable credential to allow individuals seeking respecialization to provide school-based mental health services under the direct supervision of a fully credentialed school-based mental health services provider of the same profession.

(5) Offering other meaningful activities that result in existing mental health services providers obtaining a State credential as a school-based mental health services provider.

*Retention* means strategies to help ensure that credentialed individuals stay in their position to avoid gaps in service and unfilled positions, including by—

(1) Providing opportunities for advancement or leadership, such as career pathways programs, recognition and award programs, and mentorship programs; and

(2) Offering incentives and supports to help mitigate shortages. These may include, for example, increasing pay; making payments toward student loans; offering monetary incentives for relocation to high-need areas; providing services via telehealth; offering service scholarship programs, such as those that provide grants in exchange for a commitment to serve in the LEA for a minimum number of years; and developing paid internship programs.

*Telehealth* means the use of electronic information and telecommunication technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

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

**Note:** This notice does not solicit applications. In any year in which we choose to use these priorities, requirements, and definitions, we invite applications through a notice 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—

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

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

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

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

This final regulatory action will have an annual effect on the economy of more than \$100 million because approximately \$143 million is available under this program from FY 2022 appropriations actions and \$100 million is available each year from FY 2023 to FY 2026. Therefore, this final action is “economically significant” and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits justify the costs.

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

(1) Propose or adopt regulations only 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 these final priorities, requirements, and definitions 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 priorities, requirements, and definitions are consistent with the principles in Executive Order 13563.

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

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

### Summary of Potential Costs and Benefits

The final priorities, requirements, and definitions are necessary for the implementation of the SBMH program consistent with the requirements established by Congress in the Department of Education Appropriations Act, 2022, and the Explanatory Statement accompanying that Act. The Department believes that implementation of the SBMH program will most exclusively confer benefits on the recipients of Federal funds, while the costs associated with the priorities, requirements and definitions will be minimal. This regulatory action does not impose significant costs on eligible entities as participation in this program is voluntary, and the costs imposed on applicants are limited to paperwork burden related to preparing an application.

This program was established under a statute with broad authority and only nonbinding report language establishing program purpose, eligibility, or requirements; consequently, this rulemaking action is necessary to ensure program funds are used for their intended purpose. More specifically, the final priorities, requirements, and definitions are likely to (1) ensure that the Department collects from applicants for SBMH funding the information necessary for competitive review of applications by peer reviewers, and (2) fund high-quality applications that will lead to the implementation of projects consistent with congressional intent. Absent this rulemaking action, there is no alternative means of meeting these objectives.

The specific benefits of establishing a menu of priorities include ensuring that funds are used consistent with congressional intent and providing flexibility to the Department for supporting multiple strategies designed to address the shortage of school-based mental health services providers. The first strategy, embedded in priorities 1 and 2, is to focus grant activities on hiring additional school-based mental health services providers in LEAs with demonstrated need to increase the number of school-based mental health services providers in schools and LEAs that have the most need for such services. The definition of “LEA with demonstrated need,” incorporated into these priorities, also was crafted to provide flexibility for an LEA to show need through data (ratios of school counselors to students), a description of events or conditions affecting school environment (such as community violence or disasters), or evidence that an applicant will serve students who have or are likely to face adverse childhood experiences. Although the total number of LEAs is high (over 13,000 in school year 2018–19), the available funding will only support a limited number of multiyear projects. Absent the targeting of SBMH funds to LEAs with demonstrated need, the program may allocate scarce Federal resources to high-capacity LEAs that already meet the mental health needs of their students. Moreover, ensuring that funds are targeted to LEAs with demonstrated need was a requirement of the FY 2020 SBMH competition, and Congress directed the Department, through the Explanatory Statement accompanying the Department of Education Appropriations Act, 2022, to incorporate the same requirement into the FY 2022 SBMH competition.

