42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016).

■ 2. Section 742.10 is amended by:
■ a. Adding a paragraph heading to paragraph (b)(1) introductory text;
■ b. Revising the first sentence of paragraph (b)(1)(iv);
■ c. Adding a paragraph heading to paragraph (b)(2); and
■ d. Revising paragraph (b)(3).

The additions and revisions read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) *General policy of denial.* * * *

* * * * *

(iv) Except as provided in paragraph (b)(3)(ii) of this section, all aircraft (powered and unpowered), helicopters, engines and related spare parts and components. * * *

* * * * *

(2) *Military end-user and end-use policy.* * * *

(3) *Other licensing policies.* The licensing policies set forth in this paragraph apply notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section.

(i) *Case-by-case review policy.* Applications to export or reexport to Sudan will be considered on a case-by-case basis in the four situations described in paragraphs (b)(3)(i)(A) through (D) of this section.

(A) The transaction involves the reexport to Sudan of items where Sudan was not the intended ultimate destination at the time of original export from the United States, provided that the export from the United States occurred prior to the applicable contract sanctity date.

(B) The U.S. content of foreign-produced commodities is 20% or less by value.

(C) The commodities are medical items.

(D) The items are telecommunications equipment and associated computers, software and technology for civil end use, including items useful for the development of civil telecommunications network infrastructure.

Note to paragraph (b)(3)(i). Applicants seeking approval of their license applications pursuant to this paragraph must include with their applications documentation demonstrating how their proposed transaction is consistent with one or more of the four situations described in this paragraph.

(ii) *General policy of approval.* Applications to export or reexport to Sudan the following for civil uses by non-sensitive end-users within Sudan will be reviewed with a general policy of approval.

(A) Parts, components, materials, equipment, and technology that are controlled on the Commerce Control List (Supp. No. 1 to part 774 of the EAR) only for anti-terrorism reasons that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing commercial passenger aircraft.

(B) Items controlled on the Commerce Control List (Supp. No. 1 to part 774 of the EAR) only for anti-terrorism reasons that will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan.

Note to paragraph (b)(3)(ii). Applications will generally be denied for exports or reexports that would substantially benefit a sensitive end user. Sensitive end users include Sudan's military, police, and intelligence services and persons that are owned by or are part of or operated or controlled by those services.

* * * * *

Supplement No. 2 to Part 742 [Amended]

■ 3. In Supplement No. 2 to part 742, remove and reserve paragraphs (c)(6)(iii) and (c)(10)(iii).

Dated: January 4, 2017.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2017–00836 Filed 1–13–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 31

[Docket No.: OJP (OJJDP) 1719]

RIN 1121–AA83

Juvenile Justice and Delinquency Prevention Act Formula Grant Program

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (''OJJDP'') of the U.S. Department of Justice's Office of Justice Programs (''OJP''), publishes this partial final rule to amend portions of the formula grant program (''Formula Grant Program'') regulation to reflect changes in OJJDP policy.

DATES: *Effective Date:* This rule is effective February 16, 2017.

FOR FURTHER INFORMATION CONTACT: Gregory Thompson, Senior Advisor, Office of Juvenile Justice and Delinquency Prevention, at 202–307–5911.

SUPPLEMENTARY INFORMATION: The OJJDP Formula Grant Program is authorized by the Juvenile Justice and Delinquency Prevention Act (''JJDPA''). The JJDPA authorizes OJJDP to provide an annual grant to each State to improve its juvenile justice system and to support juvenile delinquency prevention programs. OJJDP published a notice of proposed rulemaking on August 8, 2016, 81 FR 52377, that proposed to revise the entirety of the Formula Grant Program regulation.

OJJDP is finalizing some, but not all, aspects of the proposed rule here. For several provisions, OJJDP has addressed the comments received and is amending the current Formula Grant Program regulation through this partial final rule. For other provisions included in the proposed rule, OJJDP received voluminous comments that will require additional time for OJJDP to consider them thoughtfully. OJJDP anticipates publishing a final rule in the future addressing the remainder of the proposed changes that are not addressed in this partial final rule.

I. Executive Summary

A. Purpose of the Regulatory Action

The JJDPA authorizes annual formula grants to be made to States to improve their juvenile justice systems and to support juvenile delinquency prevention programs.[1] *See* 42 U.S.C. 5631(a). OJJDP promulgates this rule pursuant to the rulemaking authority granted to the OJJDP Administrator (the Administrator) by 42 U.S.C. 5611(b).

