

tilt the sieve at a 17- to 20-degree angle to help facilitate drainage. Allow the tuna to drain for 2 minutes, starting when the product is applied to the sieve. The sieve containing the drained tuna is then reweighed, after excess packing media is gently removed from the bottom of the sieve with a paper towel. The drained weight is calculated by subtracting the difference in the weights as follows:

Final weight of sieve with tuna—Empty weight of sieve = Drained weight of tuna

If the contents of the tuna container weigh less than 3 pounds (1.36 kilograms), then a sieve with an 8-inch (20-centimeter) diameter must be used. If the contents of the tuna container weigh 3 pounds (1.36 kilograms) or more, then a sieve with a 12-inch (30-centimeter) diameter must be used. The bottom of the sieve has a woven-wire cloth mesh complying with the specifications set forth for the 2.80 mm (No. 7) sieve in the “Official Methods of AOAC INTERNATIONAL,” 22nd Ed. (2023), Table 1, “Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series),” under the heading “Definitions of Terms and Explanatory Notes,” (incorporated by reference, see paragraph (d) of this section).

(i) Determination of free flakes: If the optional form of tuna ingredient is solid pack, determine the percent of free flakes. Any flakes resulting from the drained weight procedure described in paragraph (c)(2) of this section are to be weighed as free flakes. Only fragments that were broken in the canning process are considered to be free flakes. Using a spatula, scrape free flakes gently from the outside of the drained tuna product. Weigh the aggregate free flakes that were broken from the loin segments in the canning process and calculate their percentage of the total drained weight.

(ii) Determination of particle size: If the optional form of tuna ingredient is chunks, flakes, or grated, the drained tuna product resulting from the drained weight procedure described in paragraph (c)(2) of this section, is gently separated by hand, care being taken to avoid breaking the pieces. The separated pieces are evenly distributed over the top sieve of the screen separation equipment described in paragraph (c)(2)(iii) of this section. Beginning with the top sieve, lift and drop each sieve by its open edge three times. Each time, the open edge of the sieve is lifted the full distance permitted by the device. Combine and weigh the material remaining on the top three sieves (1¼-inch (or 37.5-millimeter), 1-inch (or 25.0-millimeter), ½-inch (or 12.5-

millimeter) meshes) and determine the combined percentage retention by weight in relation to the total drained weight.

(iii) The sieving device referred to in paragraph (c)(2)(ii) of this section consists of three sieves, each approximately 1 foot square, loosely mounted, one above another, in a metal frame. The mesh in the top sieve complies with the specifications for 1¼-inch (or 37.5-millimeter) woven-wire cloth mesh as prescribed in paragraph (a)(7) of this section. The meshes in the sieve below comply with similar specifications for 1-inch (or 25.0-millimeter) and ½-inch (or 12.5-millimeter) mesh as set forth in AOAC Official Methods, Table 1, “Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)” (incorporated by reference, see paragraph (d) of this section). The sides of each sieve are formed, in a raised rim, from ¾-inch (or 1.9-centimeters) × ⅛-inch (or 0.3-centimeter) metal strap. The frame has tracks made of ⅜-inch (or 1.0-centimeter) angle metal to support each sieve under each side. The tracks are positioned to permit each sieve a free vertical travel of 1¾-inches (or 4.4-centimeters).

(3) If canned tuna falls below the applicable standard of fill of container prescribed in paragraph (c)(1) of this section, the label must bear the general statement of substandard fill per § 130.14(b) of this chapter.

(d) *Incorporation by reference.* Table 1, Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series), Definitions of Terms and Explanatory Notes, Official Methods of Analysis of AOAC INTERNATIONAL, 22nd Ed., 2023 is incorporated by reference into this section with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Food and Drug Administration (FDA) and at the National Archives and Records Administration (NARA). Contact FDA’s Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov. The material may be obtained from AOAC INTERNATIONAL, 2275 Research Blvd., Suite 300, Rockville, MD 20850-3250; 1-800-379-2622.

