

placed it in the docket for this rulemaking.

### VIII. Executive Order Determinations

#### A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

#### B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

### IX. Additional Information

#### A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website

at <https://www.govinfo.gov>. A copy may also be found on the FAA’s Regulations and Policies website at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies).

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

#### B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iran.

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of title 14, Code of Federal Regulations, as follows:

#### PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1617 by revising paragraph (e) to read as follows:

**§ 91.1617 Special Federal Aviation Regulation No. 117—Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIIX).**

\* \* \* \* \*

(e) *Expiration.* This SFAR will remain in effect until October 31, 2027. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

**Michael G. Whitaker,**  
Administrator.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 49

[Docket ID: DoD-2024-OS-0054]

RIN 0790-AL61

#### Implementation of HAVANA Act of 2021

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** Direct final rule with request for comments.

**SUMMARY:** This rule implements within DoD (the Department) amendments made by the Helping American Victims Afflicted by Neurological Attacks (HAVANA) Act of 2021, which provide authority for the Secretary of State and other agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. This rule covers current and former DoD employees, and dependents of current or former DoD employees and is vitally important to those who have experienced such injuries.

**DATES:** This rule will be effective on November 18, 2024 unless comments are received that would result in a contrary determination. If significant adverse comments are received, the Department will publish a timely withdrawal of the rule in the **Federal Register**. Comments will be accepted on or before November 4, 2024.

**ADDRESSES:** Interested parties may submit comments, identified by docket number and/or regulatory identifier number (RIN) and title, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350-1700.

**Instructions:** All submissions received must include the agency name and docket number or RIN for this **Federal**

**Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:**

Taiwana Smith, Director Benefits Wage and NAF Policy Line of Business, Defense Civilian Personnel Advisory Services, Office of the Under Secretary of Defense for Personnel and Readiness at (571) 372-1642.

**SUPPLEMENTARY INFORMATION:** This rule is being published as a direct final rule and is effective 15 days after the comment period expires as the Department for good cause finds it unnecessary to provide for a period of public comment in accordance with 5 U.S.C. 553(b)(B). Alternatively, because this rule relates to the provision of a benefit, it is exempt from the procedural requirements of the Administrative Procedure Act. *Id.* 553(a)(2). However, the Department is seeking comment from interested persons on the provisions of this rule and will consider all relevant comments in any subsequent rulemaking. If such comments are received, the direct final rule will be withdrawn, and a proposed rule for comments will be published.

This rule implements section 901(i) of title IX of division J of the Further Consolidated Appropriations Act, 2020 (22 U.S.C. 2680b(i)).

**Purpose and Authority—§ 49.1**

In 2016, Department of State employees stationed in Havana, Cuba, began reporting a sudden onset of symptoms, including headaches, pain, nausea, disequilibrium, and hearing loss, in conjunction with sensory events. Federal agencies have called such incidents Anomalous Health Incidents (“AHIs”). Since 2016, Federal employees in numerous countries reported suspected AHIs.

Beginning on December 20, 2019, the Department of State was authorized by statute to pay benefits to employees and their dependents for injuries suffered in the Republic of Cuba, the People’s Republic of China, or other foreign countries designated by the Secretary of State incurred after January 1, 2016, in connection with certain hostile or other incidents designated by the Secretary of State (Pub. L. 116–94, Division J, Title IX, section 901) (codified in 22 U.S.C. 2680b). These benefits were limited to Department of State employees only (*e.g.*, not including other U.S.

Government employees under Chief of Mission (COM) authority).

On January 1, 2021, this law was amended, authorizing other Federal Government agency heads (such as the Secretary of Defense) to provide benefits to their own employees under COM authority who suffered similar injuries. (Pub. L. 116–283, div. A, title XI, section 1110).