B. Summary of the Major Provisions of the Partial Final Rule

This rule amends the Formula Grant Program regulation in the following respects: (1) It replaces 28 CFR 31.303(f)(6), which provides standards for determining compliance with the

[1] Pursuant to 42 U.S.C. 5603(7), ''the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands.''

core requirements found at 42 U.S.C. 5633(a)(11), the ''deinstitutionalization of status offenders'' (DSO); 42 U.S.C. 5633(a)(12), ''separation''; and 42 U.S.C. 5633(a)(13), ''jail removal''; (2) it provides a definition for the term ''detain or confine,'' clarifying that the term refers to both the secure detention and non-secure detention of juveniles; (3) it changes the deadline to February 28th for States to report their compliance monitoring data for the previous federal fiscal year and provides that the Administrator may, for good cause, grant a State's request for an extension of the February 28th reporting deadline to March 31st; (4) it requires that States provide compliance data for 85% of facilities that are required to report on compliance with the DSO, separation, and jail removal requirements; and (5) it adds a requirement that States provide a full twelve months' worth of compliance data for each reporting period.

C. Cost and Benefits

As noted in the preamble to the Notice of Proposed Rulemaking, it is difficult to quantify the financial costs to States of the increased monitoring and reporting requirements, and OJJDP did not receive any comments from States indicating what those increased costs might be. OJJDP expects, however, that those costs will be considerably lower under this partial final rule than they would have been under the proposed rule. For example, under the compliance standards in this partial final rule, only eight States would be out of compliance based on the fiscal year 2013 data, rather than the forty-eight States that would have been out of compliance under the standards in the proposed rule. In addition, in this partial final rule the revised definition of ''detain or confine'' clarifies, per the statute, that the term does not apply to situations where juveniles are being held solely pending their return to a parent or guardian or pending transfer to the custody of a child welfare or social services agency. Nor (in keeping with the statute) does it apply to situations where juveniles are held in a non-secure area of a building that also houses an adult jail or lockup. OJJDP expects that this clarification, along with the revised definition, will greatly reduce the amount of data that States will have to collect, compared to what they would have had to collect under the proposed definition. Finally, although the proposed rule would have required that 100% of facilities annually report compliance data, this partial final rule provides that States must submit annual compliance data from only 85% of those facilities.

II. Background

A. Overview

This rule amends the regulation implementing the JJDPA Formula Grant Program at 28 CFR part 31, authorized by 42 U.S.C. 5631(a). This section of the JJDPA authorizes OJJDP to provide an annual grant to each State to improve its juvenile justice system and to support juvenile delinquency prevention programs.

B. History of This Rulemaking

On August 8, 2016, OJP published a Notice of Proposed Rulemaking at 81 FR 52377, seeking comments on a rule that would have superseded the current Formula Grant Program regulation at 28 CFR part 31 in its entirety. The period for commenting on the proposed rule closed on October 7, 2016. During that period, OJJDP received 72 written comments, from a diverse array of respondents, representing State entities that administer the JJDPA, child advocacy organizations, public interest groups, and individuals.

Based on the volume and complexity of the comments received, OJP has decided to publish a partial final rule to implement only some of the provisions included in the proposed rule as amendments to the current regulations. Many of the provisions included in the proposed rule, and responses to comments regarding those provisions, will be addressed in a future final rule, after further consideration.

Changes Proposed in the Proposed Rule That Are Being Finalized in the Partial Final Rule [2]

1. The compliance standards included in section 31.9 of the proposed rule for the DSO, separation, and jail removal requirements have been significantly revised. This rule incorporates the revised language by amending section 31.303(f)(6) of the current regulation, through the adoption of a new methodology for determining the compliance standards on an annual basis.

2. The requirement in section 31.7(d)(1) of the proposed rule that States must annually submit compliance monitoring data from 100% of all facilities that are required to report such data has been modified. This rule amends section 31.303(f)(5) of the current regulations, such that States will be required to report data for 85% of facilities and demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities.

3. Consistent with the requirement in section 31.8(a) of the proposed rule, this rule amends section 31.303(f)(5) of the current regulations to change the compliance data reporting period to the federal fiscal year as required by the Act, at 42 U.S.C. 5633(c).

