



DEPARTMENT OF COMMERCE

15 CFR Part 3

[Docket No. 260429-0119]

RIN 0605-AA89

Amending the Department of Commerce's Regulations Implementing the HAVANA Act

AGENCY: Office of the Secretary, Department of Commerce (Commerce).

ACTION: Final rule.

SUMMARY: By this rule, Commerce is updating and amending its regulations implementing the Helping American Victims Afflicted by Neurological Attacks (HAVANA) Act of 2021. This action will ensure statutory conformity, clarify and improve Commerce's regulations, and promote inter-agency uniformity without diminishing any substantive requirements, entitlements, or obligations established by the HAVANA Act.

DATES: The rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482-1395.

SUPPLEMENTARY INFORMATION:

I. Background

This action amends Commerce's regulations at 15 CFR part 3, which implement the HAVANA Act. The HAVANA Act was signed into law on October 8, 2021, and, broadly speaking, it permits agency heads to provide compensation to their employees and other individuals (including former employees and certain dependents) for qualifying brain injuries (Pub. L. 117-46). The HAVANA Act was enacted against the backdrop of several reports of government personnel experiencing "Havana Syndrome," also known as Anomalous Health Incidents (AHIs).

Under the HAVANA Act, the Secretary of State and other agency heads—including the Secretary of Commerce—“may provide payment to a covered dependent, a dependent of a former employee, a covered employee, a former employee, and a covered individual for a qualifying injury to the brain.” 22 U.S.C. 2680b(i)(2). To that end, the HAVANA Act directs such agency heads to “prescribe regulations to carry out” subsection (i), *see* 22 U.S.C. 2680b(i)(4)(A), and clarifies that such regulations must “include regulations detailing fair and equitable criteria for payment,” *see* 22 U.S.C. 2680(i)(4)(B).

Commerce promulgated the regulations at part 3 via final rule on December 18, 2024 (89 FR 102701), citing 22 U.S.C. 2680b as the underlying statutory authority. Part 3 consists of four sections: § 3.1 addresses the authority for part 3; § 3.2 sets forth definitions for various terms, including one for the term “other incident”; § 3.3 establishes the rules regarding eligibility for payments by Commerce, including the framework for administrative decisions and appeals; and § 3.4 addresses consultation with other agencies as well as the ineligibility of individuals who are current or former employees of other agencies.

On December 18, 2025, Congress amended the HAVANA Act to cover qualifying injuries dating back to September 11, 2001 (Pub. L. 119-60, Sec. 5604). Previously, the start date had been January 1, 2016.

II. Discussion

Commerce is making the following amendments to the regulations at 15 CFR part 3.

First, Commerce is removing the word “sole” from the final sentence of § 3.1(a), which states that “[t]he authority to provide [payments for a qualifying injury to a covered individual] is at the sole discretion of the Secretary or their designee.” 15 CFR 3.1(a). The inclusion of the word “sole” does not track any language from HAVANA Act; the statute, instead, commands Commerce to issue “regulations detailing fair and equitable criteria for payment.” 22 U.S.C. 2680(i)(4)(B). Based on that statutory language, Commerce considers the inclusion of “sole” be both unnecessary and potentially excessive. The elimination of this word will also promote

uniformity between part 3 and the HAVANA Act regulations promulgated by DOW at 32 CFR part 49 or by DOJ at 28 CFR part 106, as those other agencies' regulations acknowledge the agency head's discretion but do not use the phrase "sole discretion."

Second, Commerce is amending § 3.2(f), which sets forth a definition of the term "[o]ther incident," to include a reference to the designation process under 22 U.S.C. 2680b. Currently, § 3.2(f) defines "[o]ther incident" to mean "[a] new onset of physical manifestations that cannot otherwise be readily explained." 15 CFR 3.2(f). By comparison, the regulations promulgated by DOW and DOJ define "other incident" to mean "[a] new onset of physical manifestations that cannot otherwise be readily explained *and that is designated under 22 U.S.C. 2680b.*" 32 CFR 49.2 (emphasis added); 28 CFR 106.2(e) (same). Commerce has determined that adding the same designation language to § 3.2(f) will enhance clarity, ensure statutory conformity, and promote uniformity.