On October 8, 2021, the President signed the “Helping American Victims Afflicted by Neurological Attacks” (HAVANA) Act of 2021 (Pub. L. 117–46). The HAVANA Act amended section 901 to authorize the heads of Federal Government agencies to compensate affected employees, former employees, and their dependents for qualifying injuries to the brain. The HAVANA Act amendments did not require that the qualifying injury occur in the Republic of Cuba, the People’s Republic of China, or another foreign country designated by the Secretary of State. Section 9216 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, (Pub. L. 117–263) (codified at 22 U.S.C. 2680b(j)), provided agencies with authority to designate incidents affecting employees or dependents who are not under the security responsibility of the Secretary of State. Section 7803 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118–31) (50 U.S.C. 3519b note) generally requires each head of an element of the intelligence community to issue regulations and procedures, not later than 180 days after the effective date of the National Defense Authorization Act for Fiscal Year 2024, to implement the authorities in section 901(i) of title IX of division J of the Further Consolidated Appropriations Act, 2020 (22 U.S.C. 2680b(i)) to provide payments to the degree that such authorities are applicable to the head of the element.

This rule implements 22 U.S.C. 2680b(i) as it applies to the Department of Defense. The rule only applies to current and former employees of the DoD, and their dependents as defined in § 49.2 of this rule.

On June 30, 2022, the Department of State published an interim final rule implementing 22 U.S.C. 2680b(i), with an effective date of August 15, 2022. 87 FR 38981 (June 30, 2022) (codified at 22 CFR part 135). The Department of State subsequently published a final rule that became effective on January 25, 2023. 88 FR 4722 (Jan. 25, 2023) (codified at 22 CFR part 135). The Department of Defense has independently reviewed the approach implemented by the Department of State in these rules and has determined that its approach is reasonable and well considered.

Therefore, the Department of Defense will not substantially deviate from the definitions and process established by the Department of State.

**Definitions—§ 49.2**

The rule defines those who are eligible to receive payments: covered employees (including current and former employees) and covered dependents who on or after January 1, 2016, experience a qualifying brain injury. A “covered employee” includes Department employees who have been appointed in the civil service in accordance with 5 U.S.C. 2105(a)(1), with the exception of employees paid from non-appropriated funds of an instrumentality of the United States under the jurisdiction of the armed forces who are not citizens or nationals of the United States.

An employee’s family member is a covered dependent if, on or after January 1, 2016, the family member experiences a qualifying injury. The rule defines the family members who are eligible as certain children, parents residing with the employee sponsor, dependent siblings, and spouses. For the purposes of this rule, the Department also adopts the Department of State’s definition of “qualifying injury to the brain.” 22 CFR 135.2. The Department has determined that the Department of State definition is reasonable and well considered. The Department of State consulted with the chief medical officers at other Federal agencies and experts at civilian medical centers of excellence. There is no diagnostic code or criteria for AHIs in the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM). Because of the varied symptoms and still nascent understanding of how to test or otherwise screen for AHI impacts, the standard adopted is broadly inclusive of the types of injuries that have been reported to date.

The definition of “qualifying injury to the brain” is based on current medical practices related to brain injuries. The individual must have: (1) an acute injury to the brain such as a concussion, a penetrating injury, or an injury as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies or electroencephalogram (“EEG”); (2) a medical diagnosis of a traumatic brain injury that required active medical treatment for 12 months or more; or (3) the acute onset of new, persistent, disabling neurologic symptoms, as demonstrated by confirming correlative findings on imaging studies, EEG, a

physical exam, or other appropriate testing, that required active medical treatment for 12 months or more.

The first component of the definition of “qualifying injury to the brain” set forth in § 49.2 accounts for a variety of observable impacts to an individual, including a concussion or a penetrating injury or, absent either of those, permanent alterations in brain function as confirmed by a board-certified physician’s review of a variety of forms of medical imaging evidence. The goal with this standard is to ensure there is some documented evidence of impact to the brain, while minimally circumscribing what that impact entails. The second and third components of the definition in § 49.2 are intended to provide alternative avenues for demonstrating sustained, long-term impact to the individual. This benefit is intended for individuals who experience long-term consequences, potentially including an inability to gainfully work, as a result of a suspected AHI.

The standard is consistent with that employed by other agencies, including the Department of State. A 12-month threshold of active medical treatment is indicative of a long-term injury. For example, the Centers for Disease Control and Prevention (“CDC”) broadly defines chronic diseases “as conditions that last 1 year or more and require ongoing medical attention or limit activities of daily living or both.” CDC, About Chronic Diseases, <https://www.cdc.gov/chronic-disease/about/index.html> (last reviewed July 11, 2024). The Department notes that applicants who have suffered kinetic or external, physically caused injuries to the brain such as the head striking an object, the brain undergoing an acceleration or deceleration movement, or brain injuries from events such as a blast or explosion, including penetrating injuries, may be eligible if the injuries satisfy the other requirements of this rule.