4. Instead of the proposed annual deadline of January 31st included in section 31.8(b) of the proposed rule for States to submit their compliance monitoring reports, this rule amends section 31.303(f)(5) of the current regulations to change the deadline to February 28th, with a provision allowing the Administrator to grant a one-month extension to March 31st upon a State's showing of good cause.

5. This rule modifies the definition for ''detain or confine'' included in section 31.2 of the proposed rule. This rule adds this definition in subsection 31.304(q) of the current regulations, and clarifies that it does not apply to juveniles who are being held by law enforcement solely pending their reunification with a parent or guardian or pending transfer to the custody of a child welfare or social services agency.

Changes Proposed in the Proposed Rule That Will Be Addressed in a Future Final Rule

1. Proposed changes to the Disproportionate Minority Contact (DMC) requirement;

2. Providing definitions for the following terms: ''Administrator'', ''alien'', ''annual performance report'', ''assessment'', ''authorized representative'', ''compliance monitoring report'', ''construction fixtures'', ''contact between juveniles and adult inmates'', ''convicted'', ''core requirements'', ''designated state agency'', ''DMC requirements'', ''DSO requirements'', ''extended juvenile court jurisdiction'', ''full due process rights guaranteed to a status offender by the Constitution of the United States'', ''jail removal requirements'', ''juvenile'', ''juveniles alleged to be or found to be delinquent'', ''juveniles who are accused of nonstatus offenses'', ''minority groups'', ''monitoring universe'', ''non-secure facility'', ''placed or placement'', ''public holidays'', ''residential'', ''responsible agency official'', ''separation requirements'', ''status offender'', ''status offense'', ''twenty-four hours'';

[2] Because this partial final rule amends only certain sections of part 31, subpart A, rather than replacing the entire regulation (as the proposed rule would have done), the section numbers of these amended provisions correspond with the sections in the current regulations.

3. Proposed deletion of text in the current regulation that is repetitive of statutory provisions;

4. Proposed deletion of the Federal wards provision in the current regulation;

5. Proposed deletion of provisions in the current regulation rendered obsolete by the 2002 JJDPA reauthorization;

6. Proposed deletion of requirements in the current regulation not specific to the formula grant program and are found elsewhere such as in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, at 2 CFR part 200;

7. Proposed deletion of provisions that describe recommendations rather than requirements;

8. Proposed deletion of provisions that are unnecessary or duplicative of the formula grant program solicitation;

9. Prohibited discrimination provision (§ 31.4 in the proposed rule) (*i.e.,* the non-discrimination provision at 28 CFR 31.403—''Civil rights requirements''—remains in effect);

10. Proposed formula allocation (§ 31.5 in the proposed rule) (which would not alter the formula described in the Act at 42 U.S.C. 5632, but would simply require that a State's annual allocation be based on data available from the U.S. Census Bureau);

The proposed provision (§ 31.8(c) in the NPRM) requiring that a designated State official certify that the information in the State's compliance monitoring report is correct and complete is not being codified in this partial final rule, but this certification is already required under OJJDP's current policy on ''Monitoring of State Compliance with the Juvenile Justice and Delinquency Prevention Act.'' [3]

III. Discussion of Comments and Changes Made by This Rule

A. Compliance Standards

Based heavily on feedback from commenters, and in conjunction with statisticians in OJP's Bureau of Justice Statistics, OJJDP has developed new compliance standards using the distribution of compliance rates reported in States' compliance monitoring reports. The compliance standards included in section 31.303(f)(6) of this rule are significantly different from the standards contained in section 31.303(f)(6) of the current formula grant program regulations, as well as from those in the proposed rule. OJJDP believes that the methodology for establishing new compliance standards included in this partial final rule fully addresses the concerns raised by commenters, which are discussed more fully below.

1. Revised Methodology for Determining Compliance Standards

In determining the compliance standards, the distribution of each set of compliance rates (*i.e.,* for DSO, separation, and jail removal) using the average of two or more years of data (removing, when appropriate and applicable, one negative outlier each for DSO, separation, and jail removal) and applying a standard deviation factor of not less than one, will be analyzed to determine its mean, and standard deviations therefrom.

As provided in the final rule, section 31.303(f)(6) provides that, based on this information, a compliance rate that is not less than one standard deviation above the mean rate will be set as the compliance standard. Once established, the standards will be posted annually (in numerical form) on OJJDP's Web site by August 31 of each year. Any State that reports a compliance rate above this compliance standard will be determined to be out of compliance. This methodology will not be applied, however, to States' FY 2016 and FY 2017 compliance monitoring reports, in order to allow for a transition period.

