hospitalizations, amputations, loss of an eye, or fatality that occur as a result of diving operations within eight (8) hours of the incident;

2. Provide OTPCA and the Houston South Texas OSHA Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA 301 form);

3. Include on the OSHA 301 form information on the diving conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented;

4. Provide their certification that they informed affected divers of the incident and the results of the incident investigation;

5. Notify OTPCA and the Houston South Texas OSHA Area Office within fifteen (15) working days should the applicants need to revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance;

6. Obtain OSHA's written approval prior to implementing the revision in their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions in the proposed permanent variance;

7. By the fifteenth (15th) of January, at the beginning of each new calendar year, provide OTPCA, and Houston South Texas OSHA Area Office, with a report summarizing the dives completed during the previous year and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents;

8. Notify OSHA if it ceases to do business, has a new address or location for their main office, or transfers the operations covered by the proposed permanent variance to a successor company; and

9. Ensure that OSHA would approve the transfer of the interim order or permanent variance to another company.

OSHA will publish a copy of this notice in the **Federal Register**.

VII. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–25566 Filed 11–17–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0010]

KBR Wyle Services, LLC; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of KBR Wyle Services, LLC for a permanent variance and interim order from a provision of the OSHA standard that regulates commercial diving operations, presents the agency's preliminary finding on KBR's application, and announces the granting of an interim order. KBR's variance request is based on the conditions specified in the alternate standard that OSHA granted to the National Aeronautics and Space Administration (NASA) on June 30, 2021. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this notice.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before December 20, 2023. The interim order specified by this notice becomes effective on November 20, 2023 and shall remain in effect until it is modified or revoked, or until OSHA publishes a decision on the permanent variance application, whichever occurs first.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2022–0010). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627 for assistance in locating docket submission.

Extension of comment period: Submit requests for an extension of the comment period on or before December 20, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2300; email: *robinson.kevin@dol.gov.*

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

Hearing Requests: Pursuant to 29 CFR 1905.15, hearing requests must include: (1) a short and plain statement detailing how the proposed variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

OSHA's standards in subpart T of 29 CFR 1910 govern commercial diving operations. On June 20, 2022, KBR Wyle Services, LLC (KBR or the applicant), submitted an application for a permanent variance under section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and 29 CFR 1905.11 (Variances and other relief under section 6(d)), from a provision of OSHA's commercial diving operations (CDO) standard that regulates the use of decompression chambers (Docket No. OSHA–2022–0010–0001). KBR's application also requested an interim order pending OSHA's decision on the variance application. KBR's corporate offices are located at 601 Jefferson Street, Houston, Texas 77002, and KBR identified an additional place of employment involved in the variance application: NASA's Neutral Buoyancy Laboratory, 13000 Space Center Boulevard, Houston, Texas 77059.

Specifically, KBR seeks a permanent variance and interim order from the provision of OSHA's CDO standard at 29 CFR 1910.423(b)(2) that requires the employer to instruct divers engaged in commercial diving operations to remain awake and in the vicinity of the decompression chamber at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) for any dive outside the no-decompression limits, deeper than 100 feet of sea water (fsw), or using mixed gas as a breathing mixture.

KBR is a contractor for the National Aeronautics and Space Administration (NASA), a federal government agency that is responsible for science and technology related to air and space. On June 30, 2021, OSHA granted NASA an alternate standard [1] regulating its use of decompression chambers during diving operations at NASA's National Buoyancy Laboratory (NBL) (Docket No. OSHA–2022–0010–0002), OSHA's Comments and Decisions to NASA's Request for an Alternate Standard on Diving (NASA Alternate Diving Standards). To account for technological advances in the use of elevated oxygen levels in nitrox breathing-gas mixtures and the use of the equivalent-air-depth (EAD) formula (see OSHA's 2004 Final Rule amending 29 CFR part 1910, subpart T, Appendix C (69 FR 7351, 7356)) the NASA Alternate Diving Standard provides NASA with modified requirements regarding the use of decompression chambers, including requiring the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

KBR's divers conduct diving operations for NASA at the NBL facility in Houston, Texas. NASA requires all divers to follow all of their internal requirements, including the NBL Diving Program and the NASA Alternate Diving Standard, which only covers NASA employees. To permit KBR's divers to dive under the same standards as their NASA-employed colleagues, KBR seeks the interim order and permanent variance from 29 CFR 1910.423(b)(2) based on the same conditions that apply to NASA divers under the NASA Alternate Diving Standard.

