to find that the Arizona SIP is substantially inadequate to attain or maintain the PM_{10} standard and to issue a SIP call requiring Arizona to revise the SIP to address this inadequacy. We proposed to require Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of finalizing the SIP call and to set a new attainment date of no later than December 31, 2025, because the original maximum attainment date for this area under Clean Air Act (CAA) section 188(c)(1) was December 31, 1994 (approximately four years from the original designation).[2] We proposed a deadline for reasonably available control measures to be fully implemented in the area by January 1, 2025, but also recommended that reasonable controls be fully implemented as early as January 1, 2023. Earlier implementation of reasonable controls would allow high-wind dust events during the three-year period preceding the proposed attainment date potentially to be considered ''natural events'' under the EPA's exceptional events rule.[3]

The public comment period for the proposed rule started on June 1, 2021, and ended on July 1, 2021. Due to an inadvertent administrative oversight, the EPA did not post all the documents contained in the docket until June 23, 2021. The EPA is re-opening the comment period for the proposed rule for an additional 30 days, to allow for a full comment period with access to the docket.

During the comment period, the EPA received comments from seven commenters including the Arizona Department of Environmental Quality (ADEQ). In its comment letter, ADEQ noted that the EPA's authority to establish a new attainment date is contained in section 110(k)(5), which allows the EPA to adjust any dates applicable to the relevant requirements ''as appropriate;'' that such adjusted dates could include the attainment date if the original attainment date had elapsed; and that CAA section 188(c)(1) ''establishes two alternative attainment deadlines for moderate PM_{10} nonattainment areas: four years after designation for areas designated in 1990, and six years after designation for all other areas.'' [4] ADEQ asserted that the CAA does not require the EPA to set the new maximum attainment date according to the shorter deadline and that ''the six-year deadline would be more 'appropriate''' for the Yuma PM_{10} nonattainment area.[5] In particular, ADEQ asserted that the EPA's recommended schedule for implementation of reasonable controls by January 1, 2023, ''which envisions *implementation nineteen months* after EPA's *proposed* finding is completely unrealistic.'' [6]

In response to ADEQ's comment, we are now also seeking comment on a possible alternative attainment date for the Yuma PM_{10} nonattainment area. As noted by ADEQ, given that the original attainment date of December 31, 1994, has elapsed, CAA section 110(k)(5) provides the EPA with discretion to adjust this date ''as appropriate.'' [7] We initially proposed an attainment date of December 31, 2025, based on the fact that the Yuma area's original attainment date was approximately four years from its designation as a nonattainment area in 1990. However, as also noted by ADEQ, for other Moderate PM_{10} nonattainment areas, CAA section 188(c)(1) sets a maximum attainment date of the end of the sixth calendar year after the area's designation as nonattainment. Therefore, we are specifically seeking comment on whether we should set a maximum attainment date of December 31, 2027 (roughly six years from the expected SIP call effective date), rather than December 31, 2025 (roughly four years from the expected SIP call effective date), for the Yuma PM_{10} nonattainment area, if we finalize our proposed finding of inadequacy and SIP call.

We are also again soliciting public comments on all issues discussed in our June 1, 2021 proposal. We will accept comments from the public on that proposal until the date listed in the **DATES** section above. We will consider all comments received during both the initial comment period and this second comment period before taking final action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Pollution.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 5, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–22167 Filed 10–18–21; 8:45 am]

BILLING CODE 6560–50–P

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[2] 86 FR 29221.

[3] Id. at footnote 40 (citing 40 CFR 50.14(b)(5)(ii)).

[4] Letter dated June 30, 2021 from Daniel Czecholinski, Air Quality Division Director, ADEQ, RE: Proposed Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ PM_{10} Moderate Nonattainment Area, 2.

[5] Id. (quoting CAA section 110(k)(5)).

[6] Id. (emphasis in original).

[7] CAA section 110(k)(5) (''Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).'').

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 305

RIN 0970–AC86

Paternity Establishment Percentage Performance Relief

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: Due to the impact of the COVID–19 public health emergency on state child support program operations, the Office of Child Support Enforcement (OCSE) proposes to modify the Paternity Establishment Percentage (PEP) from the 90 percent performance threshold to 50 percent for Federal Fiscal Years (FFY) 2020 and 2021 in order for a state to avoid a financial penalty. OCSE also proposes to provide that adverse findings of data reliability audits of a state's paternity establishment data will not result in a financial penalty.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before November 18, 2021.