Dated: August 14, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023-17916 Filed 8-24-23; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 105

[Docket No. FBI-154; AG Order No. 5736-2023]

RIN 1110-AA33

Child Protection Improvements Act Criteria for Designated Entity Determinations

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice is proposing to promulgate regulations (“proposed rule” or “rule”) concerning the Child Protection Improvements Act of 2018 (“CPIA”). The CPIA provides a means by which authorized qualified entities can have access to national criminal history background checks for determinations of whether covered individuals have been convicted of, or are under pending indictment for, a crime that bears upon their fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. As required by the CPIA, these proposed regulations would establish the criteria to be utilized by an entity designated by the Federal Bureau of Investigation (FBI) to make these determinations.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before September 25, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. eastern time on the last day of the comment period.

ADDRESSES: You may review this proposed rule on <https://www.regulations.gov> and use the electronic comment form for these regulations to submit your comments. Submit written comments by U.S. Postal Service or other commercial delivery services, addressing them to FBI, CPIA Comments, Attention, Betsy C. Taylor, Office of the General Counsel (OGC), FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Module C3, Clarksburg, West Virginia 26306.

FOR FURTHER INFORMATION CONTACT:

Betsy C. Taylor, Assistant General Counsel, OGC, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, West Virginia 26306; Telephone: (304) 625-5429. (Note: This is not a toll-free number).

SUPPLEMENTARY INFORMATION:**Electronic Access and Filing**

Electronic comments are preferred. For comments sent via U.S. Postal Service or other commercial delivery, please do not submit duplicate electronic comments. Please confine comments to the proposed rule. All submissions received must include the agency name (FBI) 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 on the internet at <https://www.regulations.gov> as they are received, without change, including any personal identifiers or contact information. It is recommended that your comments not include any personal information such as social security numbers or medical information.

Background

The CPIA, enacted as part of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141) amended the National Child Protection Act/Volunteers for Children Act (“NCPA/VCA”) (34 U.S.C. 40101 *et seq.*). The CPIA requires the Attorney General to establish a national program (the “CPIA Program”) to provide qualified entities in States that do not have procedures in place to utilize the NCPA/VCA, or in States that do not prohibit the use of the CPIA Program, with access to national criminal history background checks on, and criminal history reviews of, covered individuals. 34 U.S.C. 40102(a)(3)(A).

Under the CPIA, the FBI conducts fingerprint-based national criminal history background checks on covered individuals upon request of a designated entity and provides the resulting information to the designated entity. Reviewing that information, the designated entity determines whether the individual has been convicted of, or is under pending indictment for, a crime bearing on the individual’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. The designated entity then informs the qualified entity—such as an employer or volunteer organization providing care for children, the elderly, or individuals with disabilities—whether the

designated entity’s review has determined that the covered individual’s criminal history includes a conviction or pending indictment for a crime bearing on fitness listed in § 105.34 of the proposed rule. 34 U.S.C. 40102(a)(3), (b)(4), (f)(1).

Invoking the processes described in this proposed rule would not be mandatory. Rather, the rule will provide a means for a qualified entity in a State that does not have procedures to utilize the NCPA/VCA or that does not prohibit the CPIA Program to obtain national criminal history background checks of covered individuals. The choice whether to invoke the rule’s procedures will be left to the discretion of the qualified entities, subject to any other applicable legal requirements.

Crimes Bearing on Fitness

The CPIA requires the Attorney General to establish by rule the criteria for designated entities to use in making the determination bearing on fitness for covered individuals. 34 U.S.C. 40102(f)(2)(C). The criminal history review criteria must be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the PROTECT Act, Public Law 108-21 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act (“CCDBG”) of 1990 (42 U.S.C. 9858f).

A pilot project established by the PROTECT Act required that the National Center for Missing and Exploited Children (“NCMEC”) make a determination whether criminal history record information received in response to a criminal history background check indicated that a provider or volunteer had a criminal history that rendered the individual unfit to provide care to children, based upon criteria established jointly by the NCMEC and three designated nonprofit organizations—the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports. The resulting criteria established pursuant to the PROTECT Act provided that anyone who had been convicted or was under pending indictment for any of the following offenses would be considered unfit to provide care to children: (1) all felonies, (2) any lesser crime of which sexual relations is an element (including child pornography); (3) any lesser crime involving cruelty to animals, (4) any lesser crime involving controlled substances, including Driving Under the Influence that may involve drugs; and

(5) any lesser crime involving force or threat of force against a person.¹

The CCDBG provides that a child care staff member shall be ineligible for employment by a child care provider receiving certain federal assistance if such individual:

(A) refuses to consent to the criminal background check;

(B) knowingly makes a materially false statement in connection with such criminal background check;

(C) is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006;

(D) has been convicted of a felony consisting of:

(1) murder, as described in 18 U.S.C. 1111;

(2) child abuse or neglect;

(3) a crime against children, including child pornography;

(4) spousal abuse;

(5) a crime involving rape or sexual assault;

(6) kidnapping;

(7) arson;

(8) physical assault or battery; or

(9) a drug-related offense committed during the preceding five years; or

(E) has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes:

(1) child abuse;

(2) child endangerment;

(3) sexual assault; or

(4) a misdemeanor involving child pornography.

See 42 U.S.C. 9858f(c)(1). In addition, under the CCDBG, a State may allow for a review process through which the State may determine that a child care staff member, including a prospective child care staff member, disqualified for a drug-related offense committed during the preceding five years is eligible for employment. See 42 U.S.C. 9858f(e)(4).

The CPIA differs from the PROTECT Act pilot program and the CCDBG in that it does not declare covered individuals to be unfit or ineligible to care for children, the elderly, or individuals with disabilities and does not limit the discretion of qualified entities as to who they will employ or allow to participate in their activities. Rather, it provides a mechanism by which qualified entities may obtain from the designated entity a determination whether a covered

¹ See U.S. Dep’t of Justice, Office of Legislative Affairs, Interim Report on the Feasibility of Performing Fingerprint-Based Criminal History Background Checks on Individuals That Participate in National Service Programs 27-30 (2009).

individual has a conviction or is under pending indictment for a crime bearing on the covered individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. The CPIA leaves it to the qualified entities themselves to decide what effect they will give to that determination.

Designated Entities

Pursuant to the CPIA, the Attorney General is required to designate one or more non-federal entities to make the determinations bearing on fitness. 34 U.S.C. 40102(f)(2)(A). These designated entities will be authorized to provide national criminal history background checks for qualified entities in States that do not have procedures in place to utilize the NCPA/VCA, or in States that do not prohibit the use of the CPIA Program. The FBI will issue a Request for Proposal ("RFP") to select those to serve as designated entities under the CPIA Program. As noted above, participation in the CPIA Program by qualified entities is voluntary, and they are not required to conduct checks of their covered individuals using these designated entities.

The FBI collects user fees for the fingerprint-based criminal history record information checks it conducts in compliance with Public Law 101–515 (now codified at 34 U.S.C. 41104). The FBI's user fees are set out in a fee schedule routinely published in the **Federal Register**. In accordance with 28 CFR 20.31(e)(1), the FBI reviews its fee schedule at least every four years to determine the current cost of processing fingerprint identification records for noncriminal justice purposes. The FBI's user fee schedule provides for a reduction in the rate it charges for checks of volunteers serving vulnerable populations, such as volunteers who will be covered under the CPIA Program. As published in the **Federal Register**, the current cost for processing the FBI fingerprint check is \$13.25 for employees and \$11.25 for volunteers. See 87 FR 47794 (Aug. 4, 2022).

In accordance with the CPIA, designated entities will be required to adopt a fee schedule for providing their national criminal history background checks and criminal history reviews. See generally 34 U.S.C. 40102(e). These designated entities also are required by the CPIA to remit to the FBI its portion of that fee. *Id.* 40102(e)(2). The CPIA provides that fees collected by a designated entity must be set at a level that will ensure the recovery of the full costs of providing their services. *Id.* However, the CPIA also requires that the fees set by designated entities must be

established in a manner that ensures that volunteers will not be discouraged from participating in programs to care for children, the elderly, or individuals with disabilities. *Id.* 40102(e)(3). In addition, the CPIA requires that a fee charged to a qualified entity that is not organized under section 501(c)(3) of the Internal Revenue Code of 1986 may not be less than the total sum of the costs of the FBI and the designated entity. *Id.*

As part of the evaluation criteria in the RFP, a prospective designated entity will be required to provide information on the methodology it will use to determine the "full costs" of providing the services, how their fee structure will not discourage volunteers, and the profit margin, if any, to be collected for providing these services. This information will be considered by the FBI in evaluating and making decisions regarding prospective designated entities for participation in the CPIA Program.