KBR contends that the proposed variance conditions outlined in their application provide KBR's workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's CDO standard. KBR also certified that it is not contesting any citations involving the standards that are the subject of this application.

Based on an initial review of KBR's application for a permanent variance and interim order based on the Alternate Standard OSHA granted NASA on June 30, 2021, OSHA has preliminarily determined that granting a variance allowing KBR to use the NASA Alternate Standard would provide a workplace for KBR employees that is as safe and healthful as that provided by the OSHA standard.

Pursuant to the requirements of OSHA's variance regulations (29 CFR 1905.11), the applicant has certified that they notified their workers of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed their workers of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

II. NASA's Alternate Diving Standard and KBR's Variance Application

A. Background

On December 15, 2020, NASA submitted an application (Docket No. OSHA–2022–0010–0001) to OSHA proposing one alternate standard to 29 CFR 1910.423(b)(2), Subpart T, and included with their application extensive introductory, background, and explanatory information in support of the application (Docket No. OSHA–2022–0010–0003). NASA sought an alternate standard that would permit the NBL to conduct post-dive health monitoring that is tailored to NASA's specific dive operations and medical surveillance capabilities.

The alternate standard application stated that NASA operates training and simulation activities for space operations that routinely involve underwater diving operations in preparation of upcoming missions. NASA described the NBL as a large, indoor tank of water, where astronauts perform simulated extravehicular activities (EVAs), also known as spacewalks, in preparation for upcoming space missions. The NBL is a controlled environment with a maximum depth of 40 feet. Its primary purpose is to provide a large-scale underwater environment in which NASA personnel can simulate a weightless environment by balancing the buoyancy of a suited subject submerged in the water. Astronaut trainees, suited in Extravehicular Mobility Units (EMUs) adapted for use in water, can then perform a variety of specialized activities on spacecraft and Space Station analogs in the water. The NBL uses nitrox (46% enriched air nitrox ([EAN_{46}) as the standard breathing gas for self-contained underwater breathing apparatus (SCUBA) while working in the tank. NASA asserted in its request for the alternate standard that diving on nitrox in the NBL is safer and less likely to cause decompression sickness (DCS) than diving on compressed air due to the lower partial pressure of nitrogen in the gas mixture, giving a shallower ''equivalent air depth'' (EAD). The EAD formula can accurately estimate the depth allowing for DCS risk calculation based on equivalent nitrogen pressures and dive durations used in air diving. In other words, breathing 46% EAN_{46} at 40 feet is like breathing air at 17 feet, essentially eliminating the risk of DCS in nominal operations. Additionally, the alternate standard application examined the use of nitrox in the water, and the risk of oxygen toxicity, specifically the risk of seizure resulting from Central Nervous System (CNS) oxygen toxicity. NASA asserted in the alternate standard application that with the hard floor at 40 feet in the tank, there are no cases in medical or diving literature of seizure in water at pressures of $_{p}O_{2}$ of 1.0 ata. Further, NASA asserted that there have

[1] Federal agency heads may seek and obtain approval for alternate standards from OSHA pursuant to 29 CFR 1960.17. An alternate standard may only be approved upon a showing that the alternate standard will provide equivalent or greater protection for the affected employees than compliance with the OSHA standard.

been no instances of CNS oxygen toxicity with NBL operations to date.