The benefit of including priority 3 is that it supports another strategy for

addressing the shortage of school-based mental health services providers. Requirements for school-based mental health services providers are established by States and generally include the completion of a bachelor’s degree or higher, completion of a practicum, and an internship in a K–12 school, which typically take several years to fulfill. Priority 3 is likely to support States working to establish innovative strategies to expand the pipeline for credentialed mental health providers by establishing pathways for individuals in related fields to attain the credentials to work as school-based mental health services providers. Under this priority, for example, a State might determine that individuals in related fields, such as counseling or social work, would only need professional retraining to qualify as a school-based mental health services provider, rather than a full degree or credentialing program. This strategy has the benefit of reducing the time necessary for credentialing and potentially increasing the number of credentialed mental health providers available for hiring by LEAs, which is the core goal and purpose of the SBMH program. Absent the expanded use of strategies to shorten the time needed to meet the requirements to become a school-based mental health services provider, SBMH grantees may not be able to increase the number of such providers in schools due to the documented shortage of such providers.

The benefit of priority 4 is that it supports another strategy for expanding the workforce of school-based mental health services providers. Currently, the psychology<sup>6</sup> and school counselor<sup>7</sup> workforce is significantly less diverse than the student population.<sup>8</sup> Increasing the number of credentialed school-based mental health services providers from diverse backgrounds and from communities served by LEAs with demonstrated need, and who can provide culturally and linguistically appropriate services, not only would expand the numbers of these providers but also increase access to and improve the quality of mental health services available to students. Further, this priority supports the Administration’s equity agenda<sup>[14]</sup> and the Department’s mission to support equity and excellence.

The Paperwork Reduction Act (PRA) section of this document discusses the

<sup>6</sup> <https://www.apa.org/workforce/data-tools/demographics>.

<sup>7</sup> <https://www.schoolcounselor.org/getmedia/9c1d81ab-2484-4615-9dd7-d788a241beaf/member-demographics.pdf>.

<sup>8</sup> <https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment>.

burden estimates for preparing an application. The potential benefits of receiving Federal funds under this program to expand the pool of and hire school-based mental health services providers will likely outweigh the application costs detailed in the PRA section. The costs of implementing the requirements established in this notice can be paid for with grant funds.

**Regulatory Alternatives Considered**

The Department believes that the final priorities, requirements, and definitions in this document are needed to administer the program effectively. The authorizing statute does not provide

sufficient detail to develop and administer a competitive grant program consistent with the intent of Congress as expressed in the Explanatory Statement accompanying the Department of Education Appropriations Act 2022, which provided funding for the program in FY 2022, or the Bipartisan Safer Communities Act, which provided additional funding for FYs 2022 through 2026. Consequently, absent the final priorities, requirements, and definitions, the Department will not have a sufficient basis for evaluating the quality of applications or ensuring that the program achieves its intended objectives.

**Accounting Statement**

As required by OMB Circular A-4 (available at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action.

Expenditures are classified as transfers from the Federal Government to SEAs and LEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES  
[In millions]

Category	Transfers	
	3%	7%
Annualized monetized transfers .....	\$108.6	\$108.6
From whom to whom? .....	From the Federal government to SEAs and LEAs.	

**Regulatory Flexibility Act Certification**

The Secretary certifies that this final 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 final regulatory action would affect are LEAs. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in mental health providers. Therefore, we do not believe that the final priorities, requirements, and definitions 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 Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in this notice of final priorities, regulations, and definitions at the end of the affected sections of the requirements.

The final priorities, requirements, and definitions contain information collection requirements that are approved by OMB. The final priorities, requirements, and definitions do not affect the currently approved data collection. An FY 2022 competition would require applicants to complete and submit an application for Federal assistance using Department standard application forms. We estimate that for the FY 2022 SBMH competition and later competitions, each applicant will spend approximately 40 hours of staff time to address these priorities, requirements, and definitions. We estimate that we will receive approximately 300 applications for these funds. The total number of burden hours for all applicants to review instructions, search existing data sources, gather and maintain the data

needed, and complete and review the collection of information is estimated to be 12,000 hours.