To be compensable, the injury must have occurred “in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State,” and cannot have been “the result of the willful misconduct” of the covered individual. 22 U.S.C. 2680b(e)(4)(A)(ii)–(iii), (e)(4)(B)(ii)–(iii), (i)(1)(D). The Department will work with an applicant upon the applicant’s submission of the Department of Defense (DD) Form 3220, “Eligibility Questionnaire for HAVANA Act Payments,” to determine whether the reported incident qualifies.

The definition of “other incident” is a new onset of physical manifestations

that cannot otherwise be readily explained and that is designated under 22 U.S.C. 2680b. The Department will review available information on the reported incident. If a physician does not indicate that there is a credible alternative explanation for the individual’s symptoms, and if the information the Department has regarding the incident does not provide a credible alternative explanation for the incident, that incident will be recommended for designation. Incidents for which an alternative explanation has been identified will not be recommended for designation. For incidents affecting employees or dependents who are not under the security responsibility of the Secretary of State, the Secretary of Defense will determine whether to designate such incidents.

#### **Eligibility for Payments by the Department of Defense—§ 49.3**

The Department will make available to its workforce information concerning the regulations, and the process to apply for compensation pursuant to 22 U.S.C. 2680b, or “HAVANA Act payments.” Current employees, former employees, and dependents (as defined in this rule) can apply for consideration. Applicants will be required to provide the necessary documentation so the Department may determine whether they qualify for payment. The DD Form 3220, “Eligibility Questionnaire for HAVANA Act Payments,” is the form associated with collecting the necessary evidence to submit a claim, and it will be available upon request with instructions on how to apply for a HAVANA Act payment. A portion of the form must be filled out by a qualified physician; the rule specifies certain board certification requirements for physicians who can evaluate a qualifying injury to the brain. This information will also be publicly available on the Defense Civilian Personnel Advisory Service website, <https://www.dcpas.osd.mil/havana-act-benefits-program>, which includes methods of contacting the Department for additional information.

The Department of Defense has determined that the payment scheme set forth in the Department of State’s HAVANA Act regulations, 22 CFR 135.3, is well reasoned and provides an effective means of compensating covered employees. Accordingly, the Department has adopted it for purposes of this rulemaking. Pursuant to this direct final rule, the Department, in its discretion, may authorize a one-time, non-taxable, lump sum payment based on Level III of the Executive Schedule.

See 5 U.S.C. 5311 *et seq.* Payment eligibility and the amount of the payment will be at the Department’s discretion. A Base payment will be 75 percent of Level III pay, and a Base+ payment will be 100 percent of Level III pay. The specific use of Level III of the Executive Schedule sets the compensation at the maximum annual salary potentially available to most of the Federal workforce. The Department believes this amount is the most it can reasonably compensate each applicant while ensuring funds for the total number of applicants it believes will likely receive payments. The payment is non-taxable pursuant to 22 U.S.C. 2680b(g) and will not count as Supplemental Security Income (SSI) income in the month of receipt and from resources the month after receipt, if retained. The maximum should only be awarded where a condition has a consistent, sustained, and exceptionally severe impact on a victim’s quality of life or prevents a victim from successfully performing their work-related duties. The purpose is to compensate individuals only for qualifying brain injuries that meet the criteria set forth in this rule. The following factors will be taken into account to determine the amount of the payment to be authorized: (1) the applicant’s responses on the eligibility form; (2) whether the Department of Labor (Office of Workers’ Compensation Programs) has determined that the applicant has no reemployment potential for an indefinite future, the Social Security Administration (“SSA”) has approved the applicant for Social Security Disability Insurance or SSI benefits based on disability, or (3) the applicant’s board-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence in Activities of Daily Living.