The alternate standard application asserted that the alternate standard provides equivalent protection to the OSHA standard. First, the fixed diving depth of the pool has mitigated the risk of decompression sickness. As a result, the NBL has eliminated the risk of decompression sickness and thus the need to remain within the vicinity of the chamber is for the control and treatment of arterial gas embolism only. Second, NASA asserted that a shorter observation period would be sufficient: ''At the NBL, a ten-minute observation provides the equivalent protection as a one-hour observation in the outside environment. Moreover, implementation of this standard will provide greater protection for divers by allowing them to dive on Nitrox rather than air routinely. This will reduce recurrent decompression stress experienced by the divers, along with the resulting long-term health problems that occur from repetitive decompression stress, such as the risk of dysbaric osteonecrosis (bone death).'' Additionally: ''NBL divers operate under no-decompression limits that are more conservative than the U.S. Navy. The OSHA regulations for mixed gas diving enhance safety when applied to gas mixtures used on long, deep, complex dives because of increased risk of DCS and oxygen toxicity. However, diving with nitrox at shallower depths, such as the NBL, is in fact safer than diving on air.'' Further: ''The NBL adheres to strict oxygen clean handling and compatibility requirements that exceed the industry standard for concentrations greater than 40% by volume. The alternate standard allows a safer gas to be breathed during all NBL events, in addition to allowing for fewer total diving events.''

NASA's alternate standard application also explained that NASA employees working within the NBL work together to ensure that qualified personnel and certified systems are available to meet NASA's EVA requirements. NASA stated that safety and utility divers support suited trainees at all times in the water. Suited crew utilize surface-supplied nitrox via an umbilical, and support divers breath nitrox via self-contained underwater breathing apparatus (SCUBA) while working in the tank. NBL activities routinely involve dozens of trainees and divers, requiring hundreds of dive hours per week. NASA asserted in the alternate standard application that all divers are physically examined by the NBL medial officer or a human test support group medical technical for fitness prior to entering the water. Suited subjects have their fitness to dive exam performed by the medical officer only. This exam includes vital signs and changes to medical history, including but not limited to, medications, physical fitness, as well as cardiopulmonary and ear, nose and throat examinations. Divers and suited subjects may be disqualified, if there are any concerning abnormalities, pending treatment or further evaluation and management. NASA also certified that the application of the alternate standard will only apply to the NBL and will not be used during the other underwater activities that NASA performs.

After fully considering NASA's application and its responses to OSHA's follow-up questions (Docket No. OSHA–2022–0010–0004), OSHA granted the alternate standard that NASA proposed for use solely at NASA's NBL (Docket No. OSHA–2022–0010–0002). KBR now seeks an interim order and permanent variance based on the alternate standard that OSHA granted to NASA covering their employees conducting commercial diving operations at the NBL.

As a NASA contractor, KBR asserts that their divers must strictly follow the requirements of the NBL, which include following the conditions of the NASA Alternate Diving Standard. However, the NASA Alternate Diving Standard's coverage does not include KBR-employed divers, even though they work side-by-side with NASA-employed divers during NBL operations. KBR states that their divers undergo the same training as NASA NBL employees, and that there are no differences between NASA and KBR divers regarding medical clearance procedures and standards, training materials, equipment used, equipment maintenance, and diving procedures used. Accordingly, KBR seeks permission from OSHA to conduct diving activities for NASA at the NBL under the same standard regulating the time required for NASA employees, diving at the NBL, on nitrox and within the no-decompression limits, pursuant to the NASA Alternate Diving Standard at 29 CFR 1910.432(b)(2).

B. Requested Variance From 29 CFR 1910.423(b)(2), Requirements for Decompression Chambers [2]

OSHA's standards regulating the availability and use of decompression chambers require that: for any dive outside the no-decompression limits, deeper than 100 fsw, or using mixed gas as a breathing mixture, the employer must instruct the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) (1910.423(b)(2)).

In adopting the conditions of the NASA Alternate Diving Standard, KBR's application proposes deviating from the decompression chamber availability and capability requirements in OSHA's CDO standard. As OSHA explained when it granted the NASA Alternate Diving Standard, the purpose of having a decompression chamber available and ready for use at a dive site is to treat DCS and arterial gas embolism (AGE). DCS may occur from breathing air or mixed gases at diving depths and durations that require decompression, while AGE may result from over-pressurizing the lungs, usually following a rapid ascent to the surface without proper exhalation. If DCS or AGE develops, a decompression chamber, oxygen or treatment gas mixtures, and treatment tables and instructions must be readily available to treat these conditions effectively. Decompression chambers provide the most effective therapy—recompression—for DCS and AGE.