Discussion

Crimes Bearing on Fitness

As noted above, 34 U.S.C. 40102(f)(2)(C) requires the Attorney General to establish by rule the criteria—based on the criteria used in a PROTECT Act pilot program and the CCDBG—*for designated entities to use under the CPIA in determining whether a covered individual's criminal history includes a crime bearing on the individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.* The PROTECT Act criteria, described earlier in this preamble, are in some respects most suitable as a model for crimes bearing on fitness under the CPIA because of their greater generality. For example, since the PROTECT Act criteria include all felonies, there is no need to enumerate the CCDBG's particular covered felonies, 42 U.S.C. 9858f(c)(1)(D). However, certain features of the CCDBG are helpful in defining the relevant offenses, including the CCDBG's greater explicitness regarding sex offenses and offenses involving abuse, neglect, or endangerment. In addition, both the PROTECT Act criteria and the CCDBG criteria require some adaptation for purposes of the CPIA, because the CPIA relates to qualified entities serving the elderly and individuals with disabilities, as well as child-serving entities.

The relevant crimes under the CPIA that bear upon the covered individual's fitness to have responsibility for the safety and well-being of children, the

elderly, or individuals with disabilities are set forth in § 105.34 of the proposed regulation. Those crimes are as follows:

Section 105.34(1) refers to "[a]ny felony." This is the same as the first PROTECT Act category.

Section 105.34(2) refers to crimes involving abuse, neglect, or endangerment of children, the elderly, or individuals with disabilities. This is similar to the CCDBG's coverage of offenses of child abuse, neglect, or endangerment, *see* 42 U.S.C. 9858f(c)(1)(D)(ii) and (E), with the necessary addition of such crimes directed against the elderly or individuals with disabilities for purposes of the CPIA.

Section 105.34(3) refers to crimes involving the use, or attempted or threatened use, of force against a person. This parallels the fifth category under the PROTECT Act pilot program.

Section 105.34(4) refers to crimes involving sexual abuse, assault, or exploitation, including child pornography crimes. This is similar to the second category under the PROTECT Act pilot program, and to CCDBG provisions appearing in 42 U.S.C. 9858f(c)(1)(D)(iii), (v), (E).

Section 105.34(5) refers to crimes on the basis of which the covered individual is registered, or is required to be registered, in the sex offender registry of a jurisdiction, or is included in the National Sex Offender Registry. This parallels the CCDBG provision in 42 U.S.C. 9858f(c)(1)(C).

Section 105.34(6) refers to crimes involving cruelty to animals, parallel to the third PROTECT Act category.

Section 105.34(7) refers to crimes involving controlled substances, including impaired driving offenses involving drugs, which is similar to the fourth PROTECT Act category, and to the CCDBG provision in 42 U.S.C. 9858f(c)(1)(D)(ix).

The proposed rule provides that after a designated entity evaluates a covered individual using the CPIA criteria, one of three determinations is to be returned to the qualified entity under the CPIA Program: (1) the covered individual has a conviction or is under pending indictment for a crime bearing on fitness listed in § 105.34, (2) the covered individual does not have a conviction and is not under pending indictment for a crime bearing on fitness listed in § 105.34, or (3) the covered individual may have a conviction for a crime bearing on fitness listed in § 105.34. A determination that a covered individual "may have a conviction" should be returned by the designated entity if the disposition is missing from an arrest for a crime listed in § 105.34. The "may

have a conviction” determination should be returned only after the designated entity has conducted research to try to locate relevant missing disposition data. The FBI notes that a designated entity’s determination that a covered individual “has,” “does not have,” or “may have” a conviction or pending indictment for a crime bearing on fitness pertains to the national criminal history background check information received from the FBI as part of the CPIA Program. A qualified entity is not prohibited from denying a covered individual an employment or volunteer position based on other evaluation criteria.

Requests for a National Criminal History Background Check

As noted above, the authorized qualified entities themselves will decide whether to invoke the procedures of this proposed rule in order to obtain a criminal history background check on their covered individuals regarding care for children, the elderly, or individuals with disabilities. The following discussion explains the intended process where a qualified entity is seeking such a criminal history background check pursuant to the CPIA.