ADDRESSES: You may submit comments, identified by [docket number and/or Regulatory Information Number (RIN) number], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, Attention: Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Eliza Lowe, Senior Policy Specialist, the OCSE Division of Policy and Training, at *ocse.dpt@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the final rule. In this NPRM, we specifically seek public comment on the timeframe for the relief proposed, and whether the relief period should extend to include FFY 2022.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. The proposed relief from the Paternity Establishment Percentage performance penalty under this NPRM is based on statutory authority granted under section 452(g)(3)(A) of the Act (42 U.S.C. 652(g)(3)(A)).

Justification

The purpose of this proposed rule is to provide targeted and time-limited relief to states from penalties due to the impact of the national public health emergency (PHE) caused by COVID–19 on state program performance. The pandemic has had an enormous adverse impact on child support services delivered by states under Title IV–D of the Act. Due to disruptions to state child support operations and to court operations during the PHE, states are experiencing significant workload burdens and service backlogs.

In particular, states have indicated that the PHE has created numerous challenges in their ability to establish paternity/parentage in child support cases. Establishing paternity, a core function of the child support program as stated in section 452(a)(1) of the Act, is an essential step in securing a support order and ultimately support for a child. Because of the importance of paternity/parentage establishment in the success of the child support program, a state's paternity establishment performance, measured using the Paternity Establishment Percentage (PEP), is a federally-required performance measure under section 452(g) of the Act.

While states have some discretion under their Title IV–D State Plan for their paternity and parentage establishment procedures and have developed programs that range from highly-administrative to more judicially-based, they also have commonalities in these procedures. States are required, for example, to have hospital-based, voluntary paternity acknowledgement programs to establish parentage for non-marital birth families in uncontested cases and to have procedures for genetic testing in contested cases.

The pandemic has made it difficult for state child support programs to perform many of the in-person functions needed to establish paternity/parentage. Barriers to this process include the limitations of on-site genetic-testing operations, office-staffing issues due to staff telework or illness, and people's inability to visit offices for case intake or genetic testing. In addition, many hospitals have limited visitation policies during the PHE, which led many states to suspend their hospital-based voluntary paternity/parentage establishment programs. Finally, in many jurisdictions, courts halted certain civil proceedings, including child support cases requiring paternity/parentage establishment.[1] While most courts are now operational, child support cases remain backlogged.[2] The situation continues to impact state's paternity establishment performance for FFY 2021.

Since the start of the pandemic in early 2020, states have appealed for relief from program requirements in order to support their operations during the crisis. OCSE is able to provide certain flexibilities for administrative requirements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (See OCSE Dear Colleague Letter 20–04: Flexibilities for State and Tribal Child Support Agencies during COVID–19 Pandemic [3]). However, these flexibilities do not extend to relief for financial penalties related to performance or adverse data reliability audit findings. States are concerned that PEP-related financial penalties, which like all child support performance penalties are imposed in the form of a reduction in the Temporary Assistance for Needy Families (TANF) program funding to states, place an undue burden on state budgets and threaten funding that supports the very families who are most in need during this time of crisis.

The adverse impact of the pandemic on paternity establishment is evident in the data. According to OCSE's FFY 2020 data, which are based on data that states submit and OCSE compiles, 41 out of the 54 states (50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) experienced a decrease in their paternity establishment performance as measured by their PEP percentage. More problematic, according to these data, as many as 18 states appear to have failed to meet the 90 percent threshold and may be subject to financial penalties if they fail to take sufficient corrective action to achieve the appropriate PEP performance level in the subsequent year.

This regulatory action is time sensitive because it must be in effect before states are subject to penalties and adverse data reliability audit findings. States are desperately seeking confirmation from OCSE that they will have relief from these penalties against their state TANF grants. Such penalties would be an overwhelming burden on state budgets and threaten critical funding needed during this COVID–19 PHE.