KBR's proposed variance would adopt the conditions of the NASA Alternate Diving Standard that permits NASA to deviate from the requirement of 1910.423(b)(2) that the employer instruct all divers who dive deeper than 100 fsw or who dive using mixed breathing gas to remain awake and in the vicinity of a decompression chamber for one hour after the dive, by allowing divers at NASA's NBL who are diving on nitrox, within the no decompression limits, to be instructed to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive. In other words, alternate Section 1910.423(b)(2) requires that any NASA diver at NASA's NBL who dives using nitrox within the no decompression limits will be instructed to remain awake and in the vicinity of the decompression chamber for at least ten minutes after the completion of the dive.

When granting NASA an alternate standard to 1910.423(b)(2), OSHA explained that the CDO standard sets the 100 fsw limit based on the increased risk of developing DCS and AGE on dives deeper than 100 fsw. However, OSHA explained that the agency amended the CDO standard in 2004 to permit employers of recreational diving instructors and diving guides to comply with an alternative set of decompression

[2] A decompression chamber is ''a pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system used to decompress divers and to treat decompression sickness'' (29 CFR 1910.402).

chamber requirements (see 69 FR 7351 (February 17, 2004)).[3] Under the conditions articulated in Appendix C to Subpart T, eligible employers are not required to provide a decompression chamber at the dive site when engaged in SCUBA diving to 130 fsw while breathing a nitrox gas mixture within the no-decompression limits.

OSHA explained in the NASA Alternate Diving Standard that it created this exemption for diving guides because the agency determined that the elevated levels of oxygen in nitrox breathing-gas mixtures reduced the incidence of DCS compared to breathing air at the same depths, and therefore found that the risk of DCS was minimal.

After considering the statistics and information regarding NBL operations that NASA submitted, OSHA concluded that NASA's proposed alternate standard would provide equivalent protection to the CDO standard when NBL divers use nitrox breathing-gas mixtures. KBR's proposed variance would adopt the same conditions under which OSHA granted the alternate standard to 1910.423(b)(2) to NASA for NBL dives in which KBR divers participate.

Based on the technical review of KBR's application, the NASA Alternate Diving Standard, and related supporting material, OSHA preliminarily finds that the proposed conditions would provide KBR divers with protection equivalent to the CDO standard; there are no differences in the training requirements, medical clearance procedures and standards, equipment use and maintenance requirements, or diving procedures that apply to NASA-employed and KBR-employed divers who dive at the NBL; diver safety is best promoted where diving safety rules are clear and consistently applicable to all divers at a worksite. For these reasons, OSHA believes that diving safety for the NBL will be maximized when the diving practices of KBR-employed divers are identical to those of NASA-employed divers. Accordingly, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to KBR on those same conditions.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives, OSHA has preliminarily determined that the applicant's proposed alternative on the whole, subject to the conditions in the request and imposed by this interim order, provide measures that are as safe and healthful as those required by the OSHA standard addressed in section II of this document.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the decision to grant an interim order allowing KBR's employees to perform diving operations at NASA's NBL, subject to the conditions that follow in this document. This interim order will remain in effect until the agency modifies or revokes the interim order or makes a decision on KBR's application for a permanent variance. During the period starting with the publication of this notice or until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance, the applicant is required to comply fully with the conditions of the interim order as an alternative to complying with the requirement of 29 CFR 1910.424(b)(2), including the condition identified in the NASA Alternate Diving Standard that:

> Requires divers at NASA's Neutral Buoyancy Laboratory, in Houston, Texas, conducting dives using nitrox, within the no-decompression limits, to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

As described earlier in this notice, KBR proposes to adopt the conditions of the NASA Alternate Diving Standard, which OSHA granted to NASA on June 30, 2021, as the conditions of the interim order and permanent variance. In addition to adopting the NASA Alternate Diving Standard's conditions for deviating from the decompression chamber provisions of Subpart T, OSHA has added several conditions, which the agency believes are necessary to ensure the safety of KBR's divers who conduct commercial diving operations for NASA at the NBL.

