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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 61

[DHS Docket No. DHS-2024-0010]

RIN 1601-AB12

Implementation of HAVANA Act of 2021

AGENCY: Department of Homeland Security.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule provides implementation by the Department of Homeland Security ("the Department" or "DHS") of the HAVANA Act of 2021. The HAVANA Act provides authority for agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. This rule covers current and former Department of Homeland Security employees and their dependents.

DATES: *Effective date*: This interim final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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: If you wish to provide comments regarding this interim final rule, you must submit comments to DHS Docket No. DHS-2024-0010 through the Federal eRulemaking Portal: https://www.regulations.gov. Follow the website instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Latousha Leslie, Senior Advisor, Office of Health Security; 202-617-5077 and AHI_Compensation@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

This rule implements the HAVANA Act of 2021, Public Law 117-46, 135 Stat. 391 (2021) (codified as amended at 22 U.S.C. 2680b(i)).

On December 20, 2019, Congress authorized the Department of State to pay benefits to employees and their dependents for injuries suffered in Cuba or China after January 1, 2016, in connection with certain hostile or other incidents designated by the Secretary of State. These benefits were limited to Department of State employees, their dependents, and other individuals affiliated with the Department of State. Pub. L. 116-94, Division J, Title IX, section 901, 133 Stat. 2875, 3079 (codified at 22 U.S.C. 2680b).

On January 1, 2021, Congress amended this law to authorize other federal government agencies to provide benefits to their own employees under Department of State Chief of Mission (COM) authority who suffered similar injuries. Pub. L. 116-283, Div. A, title XI, section 1110, 134 Stat. 3892 (codified at 22 U.S.C. 2680b).

On October 8, 2021, Congress further amended these laws in the "Helping American Victims Affected by Neurological Attacks" (HAVANA) Act of 2021. Pub. L. 117-46 (codified at 22 U.S.C. 2651 note & 50 U.S.C. 3519b note), 135 Stat. 391. In the HAVANA Act, Congress authorized federal government agencies to compensate affected current employees, former employees, and their dependents for qualifying injuries to the brain. The HAVANA Act also removed the previous law's requirement that the qualifying injury must occur in "the Republic of Cuba, People's Republic of China, or other foreign country designated by the Secretary of State." Pub. L. 117-46, 135 Stat 391, 394 (amending Pub. L. 116-94, Division J, Title IX, section 901, 133 Stat. 2875, 3080-81). The scope of coverage now includes a qualifying injury that occurs in any foreign or domestic location. Pub. L. 117-46, 135 Stat. 391, 394. The HAVANA Act requires federal agencies that make payments under the HAVANA Act to prescribe

implementing regulations not later than 180 days after the effective date of the Act. Pub. L. 117-46, 135 Stat. 391, 396.

On March 15, 2022, Congress added a provision stating that payments made under 22 U.S.C. 2680b(i)(2) are supplemental to any other benefit furnished by the United States Government for which a covered dependent, dependent of a former employee, covered employee, former employee, or covered individual is entitled, and the receipt of such payments may not affect the eligibility of such a person to any other benefit furnished by the U.S. Government. Pub. L. 117-103, Div. X, Title VI, section 603(b), 136 Stat. 49, 995.

On December 23, 2022, Congress authorized the head of any Federal agency to exercise the authorities of 22 U.S.C. 2680b, including to designate an incident, whether the incident occurred in the United States or abroad, when the incident affects United States Government employees of the agency or their dependents who are not under the security responsibility of the Secretary of State or when operational control of overseas security responsibility for such employees or dependents has been delegated to the head of the agency. Pub. L. 117-263, Div. I, Title XCII, section 9216, 136 Stat. 2395, 3877.

On December 18, 2025, Congress expanded the covered timeframe, striking "January 1, 2016" and inserted "September 11, 2001" in its place in multiple parts of the statute, and also imposed certain restrictions on payments made under 22 U.S.C. 2680b(a) and (b). Pub. L. 119-60, Div. E, Title VI, section 5604, 139 Stat. 718, 1603). This rule implements Section 3 of the HAVANA Act of 2021, as amended, as it applies to the Department of Homeland Security (the "Department"). This rule only applies to current and former employees of the Department of Homeland Security and their dependents, as defined in section 61.2 of this rule. In defining a covered dependent, the Department has adopted the Department of State's definition of family member as

defined in the Foreign Affairs Manual pursuant to 22 U.S.C. 2680b(e)(1), as well as a cross-reference to the definition of domestic partner at 5 CFR 875.101.