Under 34 U.S.C. 40102(b), a covered individual must provide to a qualified entity located in a State a set of fingerprints and complete and sign a statement as part of a request for a national criminal history background check, including an attestation that the covered individual has not been convicted of any crime or, if the covered individual has been convicted of a crime, a description of the crime and the particulars of the conviction. In addition, covered individuals must be informed by the qualified entity of the covered individual’s right to obtain a copy of any background check report by the designated entity and the process by which a covered individual may appeal those results. The statement provided by the qualified entity must also notify the covered individual that the qualified entity may elect to deny them access to a person to whom the qualified entity provides care prior to the completion of their background check. As noted above, a qualified entity also may deny a covered individual access to a person to whom the qualified entity provides care at any time based on other evaluation criteria. The designated entity must also have in effect procedures to ensure that the covered individual is notified of their right to obtain a copy of their national criminal history background check report and given notice of the opportunity to appeal and instructions on how to complete the appeals process,

if the covered individual wishes to challenge the accuracy or completeness of the information contained in the background check report.

The FBI is publishing this NPRM to allow interested parties the opportunity to provide comments concerning the criteria bearing on fitness to be established under the CPIA and the procedures for requesting and obtaining the results of criminal history background checks from a designated entity.

Technical Corrections

Finally, the FBI is proposing to update and correct the authority citations in part 105.

Regulatory Certifications

Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action under section 3(f) of Executive Order 12866, and accordingly, this rule has been reviewed by the OMB. The current cost of conducting the FBI fingerprint check, as published in the **Federal Register** (83 FR 48335) is \$13.25 for employees and \$11.25 for volunteers. The exact impact of the proposed regulations on covered individuals and qualified entities cannot be calculated due to uncertainty concerning the number of designated entities that will be participating in the CPIA Program; the number of qualified entities that will choose to submit fingerprint-based background checks through the CPIA Program; the geographic locations of the designated entities and the qualified entities; associated costs by the designated entity in establishing a connection to the FBI for the electronic submission of the fingerprints and receipt of criminal history record information; and the number of background check reports on

covered individuals lacking disposition data for which the designated entity must research. However, because the designated entities are required by the CPIA to recoup their full costs, they are not expected to incur any net costs.

This rule will not have an annual effect on the economy of \$100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an economically significant rulemaking as defined by Executive Order 12866.

Although this rule is a significant regulatory action under Executive Order 12866, the fees for providing determinations will be set by the designated entities themselves, under the standards of the CPIA, and they will be collecting those fees for providing a service under the CPIA. There is no change in the fees being charged by the FBI.

Executive Order 13132—Federalism

This proposed rule will not have a substantial, direct effect on the States, on the relationship 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 proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FBI charges a user fee in compliance with Public Law 101–515. This proposed rule imposes minimal costs on businesses, organizations, or governmental jurisdictions (whether large or small) because the submission of fingerprints for these national criminal background checks is voluntary on the part of the qualified entities. Additionally, any costs that may be borne by the current or prospective employee or volunteer

with the qualified entity is not expected to have a significant economic impact.

Unfunded Mandates Reform Act of 1995

This proposed rule does not contain a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Further, the statute authorizes a designated entity through this Federal program to recover only the full costs of providing such services, and the fee system to be established is to ensure that fees to qualified entities do not discourage volunteers from participating in programs to care for children, the elderly, or individuals with disabilities. Finally, fees to qualified entities not organized under section 501(c)(3) of title 26 may not be less than the total sum of the costs of the FBI and the designated entity. Therefore, no action was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This proposed rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the U.S. economy of \$100 million or more; a major increase in costs or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The proposed rule does not contain collection of information requirements. Therefore, clearance by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required. Of note, information collection associated with the Civil Applicant Fingerprint Card has been approved by the OMB for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The OMB Control Number for this collection is 1110-0046.

List of Subjects in 28 CFR Part 105

Administrative practice and procedure, Law enforcement, Privacy.