Third, Commerce is amending §§ 3.2(a)(3) and 3.4 to clarify the intended eligibility rules regarding persons with ties to Commerce and persons with ties to other agencies. Currently, § 3.2(a)(3) establishes a brightline rule that "employees or retired employees of other agencies" are "not considered employees of the Department of Commerce for purposes of this part," 15 CFR 3.2(a)(3), and § 3.4 similarly establishes that Commerce "will not process payment for employees, former employees, or dependents of current or former employees of other agencies," 15 CFR 3.4. Neither of these eligibility rules is required by the HAVANA Act. Upon closer review, Commerce finds these sections to be more restrictive than intended. The appropriate framework is that Commerce will consider payment requests tied to an injury suffered while the injured person was working for Commerce, and Commerce will not consider payment requests tied to an injury suffered while the injured person was working for another agency. But, if applied literally, the language of §§ 3.2(a)(3) and 3.4 would render ineligible, among others, (i) any current or retired Commerce employee who previously was an employee of another agency, and (ii) anyone who is a dependent of both an employee of Commerce and an employee

of another agency. Commerce is therefore amending §§ 3.2(a)(3) and 3.4 to align with the appropriate, intended framework and to avoid these unintended outcomes. Specifically, Commerce is amending § 3.2(a)(3) to track DOJ’s language at 28 CFR 106.2(a)(3), which includes a tie to the “time of the injury,” and Commerce is amending § 3.4 by adding similar language. These amendments will enhance clarity and better fulfill the statutory command to issue “fair and equitable criteria for payment.” 22 U.S.C. 2680(i)(4)(B).

Fourth, Commerce is updating part 3 by replacing all references to “January 1, 2016,” with references to “September 11, 2001,” consistent with the December 18, 2025 amendment to the HAVANA Act (Pub. L. 119-60, Sec. 5604).

III. Classification

A. Administrative Procedure Act

Commerce issues this final rule without prior public notice and comment pursuant to the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. 553(a)(2). Because this rule amends 15 CFR part 3, which pertains to compensation for current and former employees of Commerce (and their dependents), this rule falls within the exception set forth by 5 U.S.C. 553(a)(2).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to Executive Order (E.O.) 12866. This final rule is not subject to E.O. 14192 because it is not significant pursuant to E.O. 12866. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(a)(2), the analytical requirements of the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 3

Federal retirees, Government employees, Health care.

Dated: April 30, 2026.

Jennifer Hesch,

*Acting Deputy Assistant Secretary for Administration
performing the non-exclusive functions and
duties of the Chief Financial Officer and
Assistant Secretary for Administration.*

For the reasons set forth in the preamble, the Department of Commerce amends 15 CFR part 3 to read as follows:

PART 3 – IMPLEMENTATION OF THE HAVANA ACT OF 2021

1. The authority citation for part 3 continues to read as follows:

Authority: 22 U.S.C. 2680b.

2. Amend § 3.1 by revising paragraph (a) to read as follows:

§ 3.1 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (Pub. L. 117-46, as amended by Pub. L. 119-60), codified in 22 U.S.C. 2680b, the Secretary of Commerce and other agency heads may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent, who incurred a qualifying injury to the brain on or after September 11, 2001. The authority to provide such payments is at the discretion of the Secretary or their designee.

* * * * *

3. Amend § 3.2 by revising paragraphs (a)(1), (a)(3), (b), (c), and (f) to read as follows:

§ 3.2 Definitions

(a) *Covered employee.* (1) An employee of the Department of Commerce who, on or after September 11, 2001, becomes injured by reason of a qualifying injury to the brain

* * * * *

(3) The following are not considered employees of the Department for purposes of this rule: employees or retired employees who were employed by other agencies at the time of the injury.

* * * * *

(b) *Covered dependent.* A family member of a Department of Commerce current or former employee who, on or after September 11, 2001, becomes injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

(c) *Covered individual.* A former employee of the Department of Commerce who, on or after September 11, 2001, becomes injured by reason of a qualifying injury to the brain while they were an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

* * * * *

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

4. Amend § 3.3 by revising paragraphs (a), (b), and (c) to read as follows:

§ 3.3 Eligibility for payments by the Department of Commerce.

(a) The Department of Commerce may provide a payment to covered individuals, as defined this section, 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 Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after September 11, 2001, and while the individual was a covered employee of the Department of Commerce.

- (b) The Department of Commerce may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after September 11, 2001, and while the employee was a covered employee of the Department.
- (c) The Department of Commerce 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 AOBMR; and occurred on or after September 11, 2001, and while the dependent's sponsor was a covered employee of the Department.

* * * * *

5. Revise § 3.4 to read as follows:

§ 3.4 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies if the relevant employee was employed by another agency at the time of the injury.