If the applicant meets any of the criteria for severe impacts, the applicant will be eligible to receive a Base+ payment. Applicants whose board-certified physician confirms that the definition of qualifying injury to the brain has been met, but who have not met any of the criteria for severe impacts, will be eligible to receive a Base payment. The criteria established for severe impacts are reflective of the Department’s objective of ensuring that the individuals most severely affected by AHIs (as indicated by a lack of reemployment potential, an inability to engage in substantial gainful activity, or the need for a full-time caregiver) receive a larger payment. The use of the

Department of Labor's or the SSA's determination is to ensure that both Federal employees as well as their dependents have access to a mechanism for this determination.

The Department recognizes that the criteria the Department of Labor and SSA use in their determinations are distinct, as well as the fact that the procedural timelines for seeking and receiving approval may be different between these agencies. The third factor, that a board-certified physician certify that the individual requires a full-time caregiver for activities of daily living, provides an alternative mechanism for all individuals to meet the criteria. Finally, the Department notes that if an applicant who received a Base payment later meets any of the criteria listed for severe impacts, the applicant may apply for an additional payment that will be the difference between the Base and Base+ payment. As the payments are tied to the Executive Schedule payment levels, the amounts will change over time based on changes to the Federal salary schedule. Payments will be based on the Executive Schedule in effect at the time the payment was approved.

While HAVANA Act payments may be in addition to other leave benefits, disability benefits, or workers' compensation payments that the applicant may be receiving or may be entitled to receive that also help augment any loss of income, the Department believes this is an appropriate additional payment. This payment scheme is also consistent with what is being offered by other Federal agencies and will ensure consistency of HAVANA Act benefits among affected individuals.

The Department notes that payments may only be made using amounts appropriated in advance specifically for this purpose in the relevant fiscal year. Therefore, payments are contingent on appropriated funds, and all payments will be paid out on a first-come, first-serve basis.

#### **Consultations With Department of State—§ 49.4**

Under the rule, the Department's procedures for determining whether an incident has been designated under 22 U.S.C. 2680b include, where appropriate, consultation with the Secretary of State. See 22 U.S.C. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)).

#### **Procedures—§ 49.5**

DoD is responsible for (1) processing applications by DoD employees and their dependents for payments pursuant

to 22 U.S.C. 2680b(i); (2) determining or, as necessary, consulting with the Secretary of State to determine, whether the incident causing the injury may be deemed a designated incident under the statute, see 22 U.S.C. 2680b(j); id. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)); (3) determining eligibility for the benefit, determining the amount of the benefit, and processing payment of the benefit; and (4) notifying applicants upon receipt of their applications and when a decision has been made whether to authorize payment.

The Director, Defense Civilian Personnel Advisory Service, is authorized to approve HAVANA Act payments to DoD employees or their dependents. If payment is denied, the applicant may direct an appeal to the Deputy Assistant Secretary of Defense for Civilian Personnel Policy within 60 days of the notification of denial, but decisions on the amount of payment are not appealable.

#### **Direct Final Rule**

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective 15 days after the comment period expires.

For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

#### **Regulatory Analysis**

##### *Administrative Procedure Act*

Pursuant to section 2680b of title 22, United States Code, the DoD may provide a monetary benefit to current and former DoD employees and their dependents who have suffered a qualifying injury to the brain as a result

war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or Secretary of Defense (for designations related to employees or dependents who, at the time of the incident, were not under the security responsibility of the Secretary of State or when operational control of overseas security responsibility for such employees or dependents had been delegated to the Secretary of Defense). The policy promulgated by this rule is vitally important to those who have experienced such injuries. This rule is being published as a direct final rule and is effective 15 days after the comment period expires as the Department for good cause finds it is unnecessary to provide for a period of public comment. 5 U.S.C. 553(b)(B). Alternatively, because this rule relates to the provision of a benefit, it is exempt from the procedural requirements of the Administrative Procedure Act. *Id.* 553(a)(2). However, the Department is seeking comment from interested persons on the provisions of this rule and will consider all relevant comments in any subsequent rulemaking.

##### *Congressional Review Act*

The Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth 5 U.S.C. 804(2) for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808).