After comprehensive review of the record, the agency preliminarily finds that adherence to the conditions of the proposed variance would provide the applicant's workers with a workplace that will be at least as safe and healthful as if the applicant complied with the requirements of 29 CFR 1910.423(b)(2). After reviewing all available information, including KBR's variance application, NASA's application for the alternate diving standard, and OSHA's analysis and subsequent granting of the NASA alternate standard, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to KBR on those same conditions.

In order to avail itself of the interim order, KBR must: (1) comply with the conditions listed in the interim order for the period starting with the grant of the interim order until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance); (2) comply fully with all other applicable provisions of 29 CFR part 1910 and Subpart T; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of the application for a permanent variance.

OSHA is also proposing that the same requirements (see above section II, part B) would apply to a permanent variance if OSHA ultimately issues one. OSHA requests comment on the preliminary determination that the specified alternative and conditions would provide a workplace as safe and healthful as those required by the standard from which the variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Description of the Conditions Specified by the Interim Order and the Permanent Variance

This section describes the alternative means of compliance with the provisions of 1910.423(b)(2) and provides additional detail regarding the proposed conditions that form the basis of KBR's application for an interim order and permanent variance. As indicated earlier in this notice, KBR seeks the interim order and permanent variance based on proposed conditions derived from the conditions of the alternate standard that OSHA granted to NASA on June 30, 2021 (Docket No. OSHA–2022–0010–0002). The below-described conditions form the basis of the interim order and the requested permanent variance.[4]

Proposed Condition A: Scope

The scope of the proposed permanent variance would limit coverage only to the commercial diving operations performed at NASA's NBL. Clearly defining the scope of the proposed permanent variance provides KBR, KBR's employees, potential future

[3] Appendix C incorporated into the CDO standard essentially the same terms as those used in a variance that OSHA granted to Dixie Divers, Inc., a diving school that employed several recreational diving instructors, in 1999 (see 64 FR 71242, December 20, 1999).

[4] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a permanent variance but the conditions are mandatory for the purposes of the interim order.

applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that KBR exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers)[5] may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated in the application. In this instance, if OSHA were to grant a permanent variance, it would apply to only the applicant, KBR, and only to work at NASA's Neutral Buoyancy Laboratory. As a result, it is important to understand that if OSHA were to grant KBR a permanent variance, it would not apply to any other employers. Additionally, coverage is limited to the work situations specified under the ''Scope and Application'' section of Subpart T, Commercial Diving Operations (1910.401(a)), and would not apply to commercial diving operations that are already exempted under 1910.401(a)(2).[6] Accordingly the scope specifies that the interim order and proposed variance will only apply to dives occurring at NASA's Neutral Buoyancy Laboratory and within OSHA's geographical authority. When implementing the conditions of the proposed permanent variance, KBR would have to comply fully with all safety and health provisions that are applicable to commercial diving operations as specified by 29 CFR 1910, Subpart T, except for the requirements specified by 29 CFR 1910.423(b)(2).

The interim order only applies to KBR's employees when they conduct diving operations at NASA's Neutral Buoyancy Laboratory, as would the permanent variance should OSHA decide to grant it.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance.

Proposed Condition C: List of Abbreviations

Proposed condition C defines several abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant and their employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: Requirements for Decompression Chambers

This proposed condition requires that, for any dive that is within the no-decompression limits and using nitrox as a breathing mixture, KBR will instruct the diver to remain awake and in the vicinity of the decompression chamber which is at the dive location for at least ten minutes after the dive (including decompression or treatment as appropriate). When using a nitrox breathing-gas mixture, KBR will be required to meet the no-decompression provisions of Appendix C to the CDO rule (''Use of No-Decompression Limits'').