Accordingly, for the reasons set forth in the preamble, 28 CFR part 105 is proposed to be amended as follows:

PART 105—CRIMINAL HISTORY BACKGROUND CHECKS

- 1. The authority citation for part 105 is revised to read as follows:

Authority: Section 113 of Pub. L. 107-71, 115 Stat. 622 (49 U.S.C. 44939); Section 6402 of Pub. L. 108-458, title VI, 118 Stat. 3755 (28 U.S.C. 534 note; editorially reclassified as 34 U.S.C. 41106); Division S, Title I, Section 101 of Pub. L. 115-141, 132 Stat. 1123 (34 U.S.C. 40101 *et seq.*)

- 2. In subpart B, add an authority citation to read as follows:

Authority: Section 113 of Pub. L. 107-71, 115 Stat. 622 (49 U.S.C. 44939).

- 3. Revise the authority citation in subpart C to read as follows:

Authority: Section 6402 of Pub. L. 108-458, title VI, 118 Stat. 3755 (28 U.S.C. 534 note; editorially reclassified as 34 U.S.C. 41106).

- 4. Add a new subpart D to read as follows:

Subpart D—Child Protection Improvements Act Criteria for Designated Entity Determinations

Sec.

- 105.31 Definitions.
- 105.32 Request by a qualified entity for a national criminal history background check.
- 105.33 Receipt by a designated entity of a request from a qualified entity.
- 105.34 Crimes bearing on fitness.
- 105.35 Criminal history lacking disposition data.
- 105.36 Determination by a designated entity.
- 105.37 Rights of a covered individual.
- 105.38 Collection of fees.

Authority: Child Protection Improvements Act (Division S, Title I, Section 101 of Pub. L. 115-141, 132 Stat. 1123 (34 U.S.C. 40101 *et seq.*)).

§ 105.31 Definitions.

Authorized agency means a division or office of a State designated by a State to report, receive, or disseminate information under the CPIA.

Care means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

Child means a person who is a child for purposes of the criminal child abuse law of a State.

Covered individual means an individual—

- (1) Who has, seeks to have, or may have access to children, the elderly, or individuals with disabilities, served by a qualified entity; and
- (2) Who—
 - (i) Is employed by or volunteers with, or seeks to be employed by or volunteer with, a qualified entity, or

(ii) Owns or operates, or seeks to own or operate, a qualified entity.

CPIA means the Child Protection Improvements Act of 2018, enacted as part of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), which amended the National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (34 U.S.C. 40101 *et seq.*).

CPIA Program means the program established by the Federal Bureau of Investigation (FBI) that implements the CPIA under this subpart D.

Designated entity means an entity designated to conduct determinations under the authority of 34 U.S.C. 40102(f)(2)(A), through an agreement with the FBI.

Individuals with disabilities means persons with mental or physical impairment who require assistance to perform one or more daily living tasks.

National criminal history background check system means the criminal history record system maintained by the FBI based on fingerprint identification or any other approved method of positive identification.

Qualified entity means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

§ 105.32 Request by a qualified entity for a national criminal history background check.

(a) Qualified entities located in States that do not have in effect procedures described in 34 U.S.C. 40102(a)(1), or qualified entities located in States that do not prohibit the use of the program established under the CPIA, may be provided access to national criminal history background checks on, and criminal history reviews of, covered individuals through a designated entity under an agreement with the FBI.

(b) After approval by the designated entity for participation in the CPIA Program, each participating qualified entity will determine which covered individuals will be subject to the background check. The covered individual must provide a complete set of fingerprints to the qualified entity. The covered individual also must provide a signed statement to the qualified entity containing the following:

(1) The name, address, and date of birth appearing on a valid identification document (as defined in 18 U.S.C. 1028) of the covered individual;

(2) An attestation that the covered individual has not been convicted of a crime and, if the covered individual has been convicted of a crime, a description of the crime and the particulars of the conviction;

(3) The statement must notify the covered individual that the qualified entity may request a national criminal history background check;

(4) The statement must notify the covered individual of his or her right to obtain a copy of any background check report, to challenge the accuracy or completeness of the information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the designated entity as provided in § 105.37; and

(5) The statement must also notify the covered individual that prior to the completion of the background check the qualified entity may choose to deny the covered individual access to a person to whom the qualified entity provides care.

(c) Based upon the qualified entity's determination that the requirements under the CPIA are met, a qualified entity may submit to the appropriate designated entity a request, to include the fingerprints of the covered individual, for a national criminal history background check on, and a criminal history review of, a covered individual.

§ 105.33 Receipt by a designated entity of a request from a qualified entity.