On June 30, 2022, the Department of State published two interim final rules to implement its requirements under the HAVANA Act, with an effective date of August 15, 2022. 87 FR 38981 (June 30, 2022); 87 FR 48444 (Aug. 9, 2022). The Department of State subsequently published a final rule that became effective on January 25, 2023. 88 FR 4722 (Jan. 25, 2023). Finally, on March 16, 2026, the Department of State further amended its regulations to implement the December 2025 statutory changes, to provide a deadline for applicants to submit appeals of adverse decisions on their applications, and to make other administrative changes. 91 FR 12509.

The Department has independently reviewed the approach implemented by the Department of State in these rules and has determined that its approach was reasonable and well considered. The Department also notes the issuance of similar rules by other agencies.[1] Accordingly, the Department plans to adopt that approach as appropriate in its regulations to ensure consistency of benefits among federal employees and their dependents. In particular, the Department has based its interim final rule on the Department of State's definitions and process for the payment of benefits.

II. Section-by-Section Discussion

A. Background and Authority - § 61.1

The rule references 22 U.S.C. 2680b and notes that the rule applies to covered employees (current and former employees) and their covered dependents.

B. Definitions - § 61.2

[1] *See, e.g.*, 7 CFR part 1, subpart Q (Department of Agriculture); 15 CFR part 3 (Department of Commerce); 28 CFR part 106 (Department of Justice); 32 CFR part 49 (Department of War).

The rule defines those who are eligible to receive payments: covered employees (including current and former employees) and covered dependents who on or after September 11, 2001, become injured by reason of a qualifying injury to the brain.

A covered employee includes Department employees who have been appointed in the civil service in accordance with 5 U.S.C. 2105, employees on Limited Non-Career Appointments, employees on Temporary Appointments, personnel hired on Personal Services Contracts, citizens or nationals of the United States paid from non-appropriated funds under 32 CFR 756.2, and students providing volunteer services under 5 CFR Part 362. Covered employees do not include 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, individuals receiving compensation under 50 U.S.C. 3519b, or employees or retired employees of other agencies.[2]

A covered dependent is a family member of a current or former employee of the Department 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. For the purposes of determining whether someone is a covered dependent, the term "family member" includes unmarried children under 21 years of age at the time of the qualifying injury (or certain other children); parents; sisters and brothers; and spouse. Step-parents and step-siblings are included in the definition.

For the purposes of this rule, DHS adopts the Department of State's definition of qualifying injury to the brain codified at 22 CFR 135.2. DHS has determined that this 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

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[2] The Department's definition of "covered employee" is intended to implement both the "covered employee" and "covered individual" categories as set forth in 22 U.S.C. 2680b. This approach is consistent with implementing regulations adopted by other agencies and reflects the Department's discretionary authority to include individuals who may otherwise fall outside the statutory definition of "covered employee."

excellence in determining this definition. There is no diagnostic code or criteria for anomalous health incidents (AHI) 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 been assessed and diagnosed in person by a physician who is currently certified by 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) as having:

(1) an acute injury to the brain such as, but not limited to, a concussion, 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 (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) the 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.

The definition of qualifying injury to the brain set forth in section 61.2 accounts for a variety of observable impacts to an individual, including a concussion or a

penetrating injury, or absent either of those, the ability of a physician who is currently certified by the ABPN, the AOBPN, the ABPMR, or the AOBPMR to review one of a variety of forms of medical imaging evidence indicating permanent alterations in brain function. 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 component of the definition (paragraphs (2)(i)-(iii) of the definition) is 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 to include their inability to gainfully work, as a result of their report of a suspected AHI.

The standard is consistent with that employed by other agencies, including the Department of State. Establishing 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." 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.

Under the HAVANA Act, the injury must "have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State [or head of any Federal agency under specified circumstances in accordance with 22 U.S.C. 2680b(j)], and that was not the result of the willful misconduct of the covered individual." 22 U.S.C. 2680b(e)(4)(A)(ii)-(iii) & (B)(ii)-(iii). The Department will work

with an applicant upon their submission of the DS-4316, "Eligibility Questionnaire for HAVANA Act Payments" to determine whether their alleged incident qualifies.