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

##### *Regulatory Flexibility Act: Small Business*

The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) certifies that this rulemaking will not

have an impact on a substantial number of small entities. A regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

*Executive Order 12866 (as Amended by Executive Order 14094) and Executive Order 13563*

The Department of Defense has provided this direct final rule to the Office of Management and Budget (OMB) for its review. OMB has designated this rule as a “significant” regulatory action under Executive Order 12866, as amended. Potential causes of AHI are being investigated but remain unknown. Given the nature of the incidents, it is difficult to accurately estimate future incidents and number of individuals affected. For fiscal year (FY) 2025, the Department estimates it will pay up to \$4 million in total. After FY 2025, the Department estimates it will pay up to \$3 million each fiscal year.

The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, Executive Order 13563, and Executive Order 14094, and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) outweigh any costs to the public, which are minimal.

*Executive Order 12988*

The Department of Defense has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Orders 12372 and 13132*

This rule will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities does not apply to this regulation.

*Paperwork Reduction Act*

This rule imposes reporting and/or recordkeeping requirements under the Paperwork Reduction Act of 1995. DoD has submitted for OMB review and approval the following information collection—*Eligibility Questionnaire for*

*HAVANA Act Payments*. To review this collection, including all background materials, please visit <https://www.reginfo.gov/public/do/PRAMain> and use the search function to enter the title of the collection.

#### List of Subjects in 32 CFR Part 49

Government employees; Federal retirees; Health care.

■ Accordingly, for the reasons stated in the preamble, the Department of Defense adds 32 CFR part 49 to read as follows:

#### PART 49—IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.

- 49.1 Purpose and authority.
- 49.2 Definitions.
- 49.3 Eligibility for payments by the Department of Defense.
- 49.4 Consultation with Department of State.
- 49.5 Procedures.

**Authority:** 5 U.S.C. 301; Pub. L. 117–46, 135 STAT. 391; 22 U.S.C. 2680b.

##### § 49.1 Purpose and authority.

(a) Under 22 U.S.C. 2680b(i), the Secretary of Defense may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent, as defined in this part, who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the discretion of the Secretary of Defense or the Secretary’s designees.

(b) These regulations are issued in accordance with 22 U.S.C. 2680b(i)(4) and apply to covered employees of the Department of Defense (current and former employees) and covered dependents.

##### § 49.2 Definitions.

For purposes of this part, the following definitions apply:

**Covered dependent.** A family member, as defined in this section, of a current or former employee of the Department of Defense who, on or after January 1, 2016, accompanies the employee, while an employee of the Department, to an assigned duty location and becomes injured by reason of a qualifying injury to the brain.

**Covered employee.** A current or former employee of the Department of Defense who, on or after January 1, 2016, becomes injured by reason of a qualifying injury incurred while an employee of the Department of Defense.

**Employee.** For purposes of this part, “employee” means an individual who has been appointed to a position in the civil service in accordance with 5 U.S.C. 2104(a)(1) or 5 U.S.C. 2105(a)(1), with the exception of employees paid from

non-appropriated funds of an instrumentality of the United States under the jurisdiction of the armed forces who are not a citizen or national of the United States.

**Family member.** for the purposes of determining “covered dependent”, a family member is defined as follows:

(1) Children who at the time of the injury are unmarried and under 21 years of age or, regardless of age, are unmarried and due to mental and/or physical limitations are incapable of self-support. The term “children” includes natural offspring, step-children, adopted children, and those under permanent legal guardianship, or comparable permanent custody arrangement, of the employee, spouse or domestic partner as defined in 5 CFR 875.101 when dependent upon and normally residing with the guardian or custodial party, and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;

(2) Siblings (including stepsiblings, or adoptive siblings) of the employee, or the spouse when at the time of the injury such siblings were at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, were physically and/or mentally incapable of self-support;

(3) Parents (including stepparents and legally adoptive parents) of the employee or of the spouse or of the domestic partner as defined in 5 CFR 875.101, when normally residing with the employee at the time of the injury; and

(4) Spouse or domestic partner (as defined in 5 CFR 875.01) at the time of the injury.

**Other incident.** A new onset of physical manifestations that cannot otherwise be readily explained and that is designated under 22 U.S.C. 2680b.