Background: PEP Performance Requirement

The PEP performance requirement, which is part of the overall performance, audit, penalties, and incentives system for child support, is established under 452(g) of the Act and 45 CFR 305.40. Section 452(a)(4)(C)(i) of the Act requires the Secretary to determine whether State-reported data used to determine the performance levels are complete and reliable. Additionally, section 409(a)(8)(A) of the Act and 45 CFR 305.61(a)(1) provides for a financial penalty if there is a failure to achieve the required level of performance or an audit determines that the data is incomplete or unreliable.

[1] Hurst, John, ''PEP in a Pandemic Environment,'' NCSEA Child Support CommuiniQue, (April, 2021) and Fickler, Wade and Sarah Scherer, ''The NCSL Blog: COVID–19's Snowballing Effect on Child Support, Custody, Visitation, Economic Security'' (April 21, 2020).

[2] Ibid.

[3] *https://www.acf.hhs.gov/css/policy-guidance/flexibilities-state-and-tribal-child-support-agencies-during-covid-19-pandemic.*

The minimum acceptable level of performance for the PEP is 90 percent or an improvement of 2 to 6 percentage points over the previous year's level of performance. Section 409(a)(8) of the Act and 45 CFR 305.61(a)(2) impose automatic corrective action for the subsequent fiscal year. A state also must submit complete and reliable data used in the PEP calculation, which will be audited according to 45 CFR 305.60.

If a state fails to meet the annual 90 percent PEP standard, or to show improvement in the subsequent year (2 to 6 percentage points), the amount of the initial penalty will be equal to one percent of the adjusted State Family Assistance Grant for the TANF program. A penalty against the TANF grant will also be imposed if the state fails to submit complete and reliable PEP data and there is an adverse data reliability audit finding for PEP in the subsequent year. The penalty will continue to be assessed in accordance with section 409(a)(8)(B) of the Act and 45 CFR 305.61 until the state is determined to have submitted complete and reliable data and achieved the required performance level. In accordance with 45 CFR 262.1(e)(1), the state must expend additional state funds equal to the amount of the penalty (which will not count toward the maintenance-of-effort requirement under TANF) the year after the TANF penalty is assessed.

In recent years prior to the pandemic, OCSE has imposed an average of one penalty for PEP performance annually, as nearly all states have consistently met or exceeded the PEP performance measure. This indicates that the failure in performance in FFY 2020 is due to the unprecedented circumstances of the PHE. In addition, in the last ten years, OCSE has imposed no penalties due to adverse data reliability audit findings related to the PEP measure.

Proposed PEP Penalty Relief

OCSE proposes providing relief through this regulation by modifying the requirements related to the PEP performance measure. Section 452(g)(3) of the Act authorizes the Secretary ''to take into account such additional variables as the Secretary identifies (including the percentage of children in a State who are born out of wedlock or for whom support has not been established) that affect the ability of a State to meet the requirements of [section 452(g) of the Act].'' OCSE proposes that the effect of the COVID–19 PHE on states is one such additional variable, due to the unprecedented nature and scope of the pandemic's impact on the child support program as described above. Therefore, OCSE proposes modifying the required PEP to a lower performance threshold and setting aside adverse data reliability audit findings related to PEP, thereby allowing states that are not able to meet data performance and data reliability audit requirements to avoid the financial penalty for the years when the pandemic had its greatest impact on the child support program.

OCSE proposes modifying the PEP threshold of 90 percent to a lower threshold of 50 percent for FFYs 2020 and 2021. The rationale for choosing 50 percent is based on the value of this percentage in Table 1 under 45 CFR 305.33, Determination of applicable percentages based on performance levels. Fifty percent is the lowest possible PEP level in the table that still has performance value because it is the lowest PEP performance for which a state still gets credit in the calculation of incentives. Below 50 percent, the state's applicable percentage for PEP performance is valued at zero. In addition, we propose a 50 percent threshold because, according to OCSE's FFY 2020 data, no state has a FFY 2020 PEP level below 65 percent. Therefore, a PEP level of 50 percent will ensure that no state will be subject to a financial penalty while state agency operations are disrupted due to the ongoing PHE.

This proposed rule is time limited and data informed to provide relief narrowly and specifically in response to the ongoing PHE. We propose modifying the PEP threshold for FFYs 2020 and 2021 to align with the timeframe when states experienced the greatest impact of the public health emergency. After the relief period, starting for FFY 2022, the PEP performance thresholds will revert back to the usual levels described under 45 CFR 305.40(a)(1), and states will once again be subject to penalties for adverse data reliability audit findings related to the PEP measure after an automatic corrective action year as specified in 45 CFR 305.42. In this NPRM, we specifically seek public comment on the timeframe for the relief proposed, and whether the relief period should extend to include FFY 2022.