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

This document provides early notification of our specific plans and actions for this program.

*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, 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.

**James F. Lane,**

*Senior Advisor, Office of the Secretary Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office Elementary and Secondary Education.*

[FR Doc. 2022-21634 Filed 10-3-22; 8:45 am]

**BILLING CODE 4000-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2021-0944; FRL-9174-02-R3]

### Air Plan Approval; Delaware; Control of Volatile Organic Compound Emissions From Solvent Cleaning and Drying

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. These revisions pertain to the reduction of volatile organic compounds (VOC) emissions from cold solvent cleaning operations. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 3, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0944. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified

in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2030. Ms. Moser can also be reached via electronic mail at [Moser.Mallory@epa.gov](mailto:Moser.Mallory@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 27, 2022 (87 FR 38044), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a SIP revision that updates the solvent cleaning control requirements based upon the 2012 Ozone Transport Commission (OTC) Model Rule. The SIP revision was submitted by Delaware on October 13, 2021, requesting that EPA incorporate the Department of Natural Resources and Environmental Control's (DNREC's) revisions to Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1124 Section 33.0—Solvent Cleaning and Drying into the Delaware SIP (Section 33.0). In response to the NPRM, EPA received one comment on its June 27, 2022, proposed rulemaking, which is addressed below.

##### II. Summary of SIP Revision and EPA Analysis

The SIP revision consists of an amendment to Section 33.0. Specifically, the amendment updates the solvent cleaning control requirements based upon the 2012 Ozone Transport Commission Model Rule.

The OTC, of which Delaware is a member, is an organization established by Congress under the CAA. Among other things, the OTC develops model rules for the member states to use to reduce the emissions of ground level ozone precursors. In 2001 the OTC released the 2001 Model Rule for Solvent Cleaning, (2001 Model Rule). The 2001 Model Rule is that basis for the version of 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions, Section 33.0—Solvent Cleaning and Drying that were previously approved in the Delaware SIP.<sup>1</sup> After a release of the Control Techniques Guideline (CTG): Industrial Cleaning Solvents by the EPA in 2006, proposing new VOC limits for solvent

cleaning, the OTC convened a group of experts that suggested a more stringent model rule than what is provided in the CTG and the 2001 Model Rule. The OTC then developed the 2012 Model Rule for Solvent Degreasing. The provisions set forth in Section 33.0, which is based on the 2012 Model Rule, are more stringent than those previously included in the Delaware SIP and form the basis of the regulation we are approving to include in the Delaware SIP in this rule. For instance, the provisions eliminate an existing exemption by adding provisions that apply to owners or operators of a solvent cleaning machine that uses any volume of solvent containing VOC. The provisions also reduce the solvent VOC concentration from 100 percent to 25 grams per liter of non-VOC solution for most applications.

By removing an applicability exemption and decreasing the allowable solvent VOC concentration, the 2012 model rule is expected to decrease emissions of VOCs. This reduction of VOC emissions from solvent cleaning operations will further reduce the formation of ground-ozone because ground-level ozone is formed through the reaction of VOCs and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. In addition to improving public health and the environment, decreased emissions of VOCs, and therefore subsequently ground-level ozone, will contribute to the attainment of the ozone national ambient air quality standard (NAAQS). Delaware is amending its SIP to add Section 33.0.

##### III. EPA's Response to Comments Received

EPA provided a 30-day review and comment period for this action in the Proposal. The comment period ended on July 27, 2022. EPA received one comment, which is summarized and addressed below.

*Comment:* The comment requests additional background on the development and interpretation of the "Federal" 2012 OTC model rule in the context of the commenter seeking advice with regard to acquiring a piece of equipment. In addition, the commenter claims there could be an economic impact to businesses if affected devices cannot efficiently operate at the 25 grams per liter criteria set forth in the rule. The commenter speculates using a solvent solution with lower VOC could lead to longer run time of the cleaning devices, which may

<sup>1</sup> See 67 FR 70315 (November 22, 2002).