2. Standard for Determining Compliance Based on States' FY 2016 Compliance Data

Under the revised methodology described above, only data from Calendar Year (CY) 2013 will be used to establish standards for making compliance determinations based on States' FY 2016 annual monitoring reports (affecting the FY 2017 awards). After removing one negative outlier from the DSO distribution (with a rate of 70.16 per 100,000 juvenile population), one negative outlier from the separation distribution (with a rate of 2.82 per 100,000 juvenile population), and one negative outlier in the jail removal distribution (with a rate of 82.8 per 100,000 juvenile population), the means without the negative outliers, the standard deviations, and what the compliance standards would be, based on two standard deviations above the means, is presented in the table below:

Core requirement	Current compliance standard	Mean without negative outlier	Standard deviation (SD)	Compliance standard (two SD from mean)
DSO	At or below 5.8, 5.9 to 17.6, 17.7 to 29.4	2.85	6.37	9.89
Separation	0 (with exceptions)	0.04	0.16	0.28
Jail Removal	At or below 9	2.38	5.66	8.94

After removing the negative outlier from data for each of the three core requirements, the average rate, per 100,000 juvenile population, would be 2.85 for DSO, 0.04 for separation, and 2.38 for jail removal. Applying a standard deviation factor of 2 to each of these averages results in a final rate, per 100,000 juvenile population, of 9.89 for DSO, 0.28 for separation, and 8.94 for jail removal. States would need to be at, or below, these rates for OJJDP to find them in compliance with the DSO, separation, and jail removal core requirements.

As provided in this rule, amending section 31.303(f)(6) of the current regulation, OJJDP will employ the methodology described above in establishing annual compliance standards for DSO, separation, and jail removal core requirements for determinations based on States' FY 2016 data. Immediately following the publication of this partial final rule, OJJDP will post the standards for determining compliance with the DSO, separation and jail removal requirements, which will be derived from CY 2013 data and will be used in making compliance determinations based on States' FY 2016 compliance monitoring reports. These determinations will serve as the basis for establishing whether States will receive their full FY 2017 formula grant

[3] In any event, the report itself is subject to the False Statements Act, 18 U.S.C. 1001, as a matter of course.

allocation or their awards will be reduced for non-compliance.

3. Standard for Determining Compliance Based on States' FY 2017 Compliance Data

As provided in this rule, amending section 31.303(f)(6), in establishing compliance standards to apply to the FY 2017 compliance data (affecting the FY 2018 awards), OJJDP will take the average of the combined CY 2013 and FY 2016 compliance data (removing, when appropriate/applicable, one negative outlier in each data collection period for DSO, separation, and jail removal) and apply a standard deviation factor of not less than one to establish the compliance standards to be applied to the FY 2017 compliance monitoring reports.

This methodology, which may result in compliance standards' being adjusted from one year to the next, recognizes the difficulty that States' face in preventing all instances of non-compliance with each core requirement and allows a State that reports a minimal number of such instances to be found in compliance and to continue to receive its full formula grant allocation.

Data used to establish compliance standards	Applied to compliance monitoring report year	Affecting fiscal year title II allocation
CY 2013	FY 2016	FY 2017
CY 2013 and FY 2016	FY 2017	FY 2018
FY 2016 and FY 2017	FY 2018	FY 2019
FY 2017 and FY 2018	FY 2019	FY 2020

4. Comments on Proposed Compliance Standards

OJJDP received numerous comments on the methodology for establishing the compliance standards in the proposed rule, and on the resulting standards published in the proposed rule. Commenters questioned the data used, the methodology employed to establish the standards, and the lack of opportunity to provide supporting documentation to address compliance deficiencies; they also raised the possibility of withdrawing from participation in the Formula Grant Program. Based on these comments, OJJDP has revised the compliance standards in the partial final rule, as discussed below, following a summary of the comments received.

A number of commenters raised concern with using data from only three States with the lowest rates of compliance, from each of the four Census Bureau regions. Several commenters also made the point that the data used in calculating the proposed compliance standards (CY 2013), did not include data based on the new guidance for ''detain or confine,'' rendering the calculation unfair, arbitrary, rigid, and extreme. In addition, several States suggested that in calculating a rate for the compliance standards, OJP should use the average of two or three years of data from all States, and those data should include data based on the ''detain or confine'' guidance.