**Qualifying injury to the brain.** An injury to the brain that occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated under 22 U.S.C. 2680b, and that was not the result of the willful misconduct of the covered employee or covered dependent.

(1) The individual must have an acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as a consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed

tomography scan (CT) or magnetic resonance imaging scan (MRI)) or electroencephalogram (EEG); or

(2) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(3) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

#### **§ 49.3 Eligibility for payments by the Department of Defense.**

(a) The Department may provide a payment to covered employees as defined in this part, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR); occurred on or after January 1, 2016; and occurred while the employee or former employee was a covered employee of the Department.

(b) The Department may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBPMR; occurred on or after January 1, 2016; and occurred while the covered dependent accompanied an employee of the Department at an assigned duty location.

(c) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment unless a second payment is authorized under paragraph (d)(4) of this section.

(d) The amount of payment is at the Department's discretion. The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on; DD Form 3220, "Eligibility Questionnaire for HAVANA Act Payments"; and

(2) Whether the Department of Labor (Workers' Compensation) has determined that the requester has no reemployment potential for an indefinite future; or the Social Security Administration has approved the requester for Social Security Disability Insurance or Supplemental Security Income (SSI) for a disability; or a

neurologist or physician certified by the ABPN, AOBNP, ABPMR, or AOBPMR has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on Level III of the Senior Executive Schedule of the year in which the request for payment is approved: Base will be 75 percent of Level III pay, and Base Plus will be 100 percent of Level III pay.

(4) If the requester meets any of the criteria listed in paragraph (d)(2) of this section, the requester will be eligible to receive a Base Plus payment. Requesters whose board-certified physicians confirm that the definition of "qualifying injury to the brain" has been met but has not met any of the criteria listed in paragraph (d)(2), will be eligible to receive a Base payment. If a requester who received a Base payment later meets any of the criteria listed in paragraph (d)(2), the requester may apply for an additional payment that will be the difference between the Base and Base Plus payment.

#### **§ 49.4 Consultation with Department of State.**

When a covered employee or covered dependent seeks payment for an incident that occurred overseas under Secretary of State security responsibility, the Department will coordinate with the Department of State as appropriate in evaluating whether the incident is an "other incident" for purposes of establishing a qualifying injury or should be so designated.

#### **§ 49.5 Procedures.**

(a) *Application.* (1) A covered employee or covered dependent may apply for a HAVANA Act payment if the covered individual has sustained a qualifying injury to the brain on or after January 1, 2016. To apply for the benefit, the applicant must submit the DD Form 3220, "Eligibility Questionnaire for HAVANA Act Payments," claim form to the appropriate email address set forth in paragraph (a)(2) of this section. The claim form must be completed by a person eligible to file a claim, or by that person's legal guardian, a family member, or another individual authorized to act on behalf of the requestor and must be signed by a currently certified physician as listed in § 49.3(a).

(2) The claim form and any additional documentation must be emailed to the following address: [dodhra.mc-alex.dcpas.mbx.dod-havana-act@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.dod-havana-act@mail.mil).

(3) The applicant must furnish additional documentation upon request provided that the applicant has access to such additional documentation.

(4) Copies of the claim form, as well as the regulations and other information, may be obtained on the Defense Civilian Personnel Advisory Service website, <https://www.dcpas.osd.mil/havana-act-benefits-program>.

(b) *Other incident.* The Department will determine whether a covered employee or covered dependent has a qualifying injury to the brain as set forth in § 49.2(f)(2), and whether the incident causing the injury was in connection with war, insurgency, hostile act, or terrorist activity. The Department will, as appropriate or necessary, designate "other incidents" under 22 U.S.C. 2680b(j) for employees and dependents who were not, at the time of the incident, under the security responsibility of the Secretary of State or when operational control of overseas security responsibility for such employees or dependents was delegated to the Secretary of Defense. The Department will, as appropriate or necessary, make a recommendation to the Secretary of State that the incident should be deemed an "other incident designated by the Secretary of State" for purposes of 22 U.S.C. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)) for incidents affecting employees or dependents who were, at the time of the incident, under the security responsibility of the Secretary of State.

(c) *Decisions.* For covered employees and covered dependents, the Director, Defense Civilian Personnel Advisory Service, in their discretion may approve payments pursuant to 22 U.S.C. 2680b(i).