Finally, this proposed relief maintains the integrity of the system of performance, audit, penalties, and incentives that has driven success and accountability in the child support program for over two decades. The proposed regulation provides relief from the PEP measure and data reliability audit penalties but does not otherwise change the process for other performance measures, data collection and reporting, audits, or incentives.

Section-by-Section Discussion of the Provisions of This Proposed Rule

Section 305.61: Penalty for Failure To Meet IV–D Requirements.

We propose to add a new provision to Part 305 Program Performance Measures, Standards, Financial Incentives and Penalties, to provide short-term relief from financial penalties related to the paternity establishment percentage measure, due to the impact of the COVID–19 pandemic on state IV–D operations. We propose adding a new paragraph (e) to § 305.61, Penalty for failure to meet IV–D requirements, to modify the criteria by which states are subject to financial penalties for the PEP requirements. The proposed modified criteria are that the acceptable performance level of paternity establishment percentage under § 305.40(a)(1) is reduced from 90 percent to 50 percent and the adverse findings of data reliability audits of a state's paternity establishment data under § 305.60 will not result in a financial penalty. The proposed modifications are applicable to FFYs 2020 and 2021.

In summary, the rationale for this NPRM, which proposes modifying the PEP requirements, is based on the statutory allowance under section 452(g)(3)(A) of the Act that the Secretary may consider additional variables that affect a state's ability to meet PEP requirements due to the COVID–19 PHE. However, the proposed modifications are only for FFYs 2020 and 2021. In addition, the proposed modifications are based on data that indicate PEP declined for 41 states during the pandemic, and approximately one third of states will be subject to a financial penalty related to these declines if they do not take sufficient corrective action in the subsequent corrective action year. During this COVID–19 PHE, OCSE has carefully considered the impact of the pandemic on state performance. The proposed regulation limits adding further burden on states by providing relief from penalties against state public assistance funding.

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State

governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this NPRM is significant and was accordingly reviewed by OMB.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). ACF does not anticipate that this proposed rulemaking is likely to have an economic impact of $100 million or more in any one year, and therefore does not meet the definition of ''economically significant'' under Executive Order 12866. Accordingly, OIRA has determined that this rulemaking is 'not major' under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $164 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will result in an annual expenditure of $164 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism impact as defined in the executive order.

List of Subjects in 45 CFR Part 305

Child support, Program performance measures, standards, financial incentives, and penalties.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

JooYeun Chang,

Acting Assistant Secretary for Children and Families.

Xavier Becerra,

Secretary.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 305 as set forth below:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

■ 2. In § 305.61 revise paragraph (e) to read as follows:

§ 305.61 Penalty for failure to meet IV–D requirements.

* * * * *

(e) *COVID–19 paternity establishment percentage penalty relief.* Due to the adverse impact of the COVID–19 pandemic on State IV–D operations, the criteria by which states are subject to financial penalties for the paternity establishment percentage under paragraph (a) of this section are temporarily modified for fiscal years 2020 and 2021 as follows:

(1) The acceptable level of paternity establishment percentage performance under § 305.40(a)(1) is modified for fiscal years 2020 and 2021 from 90 percent to 50 percent, and

(2) The adverse findings of data reliability audits of a State's paternity establishment data under § 305.60 will not result in a financial penalty for fiscal years 2020 and 2021.

* * * * *

[FR Doc. 2021–22553 Filed 10–18–21; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2021–0060; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE49

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southern Sierra Nevada Distinct Population Segment of Fisher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally endangered Southern Sierra Nevada distinct population segment (DPS) of fisher (*Pekania pennanti*) under the Endangered Species Act of 1973, as amended (Act). In total, we propose to designate approximately 554,454 acres (ac) (224,379 hectares (ha)) in six units in California as critical habitat for the Southern Sierra Nevada DPS of fisher. We also announce the availability of a draft economic analysis of the proposed critical habitat designation.

DATES: We will accept comments received or postmarked on or before December 20, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address