A number of commenters stated that it would be unfair not to allow States to provide additional documentation demonstrating how they would address violations as they occur, in order to demonstrate compliance. For example, under the current compliance standards for DSO and jail removal, a State whose rate puts it out of compliance in principle could nevertheless demonstrate compliance with the *de minimis* standard by providing additional documentation (*i.e.,* recent passage of state law, or executive or judicial policy; or submission of an acceptable plan to eliminate the instances of non-compliance), that would allow it to be found in compliance.

Additionally, many commenters stated that if their State incurred just one DSO, separation, or jail removal violation, the State would be out of compliance under the proposed standards, resulting in a reduction of their formula grant allocation by 20% for each requirement with which the State is out of compliance. In addition, the State would be required to expend 50% of its remaining allocation to achieve compliance.

In response, although the current regulation permits States with a certain number of instances of non-compliance nevertheless to be found in compliance with the *de minimis* standards by providing additional documentation, OJJDP believes that the elimination of the subjective nature of this *de minimis* review will allow for a clearer and more objective process by which compliance determinations will be made.

OJJDP appreciates the thoughtful and detailed comments regarding the methodology used to establish the proposed compliance standards for the DSO, separation, and jail removal core requirements. OJJDP agrees that using data from all States, not just three States with the lowest violation rates, from each of the four Census Bureau regions, would provide for a more representative and balanced approach for establishing compliance standards.

5. States' Withdrawal From Participation in the Formula Grant Program

Several States questioned whether they would continue to participate in the Formula Grant Program, should the proposed compliance standards be implemented. It has never been OJJDP's intention to implement compliance standards that would discourage States' participation in the Formula Grant Program. OJJDP believes that the methodology described in this partial final rule to establish annual compliance standards is responsive to comments received and will encourage States' continued participation in the Formula Grant Program.

B. Revised Definition of ''Detain or Confine''

The partial final rule contains a definition for the term ''detain or confine'' in section 31.304(q) that differs in some respects from what was in the proposed rule. In response to the many comments received, OJJDP has revised the definition in two key respects: To clarify that (1) a juvenile who was not actually free to leave was ''detained,'' regardless of whether he believed he was free to leave; and (2) juveniles who are being held by law enforcement personnel for their own safety, and pending their reunification with a parent or guardian or pending transfer to the custody of a child welfare or social service agency, are not ''detained or confined'' within the meaning of the JJDPA.

OJJDP recognizes that the definition in the proposed rule may not have made sufficiently clear that the primary question in determining whether a juvenile was detained is whether he was, in fact, free to leave. If law

enforcement personnel would not have allowed the juvenile to leave, he was necessarily being detained, and there is no need to inquire as to whether he *believed* he was free to leave. For this reason, OJJDP has revised the definition to indicate that ''detain or confine'' means to hold, keep, or restrain a person *such that he is not free to leave.* If law enforcement personnel indicate that the juvenile was free to leave, it would be incumbent upon them to explain how/why the juvenile would have understood that he was free to leave.

This revised definition also allows law enforcement to hold juveniles who (for example) are runaways, abandoned, endangered due to mental illness, homelessness, or drug addiction, or are victims of sex trafficking or other crimes, held pending their return to their parent or guardian or while law enforcement locates a safe environment in which to place them. In such instances, juveniles would not be considered to be ''detained or confined'' at all.

Before addressing the specific comments regarding the definition of ''detain or confine'' that was included in the proposed rule, OJJDP offers additional clarification of the impact of the definition of ''detain or confine,'' as used in the separation and jail removal requirements at 42 U.S.C. 5633(a)(12) and (13), respectively. First, those core requirements are applicable only in specific types of facilities. In determining whether there has been an instance of non-compliance with either of these core requirements, it is critical to note that the threshold inquiry must be ''In what type of facility was the juvenile held?'' An instance of non-compliance with the separation requirement can occur only in secure facilities in which juveniles have sight and sound contact with adult inmates.[4] An instance of non-compliance with the jail removal requirement can occur only in a jail or lockup for adults, as defined at 42 U.S.C. 5603(22). If the juvenile was not held in one of these types of facilities, the inquiry ends there, and there can be no instance of non-compliance. Only if the facility is a jail or lockup for adults or is a secure facility or a secure area within a facility in which adult inmates are detained must it be determined whether the juvenile was detained or confined therein. For this reason, States need not monitor and report on ''*Terry*'' investigative stops on the street or instances in which juveniles are detained within a public or private school, or anywhere other than a jail or lockup for adults, or a secure facility in which adult inmates are detained or confined.