The definition of "other incident" is a new onset of physical manifestations that cannot otherwise be explained and that is designated under 22 U.S.C. 2680b. The Department will review available information on the reported incident. If the treating physician does not indicate that there is a credible alternate explanation for the individual's symptoms, and if the information the Department has regarding the incident does not provide a credible alternate explanation for the incident, that incident will be recommended for designation. Incidents for which an explanation has been identified will not be recommended for designation.

C. Eligibility for Payments - § 61.3

The Department will make available to its workforce information on the regulations and the process to apply for HAVANA Act payments. Current employees, former employees, and dependents (as defined herein) can apply for consideration. Applicants will be required to provide the necessary documentation so the Department may determine whether they qualify for payment. The DS-4316 "Eligibility Questionnaire for HAVANA Act Payments," is the form associated with developing 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.

The Department 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 interim 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.*). The payment is non-taxable pursuant to 22 U.S.C. 2680b(g). As indicated in section 61.3 of the regulatory text, payment eligibility and the amount of the payment will be at the Department's discretion. 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 current employees from successfully performing their work-related duties. The purpose is to only compensate qualifying brain injuries that meet the criteria set forth in this regulation. 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 and (2) whether the Department of Labor Office of Workers' Compensation Programs has determined that the applicant has no wage-earning capacity or reemployment potential for an indefinite future, or the Social Security Administration has approved the applicant for Social Security Disability Insurance or Supplemental Security Income (SSI) benefits, or 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 of Daily Living.

The award thresholds are based on Level III of the Executive Schedule. A Base payment will be 75 percent of Level III pay, and a Base plus 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 requestor while ensuring funds for the total amount of requestors it believes will likely receive payments. If the applicant meets any of the criteria for severe impacts, the applicant will be eligible to receive a Base plus 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 additional payment. The use of the Department of Labor or the Social Security Administration's (SSA) 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 option, 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. 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 plus payment. As of 2026, a Base payment will be $157,200.[3] A Base plus payment will be $209,600 pursuant to Level III of the Executive Schedule. 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.

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[3] $157,200 = 0.75 × $209,600. $209,600 is the Level III rate for 2026. U.S. Office of Personnel Management, Rates of Basic Pay for the Executive Schedule (EX), Salary Table No. 2026-EX. Effective January 2026. (Accessible at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/26Tables/exec/html/EX.aspx.)

The use of Level III of the Executive Schedule sets the compensation at the maximum annual salary potentially available to most of the federal workforce. While payments under the HAVANA Act may be in addition to other leave benefits, disability, or workers' compensation payments that the applicant may be receiving or may be entitled to receive that also help augment any loss of income, 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 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 unless Congress specifies otherwise. Therefore, payments are contingent on appropriated funds, and all payments will be paid out on a first-come, first-served basis.

D. Consultation with Other Agencies - § 61.4

The Department will adopt appropriate procedures for determining whether an incident has been designated under the HAVANA Act, including, where appropriate, consultation with the Secretary of State. *See* 22 U.S.C. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)).

E. Procedures - § 61.5

Each Federal agency is responsible for (1) processing applications for the HAVANA Act payment; (2) determining whether the incident causing the qualifying injury to the brain may be deemed a designated incident under the statute and consulting the Secretary of State if appropriate. *See* 22 U.S.C. 2680b(i)(1)(D) and (i)(2) (cross-referencing subparagraph 2680b(e)(4), and section (j)); (3) determining eligibility for the benefit, the amount of the benefit, and process 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 Office of the Chief Financial Officer is authorized to approve any HAVANA Act payments to covered employees or their dependents. If payment is denied, the applicant may direct an appeal to the Office of Health Security within 60 days. Decisions on the amount of payment are not subject to appeal.

F. Severability

The Department intends that the provisions of this rule be considered severable. The definitions, eligibility criteria, payment criteria, application procedures, review procedures, and appeal procedures in this part operate independently to the extent permitted by law. If any provision of this part, or the application of any provision to any person or circumstance, is held invalid, the Department intends that the remaining provisions continue to apply to the fullest extent permitted by law.

III. Regulatory Analysis

A. Administrative Procedure Act

DHS is publishing this rule as an interim final rule. Because this rule is a matter pertaining to benefits and agency management or personnel, it is exempt from the procedural requirements of the APA. See 5 U.S.C. 553(a)(2).[4] In addition, because the rule is exempt from section 553, the provisions of section 553(d) do not apply. Nevertheless, the rule will go into effect 30 days after publication. However, the Department is seeking comment from interested persons on the provisions of this rule and will consider all relevant comments in determining whether additional rulemaking is warranted under the provisions of the HAVANA Act.

B. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and

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[4] Substantial portions of this rule also qualify as a rule of agency organization, procedure, or practice exempt from notice-and-comment requirements under 5 U.S.C. 553(b)(A).

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 14192 regulatory action because it does not impose any more than de minimis regulatory costs and is related to agency organization, management, or personnel. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation'" (Mar. 26, 2025).

The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) justify any costs to the public, which are minimal. The Department has also considered this rulemaking in light of Executive Orders 13563 and 14192 and affirms that this proposed regulation is consistent with the guidance therein.

Given the nature of the incidents, it is difficult to accurately estimate future incidents and the number of individuals who may make requests for HAVANA Act payment. However, the rule will result in time burden cost for covered individuals

submitting requests under the HAVANA Act and for their physicians. These burdens are discussed in the Paperwork Reduction Act information collection request for the Form DS-4316 "Eligibility Questionnaire for HAVANA Act Payments," under OMB Control Number 1405-0250.[5] This rule would implement the HAVANA Act for current and former DHS employees and their covered dependents. The HAVANA Act authorized federal agencies to provide payments to covered individuals who experienced a qualifying injury to the brain.

C. Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804 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).

D. 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.

E. Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rule 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.

F. Regulatory Flexibility Act

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[5] Department of State, Supporting Statement for Paperwork Reduction Act Submission, Eligibility Questionnaire for HAVANA Act Payments, OMB Control Number 1405-0250, DS-4316. (Accessible at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202303-1405-010.)

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because this rule is being issued without advance notice and comment as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601-612). *See* 5 U.S.C. 604(a).

G. Executive Order 12988

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

H. Executive Order 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.

I. Paperwork Reduction Act

This rulemaking is related to an information collection for the common form DS-4316 "Eligibility Questionnaire for HAVANA Act Payments," OMB Control Number 1405-0250. The average time burden is 60 minutes. The estimated number of respondents is 160. The estimated total time burden hours for this collection are approximately 160 hours. While this IFR does not require a revision to the information collected via the

currently-approved DS-4316, DHS will consider comments concerning the collection of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden.

J. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with NEPA, 42 U.S.C. 4321 *et seq.*

NEPA allows Federal agencies to establish categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS). *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. *See* Instruction Manual 023-01 at V.B(2)(a)-(c).

DHS has reviewed the rule and finds that the rule is of a strictly administrative or procedural nature. The rule is not part of a larger federal action and does not present extraordinary circumstances that create the potential for a significant environmental effect.

Accordingly, DHS finds that the rule clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures, and no further NEPA analysis is required.

List of Subjects in 6 CFR Part 61

Government employees, Health care, Retirement.

Accordingly, for the reasons stated in the preamble, the Department of Homeland Security adds 6 CFR part 61 to read as follows:

PART 61 – IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.

61.1 Background and authority.

61.2 Definitions.

61.3 Eligibility for payments.

61.4 Consultation with other agencies.

61.5 Procedures.

Authority: 5 U.S.C. 301; 6 U.S.C. 101 *et seq.*; 22 U.S.C. 2680b.

§ 61.1 Background and authority.

(a) Under section 3 of the HAVANA Act of 2021 (Public Law 117-46), codified as amended at 22 U.S.C. 2680b, the Secretary of Homeland Security (Secretary) or other agency heads may provide a payment to a covered employee or covered dependent who experiences a qualifying injury to the brain on or after September 11, 2001. The authority to provide such payments is at the sole discretion of the Secretary or their designee.

(b) This part is issued in accordance with 22 U.S.C. 2680b(i)(4) and applies to covered employees (current and former employees) and their covered dependents.

§ 61.2 Definitions.

For purposes of this part, the following definitions apply:

Covered dependent. A family member, as defined in this section, of a covered employee who, on or after September 11, 2001, became injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department of Homeland Security (Department).

Covered employee. (1) A current or former employee of the Department who, on or after September 11, 2001, became injured by reason of a qualifying injury while they were employed by the Department.

(2) A current or former employee under paragraph (1) of this definition includes an "employee" appointed in the civil service in accordance with 5 U.S.C. 2105, an employee on a Limited Non-Career Appointment, an employee on a Temporary Appointment, personnel hired on a Personal Services Contract, a citizen or national of the United States paid from non-appropriated funds under 32 CFR 756.2, and a student providing volunteer services under 5 CFR part 362. The term "current or former employee" does not include an employee paid from non-appropriated funds of an instrumentality of the United States under the jurisdiction of the armed forces who is not a citizen or national of the United States, an individual receiving compensation under 50 U.S.C. 3519b, or an employee or retired employee of other agencies.