(d) *Appeals.* In the event of a decision to deny an application for payment under the HAVANA Act, the Department will notify the applicant in writing. Applicants may direct an appeal via the DoD HAVANA Act mailbox, [dodhra.mc-alex.dcpas.mbx.dod-havana-act@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.dod-havana-act@mail.mil), to the Deputy Assistant Secretary of Defense for Civilian Personnel Policy, within 60 days of the date of the notification of the denial. However, decisions concerning the amount paid are not subject to appeal. The Department will notify the

applicant in writing of the decision on appeal.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 2024–22795 Filed 10–2–24; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG–2024–0813]

#### Regulated Area; San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the regulated areas in the navigable waters of the San Francisco Bay for the San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels survey flight and demonstration days from October 10 through October 13, 2024. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the regulated area unless authorized by the Patrol Commander (PATCOM). This notification of enforcement (NOE) announces the dates and times for enforcement.

**DATES:** The regulations in 33 CFR 100.1105 will be enforced from noon until 5 p.m. on October 10, 2024; from 10 a.m. until 5 p.m. on October 11, 2024; and from noon until 5 p.m. on October 12, 2024, and October 13, 2024, for the regulated areas as identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant William Harris, Coast Guard Sector San Francisco, Waterways Management Division; telephone (415) 399–7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the regulated areas for the annual San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels survey flight and demonstration days in 33 CFR 100.1105. This NOE

announces the dates and times that the regulated areas will be enforced daily on October 10, 2024, through October 13, 2024, as described in the following paragraphs.

The regulated area “Alpha” in § 100.1105(b)(1) for the Navy Parade of Ships will be enforced from 10 a.m. until noon on October 11, 2024. The regulated area “Bravo” in § 100.1105(b)(2) for the U.S. Navy Blue Angels Activities will be enforced from noon until 5 p.m. daily from October 10, 2024, through October 13, 2024.

Regulated area “Alpha” will be enforced during the Navy Parade of Ships and is bounded by a line connecting the following points and thence along shore to the point of beginning:

Latitude	Longitude
37°48’40” N	122°28’38” W
37°49’10” N	122°28’41” W
37°49’31” N	122°25’18” W
37°49’06” N	122°24’08” W
37°47’53” N	122°22’42” W
37°46’00” N	122°22’00” W
37°46’00” N	122°23’07” W

Under the provisions of 33 CFR 100.1105, except for persons or vessels authorized by the PATCOM, in regulated area “Alpha” no person or vessels may enter the parade route or remain within 500 yards of any Navy parade vessel. No person or vessels shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area “Alpha.”

Regulated area “Bravo” will be enforced during the U.S. Navy Blue Angels Demonstration and is bounded by a line connecting the following points:

Latitude	Longitude
37°48’27.5” N	122°24’04” W
37°49’31” N	122°24’18” W
37°49’00” N	122°27’52” W
37°48’19” N	122°27’40” W

Except for persons or vessels authorized by the PATCOM, no person or vessel may enter or remain within regulated area “Bravo.”

When hailed or signaled by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this

regulation. The PATCOM shall be designated by the Captain of the Port (COTP) San Francisco. The PATCOM is empowered to forbid and control the movement of all vessels in the regulated areas.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

Dated: September 26, 2024.

**Jordan M. Balduenza,**

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2024–0646]

RIN 1625–AA00

#### Safety Zone; Pacific Ocean, Huntington Beach, California

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The U.S. Coast Guard is establishing a safety zone offshore of Huntington Beach, CA in support of the Pacific Airshow. This action is necessary to provide for the safety of life on these navigable waters in the area of air and water demonstrations and to protect the high concentration of people attending the event. This regulation prohibits vessels from entering into, transiting through, or remaining within the designated area unless specifically authorized by the Captain of the Port, Los Angeles-Long Beach (COTP), or a designated representative.

**DATES:** This rule is effective without actual notice from October 3, 2024 through 5 p.m. on October 6, 2024. For the purposes of enforcement actual notice will be used from 9:30 a.m. on October 1, 2024, through October 3, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0646 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email LCDR Kevin Kinsella, U.S.