(a) An entity will be authorized as a designated entity through an agreement with the FBI. This agreement will specify the respective responsibilities of the designated entity and the FBI, including that the designated entity's employees receive a fingerprint-based national criminal history background check in a manner determined by the FBI, prior to access to criminal history record information.

(b) The designated entity will determine if a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, meets the definition of a qualified entity.

(c) The designated entity will determine if a qualified entity is located in a State that does not have in effect procedures requiring qualified entities to contact an authorized agency of the State for a nationwide background check or if the State does not prohibit the use of the national program established under the CPIA, prior to providing access to a national criminal

history background check on, and criminal history reviews of, covered individuals. A State that does not prohibit the use of the national program established under the CPIA is a State that does not have a statute or regulation prohibiting a national criminal history background check of a covered individual or a State that has determined it has procedures in place in statute or regulation but is unable to accommodate the qualified entity's request for a national criminal history background check.

(d) The designated entity national program established under the CPIA also may not be used if a Federal law requires use of a Federal national criminal history background check program.

(e) Upon receipt of an authorized qualified entity request, a designated entity shall forward the request to the FBI and the FBI shall complete a fingerprint-based check of its national criminal history background check system and provide the information received in response to the request to the appropriate designated entity.

(f) The FBI fingerprint-based check of its national criminal history record system will provide outreach to States that support record requests for employment and licensing purposes and will return State criminal history record information from the respective State criminal history database. Upon a request from a qualified entity, the designated entity may conduct a separate check of a State criminal history database. The request for a State check should be submitted by the designated entity to the appropriate State according to the applicable procedures of that State.

§ 105.34 Crimes bearing on fitness.

Upon receipt of the criminal history record information, the designated entity shall make a determination whether the covered individual has been convicted of, or is under pending indictment for, a crime that bears upon the covered individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. The crimes that bear on a covered individual's fitness are:

(a) Any felony.

(b) Any crime involving abuse, neglect, or endangerment of a child, an elderly individual, or an individual with a disability.

(c) Any crime involving the use, or attempted or threatened use, of force against a person.

(d) Any crime involving sexual abuse, assault, or exploitation, including any crime involving child pornography.

(e) Any crime on the basis of which the covered individual is registered, or is required to be registered, in the sex offender registry of a jurisdiction, or is included in the National Sex Offender Registry established by 34 U.S.C. 20921(a).

(f) Any crime involving cruelty to an animal.

(g) Any crime involving a controlled substance, including any impaired driving offense involving a controlled substance.

§ 105.35 Criminal history lacking disposition data.

Upon the designated entity's receipt of criminal history record information from the FBI regarding an arrest for a crime bearing on fitness described in § 105.34 that is lacking disposition data, the designated entity shall conduct research in whatever Federal, State, or local recordkeeping systems are available to obtain complete data. The designated entity also should provide any source documentation containing missing disposition data it obtains from criminal justice or law enforcement agencies to the FBI so that the FBI may update or forward to the State Identification Bureaus for appropriate updating.

§ 105.36 Determination by a designated entity.

(a) The designated entity shall issue one of the following determinations to the qualified entity with respect to a covered individual:

(1) The covered individual has a conviction or is under pending indictment for a crime bearing on fitness listed in § 105.34;

(2) The covered individual does not have a conviction and is not under pending indictment for a crime bearing on fitness listed in § 105.34; or

(3) The covered individual may have a conviction for a crime bearing on fitness listed in § 105.34.

(b) The designated entity shall return a determination that the covered individual may have a conviction if the covered individual has been arrested for a crime bearing on fitness listed in § 105.34 but the disposition information is missing, and there is no other conviction or pending indictment for a crime bearing on fitness listed in § 105.34 in the covered individual's criminal history record information. The "may have a conviction" determination shall be returned after the designated entity conducts its research to try to locate relevant missing disposition data as required in § 105.35.

(c) The criminal history record information provided from the FBI to the designated entity shall not be provided to the qualified entity.

§ 105.37 Rights of a covered individual.

(a) Upon request to the designated entity, the covered individual who is the subject of the background check shall be provided with a copy of any background check report from the designated entity, including a copy of the criminal history record information that the designated entity received from the FBI.