Proposed Condition E: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

Proposed Condition F: Worker Qualification and Training

This proposed condition requires KBR to follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual as well as any instruction provided by NASA's Dive Safety Board (NSB) to qualify their employees to perform diving activities at the NBL. Further, KBR must ensure that all employees conducting dives at the NBL are physically examined by the NBL medical officer of the day or a human test support group medical technician for fitness to dive prior to entering the water. The proposed condition specifies actions an affected worker must be able to perform safely during diving activities, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing the required dive tasks ensures that they recognize and respond appropriately to underwater safety and health hazards. These qualification and training requirements enable KBR divers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Proposed Condition G: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, KBR must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore must comply fully with those requirements.

Proposed Condition H: Notifications

Proposed Condition H adds additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant would be required to maintain records of specific factors associated with each diving activity. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition I (using OSHA Form 301 Injury and Illness Incident Report to investigate and record dive-related recordable injuries as defined by 29 CFR parts 1904.4, 1904.7, and 1904.8—1904.12), would enable the applicant and OSHA to assess the effectiveness of

[5] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

[6] Section 1910.401(a)(2) provides that the CDO standard does not apply to any dive (i) performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits; (ii) performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; (iii) governed by 45 CFR part 46 (Protection of Human Subjects, U.S. Department of Health and Human Services) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects; or (iv) fitting the standard's definition of ''scientific diving.''

the interim order and proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.[7]

Under the proposed condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of NBL dive-related operations within eight (8) hours of the incident; (2) provide OTPCA and the Houston South Texas Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA Form 301 Injury and Illness Incident Report); (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OTPCA and the Houston South Texas OSHA Area Office within 15 working days should the applicant revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance; and (6) provide OTPCA and the Houston South Texas OSHA Area Office, by the fifteenth (15th) of January, at the beginning of each new calendar year, a report summarizing the dives completed during the year just ended and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and Illness Incident Report within seven (7) calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related diving (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing injuries and illnesses, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, their employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and based on this assessment, whether to revise or revoke the conditions of the proposed permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to another company. In addition, the condition specifies that the transfer of the permanent variance to another company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to another company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

VI. Specific Conditions of the Interim Order and the Proposed Variance

After comprehensively reviewing the evidence, OSHA has preliminarily determined that the proposed conditions will provide a place of employment as safe and healthful as that provided by 1910.424(b)(2). The following conditions apply to the interim order that OSHA is granting to KBR. In addition, these conditions specify the alternative means of compliance that OSHA proposes for KBR's requested permanent variance from the above-listed provision of subpart T of 29 CFR part 1910.

The conditions would apply with respect to all employees of KBR participating in diving operations as part of NASA's NBL. These conditions are outlined in this Section:

A. Scope

The interim order applies, and the permanent variance would apply only to KBR's diving operations conducted for NASA and performed at NASA's NBL; and

Performed in compliance with all applicable conditions of subpart T of 29 CFR 1910 except for the requirement specified by 29 CFR 1910.423(b)(2) when conducting commercial diving operations.

B. Duration

The interim order granted to KBR will remain in effect until OSHA modifies or revokes this interim order or grants KBR's request for a permanent variance in accordance with 29 CFR 1905.13, whichever comes first.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

ATA—Atmosphere Absolute
BCD—Buoyancy Compensator Device
CDO—Commercial Diving Operations
CFR—Code of Federal Regulations
DCS—Decompression Sickness
DSB—Dive Safety Board
EAD—Equivalent Air Depth
EVA—Extravehicular Activities
fsw—feet of seawater
KBR—KBR Wyle Services, LLC
NBL—NASA Neutral Buoyancy Laboratory
OSHA—Occupational Safety and Health Administration
OTPCA—OSHA's Office of Technical Programs and Coordination Activities
SCUBA—Self-Contained Underwater Breathing Apparatus

D. Requirements for Decompression Chambers

For any dive at the NBL that is within the no-decompression limits and using nitrox as a breathing mixture, KBR would instruct the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least ten (10) minutes after the dive (including decompression or treatment as appropriate).

E. Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected

[7] See 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); and updates to OSHA's recordkeeping rule, 79 FR 56130, September 18, 2014 (more information available at: (*http://www.osha.gov/recordkeeping2014/index.html*).

workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

F. Worker Qualification and Training

KBR would be required to:

1. Follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual, as well as any instruction provided by NASA's DSB;

2. Ensure that prior to entering the water, all KBR employees conducting dives at the NBL have been physically examined for fitness to dive by the NBL medical officer of the day or a human test support group medical technician.

G. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, KBR would have to:

1. Maintain records of recordable injuries that occur as a result of diving operations conducted for NASA under the NBL;

2. Ensure that the information gathered and recorded under this provision, in concert with the information provided under proposed condition G (using OSHA Form 301 Incident Report Form) to investigate and record dive-related recordable injuries as defined by 29 CFR parts 1904.4, 1904.7, and 1904.8—1904.12, would enable KBR and OSHA to determine the effectiveness of the proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.

H. Notifications

KBR would be required to:

1. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Houston South Texas OSHA Area Office of any recordable injuries, illnesses, in-patient hospitalizations, amputations, loss of an eye, or fatality that occur as a result of diving operations within eight (8) hours of the incident;

2. Provide OTPCA and the Houston South Texas OSHA Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA 301 form);

3. Include on the OSHA 301 form information on the diving conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented;

4. Provide their certification that they informed affected divers of the incident and the results of the incident investigation;

5. Notify OTPCA and the Houston South Texas OSHA Area Office within fifteen (15) working days should the applicant need to revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance;

6. Obtain OSHA's written approval prior to implementing the revision in their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions in the proposed permanent variance;

7. By the fifteenth (15th) of January, at the beginning of each new calendar year, provide OTPCA, and Houston South Texas OSHA Area Office, with a report summarizing the dives completed during the previous year and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents;

8. Notify OSHA if it ceases to do business, has a new address or location for their main office, or transfers the operations covered by the proposed permanent variance to a successor company; and

9. Ensure that OSHA would approve the transfer of the interim order or permanent variance to a successor company.

OSHA will publish a copy of this notice in the **Federal Register**.

VII. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–25567 Filed 11–17–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Pro Bono Innovation Fund Process for Submitting Pre-Applications for 2024 Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions for submitting a Pre-Application for 2024 Pro Bono Innovation Fund grants.

DATES: Pre-applications must be submitted by 11:59 p.m. EST on Monday, January 16, 2024.

ADDRESSES: Letters of Intent must be submitted electronically at *http://lscgrants.lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Harris, Special Grant Program Coordinator, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1572 or *harrisk@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 2014, Congress has provided an annual appropriation to LSC ''for a Pro Bono Innovation Fund.'' *See, e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4553 (2022). LSC requested these funds for grants to ''develop, test, and replicate innovative pro bono efforts that can enable LSC grantees to expand clients' access to high quality legal assistance.'' LSC Budget Request, Fiscal Year 2014 at 26 (2013). The grants must involve innovations that are either ''new ideas'' or ''new applications of existing best practices.'' *Id.* Each grant would ''either serve as a model for other legal services providers to follow or effectively replicate a prior innovation. *Id.* The Senate Appropriations Committee explained that these funds ''will support innovative projects that promote and enhance pro bono initiatives throughout the Nation,'' and the House Appropriations Committee directed LSC ''to increase the involvement of private attorneys in the delivery of legal services to [LSC-eligible] clients.'' Senate Report 114–239 at 123 (2016), House Report 113–448 at 85 (2014).

Since its inception, the Pro Bono Innovation Fund has advanced LSC's goal of increasing the quantity and quality of legal services by funding projects that more efficiently and effectively involve pro bono volunteers in serving the critical unmet legal needs of LSC-eligible clients. In 2017, LSC built on these successes by creating three funding categories to better focus