Family member. For purposes of determining "covered dependent," a family member is defined as follows:

(1) Children who are unmarried and under 21 years of age at the time of the qualifying injury or, regardless of age, are unmarried and due to mental or physical limitations are incapable of self-support. The term "children" must include natural offspring, step-children, adopted children, and those under permanent legal guardianship (at least until age 18), or comparable permanent custody arrangement, of the employee or 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) Parents (including step-parents 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;

(3) Sisters and brothers (including step-sisters or step-brothers, or adoptive sisters or brothers) of the employee, or of the spouse when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are physically or mentally incapable of self-support; and

(4) Spouse or domestic partner 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. (1) The injury must have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State when occurring under Department of State Chief of Mission (COM) authority or the Secretary of Homeland Security when not occurring under COM authority, as permitted by law, and that was not the result of the willful misconduct of the covered employee or covered dependent; and

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the 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);

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

(iii) 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.

§ 61.3 Eligibility for payments.

(a) The Department may, in its discretion, provide a payment to a covered employee or covered dependent if the qualifying injury to the brain was assessed and diagnosed in person by a physician who is currently certified by 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 September 11, 2001, and occurred while the employee was a covered employee of the Department or, for a covered dependent, while the dependent's sponsor was employed by the Department.

(b) 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) of this section.

(c) The amount of the 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 the "Eligibility Questionnaire for HAVANA Act Payments" form; and

(2) Whether the Department of Labor Office of Workers' Compensation Programs has determined that the applicant has no wage earning capacity or reemployment potential for an indefinite future, or the Social Security Administration has

approved the applicant for Social Security Disability Insurance or Supplemental Security Income (SSI) benefits, or the applicant's ABPN-certified neurologist or an AOBNP, ABPMR, or AOBPMR-board certified physician has certified that the applicant requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(d) The award thresholds are based on Level III of the Executive Schedule: Base will be 75 percent of Level III pay, and Base plus will be 100 percent of Level III pay. If the applicant meets any of the criteria listed in paragraph (c)(2) of this section, the applicant will be eligible to receive a Base plus payment. Applicants whose board-certified physician (as described in paragraph (a) of this section) confirms that the definition of "qualifying injury to the brain" has been met, but who have not met any of the criteria listed in paragraph (c)(2) of this section, will be eligible to receive a Base payment. If an applicant who received a Base payment meets any of the criteria listed in paragraph (c)(2), the applicant may apply for an additional payment that will be the difference between the Base and Base plus payment.

§ 61.4 Consultation with other agencies.

To ensure the appropriate Federal agency is processing a HAVANA Act request, the Department may consult with the appropriate officials in other Federal agencies to coordinate as appropriate regarding their current and former employees, and dependents of current or former employees who report an anomalous health incident. The Department will not process payment for qualifying injuries to the brain sustained by an employee, or dependent of an employee while the employee was employed by another Federal agency.

§ 61.5 Procedures.

(a) *Application*. A covered employee or covered dependent may apply for the HAVANA Act payment if he or she believes that he or she has sustained a qualifying

injury to the brain on or after September 11, 2001. To apply for the benefit, the applicant must submit the "Eligibility Questionnaire for HAVANA Act Payments" form and additional documentation upon request to AHI_Compensation@hq.dhs.gov.

(b) *Review*. For covered employees and dependents, the Office of the Chief Financial Officer is responsible for reviewing the applications for completeness and eligibility.

(c) *Initial decisions.* The Office of the Chief Financial Officer may approve payments under the HAVANA Act and will notify the applicant of the decision in writing.

(d) *Appeals*. In the event of a decision to deny an application for payment under the HAVANA Act, applicants may direct an appeal to the Chief Medical Officer, Office of Health Security in writing within 60 days of the date of the notification of the denial. The Chief Medical Officer, Office of Health Security, is the final appeal authority and will notify the applicant of the appeal decision in writing. In the event that the Chief Medical Officer is unavailable, or the position is vacant, the Secretary of Homeland Security or Deputy Secretary of Homeland Security may act as final appeal authority.

Markwayne Mullin,
Secretary of Homeland Security.

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