(b) Each designated entity must ensure that the covered individual who is the subject of the background check is provided notice of the opportunity to appeal and instructions on how to complete the appeals process.

(1) Each covered individual may appeal the results of the determination made by the designated entity to challenge the accuracy or completeness of the information contained in the background check report of the covered individual and obtain a prompt determination as to the validity of such challenge before a final determination is made.

(2) Each covered individual may appeal the information contained in the FBI criminal history record information through procedures the FBI has in place pursuant to 28 CFR part 16, subpart C, wherein the subject of a criminal history record may request production of that record to review it or to obtain a change, correction, or update of that record.

§ 105.38 Collection of fees.

(a) Each designated entity shall set the fees to be collected under the CPIA Program at a level that will ensure the recovery of the full costs of providing all such services under the standards of the CPIA. The fee schedule by the designated entity shall be established to ensure that fees to qualified entities for background checks of covered individuals do not discourage volunteers from participating in the programs of qualified entities.

(b) The designated entity shall remit the appropriate portion of such fee to the FBI. That amount shall be the amount published in the **Federal Register** to be collected for the provision of a fingerprint-based criminal history background check conducted by the FBI.

(c) A fee charged to a qualified entity not organized under 26 U.S.C. 501(c)(3) shall not be less than the total sum of the costs of the FBI and the designated entity.

Dated: August 17, 2023.

Merrick B. Garland,
Attorney General.

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550, 556, and 590

[Docket No. BOEM–2023–0027]

RIN 1010–AE14

Risk Management and Financial Assurance for OCS Lease and Grant Obligations; Extension of Public Comment Period

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is extending the public comment period on our notice of proposed rulemaking (NPRM), “Risk Management and Financial Assurance for Outer Continental Shelf Lease and Grant Obligations,” by 10 days. Comments previously submitted do not need to be resubmitted and will be fully considered.

DATES: The comment period for the proposed rule “Risk Management and Financial Assurance for Outer Continental Shelf [OCS] Lease and Grant Obligations,” which was published on June 29, 2023, at 88 FR 42136, is extended by 10 days. Online comments submitted at <https://www.regulations.gov> must be uploaded by 11:59 p.m. eastern daylight time on September 7, 2023. Hardcopy comments submitted by a parcel delivery service must be received by BOEM or postmarked on or before September 7, 2023.

ADDRESSES: The publicly available documents relevant to this action are available for public inspection electronically at <https://www.regulations.gov> in Docket No. BOEM–2023–0027.

Submitting Comments. You may send comments regarding the substance of this proposed rule, identified by Docket No. BOEM–2023–0027 or regulation identifier number (RIN) 1010–AE14, using any of the following methods:

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Search for and submit comments on Docket No. BOEM–2023–0027.
- *U.S. Postal Service or other parcel delivery service:* Address comments to

the Office of Regulations, Bureau of Ocean Energy Management, Department of the Interior, Attention: Kelley Spence, 45600 Woodland Road, Mailstop: DIR–BOEM, Sterling, VA 20166.

Instructions: All comments submitted regarding this proposed rule should reference Docket No. BOEM–2023–0027 or RIN 1010–AE14. All comments received by BOEM will be reviewed and may be posted to <https://www.regulations.gov>, including any personal information provided with the submission. For further instructions on protecting personally identifiable information, see “Public Availability of Comments” under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Kelley Spence, Office of Regulations, BOEM, at telephone number 984–298–7345 or email address Kelley.Spence@boem.gov; or Karen Thundiyil, Chief, Office of Regulations, BOEM, at telephone number 202–742–0970 or email address Karen.Thundiyil@boem.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On June 29, 2023, BOEM published the proposed rule “Risk Management and Financial Assurance for [OCS] Lease and Grant Obligations.” 88 FR 42136. That proposed rule would modify the criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way grant holders may be required to provide financial assurance above the current regulatorily prescribed base financial assurance to ensure compliance with their Outer Continental Shelf Lands Act obligations. This proposed rule would also remove existing restrictive provisions for third-party guarantees and decommissioning accounts and would add new criteria under which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled. Additionally, this proposed rule would clarify financial assurance requirements for RUEs serving Federal leases. With this notice, we are extending the public comment period on the NPRM from August 28, 2023, to September 7, 2023.