OJP received many questions regarding whether specific scenarios would constitute a juvenile's being detained or confined, under the definition in the proposed rule. Because these were questions, rather than comments on the proposed rule, OJJDP will address them through guidance on OJJDP's Web site. OJJDP also encourages States to submit any additional questions about specific fact patterns, which will be posted along with answers on OJJDP's Web site.

Comment That OJP Is Incorrectly Using ''Miranda'' Standards in Defining ''Detain or Confine''

Several commenters objected to OJJDP's adherence to Fourth Amendment jurisprudence in determining an appropriate definition of the phrase ''detain or confine.''

In response, despite these commenters' opinions to the contrary, Fourth Amendment jurisprudence is applicable in the context of defining ''detain or confine'' for the purposes of the JJDPA, as the plain language of that phrase references the restraining of an individual's (in this context, a juvenile's) liberty, which, as the U.S. Supreme Court noted in *U.S.* v. *Mendenhall,* 446 U.S. 544, 552 (1980), is the very definition of a ''seizure.'' [5] Thus, OJJDP does not agree with the argument that the application of Fourth Amendment jurisprudence generally, and/or the standards set forth in *Mendenhall* specifically, is improper.

Moreover, while OJJDP recognizes that *Mendenhall* was in fact a case involving an adult, the U.S. Supreme Court has never limited the Fourth Amendment protections enumerated therein to the adult population. Indeed, the U.S. Supreme Court has consistently recognized that, due to the inherent differences between adults and juveniles (in terms of maturity and reasoning), juveniles should, in certain circumstances, be afforded *more* protections than adults would be. One such example is the U.S. Supreme Court's decision in *J.D.B.* v. *North Carolina,* 564 U.S. 261 (2011). Contrary to some commenters' understanding, *J.D.B.* v. *North Carolina* did not establish a *de facto* ''reasonable minor'' standard for determining juvenile custody that was somehow separate from the standard established in *Mendenhall.* Rather, the Supreme Court's decision in *J.D.B.*—that a juvenile's age may affect his or her perception(s) of his or her interactions with law enforcement, and a juvenile's age, therefore, must be one of many factors considered in any determination of whether the interrogation of the juvenile was a ''custodial interrogation'' for the purposes of *Miranda* warnings—was an explicit acknowledgement that Fourth Amendment protections espoused in *Mendenhall* not only extend to juveniles, but actually may be expanded under some circumstances where juveniles are concerned. Nonetheless, OJJDP has considered the commenters' stated objections to the application of Fourth Amendment jurisprudence and has revised the definition to clarify that whether the juvenile is, in fact, free to leave is the critical factor in determining whether he is detained. If he is not, in fact, free to leave, as OJJDP expects will be the case in the vast majority of instances, he is detained.

Comments Received Regarding Proposed Definition of ''Detain or Confine''

One commenter questioned the reason for the proposed definition, stating that there has been either no research or at least no broadly published research that a significantly widespread problem exists that supports the implementation of the new definition.

In response, OJJDP notes that the purpose of including the definition of ''detain or confine'' in the proposed rule, and in the partial final rule, is to clarify that the separation and jail removal requirements are implicated when a juvenile is detained in certain settings, regardless of whether he is ''securely'' detained. As noted above, the word ''detain'' has a plain meaning in 4th Amendment jurisprudence. Under that jurisprudence, one can be detained without being ''securely'' detained such as by a show of authority.

[4] Under 42 U.S.C. 5633(a)(12), the separation requirement is implicated when a juvenile is detained or confined in any institution in which he has contact with an adult inmate. ''Contact'' is defined at 42 U.S.C. 5603(25) as ''the degree of interaction allowed between juvenile offenders in a *secure custody status* and incarcerated adults'' under 28 CFR 31.303(d)(1)(i) (emphasis added). In turn, section 31.303(d)(1)(i) states: ''A juvenile offender in a *secure custody status* is one who is physically detained or confined in *a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody*'' (emphasis added). Read together, these provisions indicate that ''institution'' as used in the separation requirement must be understood to be a secure facility.

[5] As noted in the proposed rule, per *U.S.* v. *Mendenhall,* the Fourth Amendment governs all ''seizures'' of the person, ''including seizures that involve only a brief detention short of traditional arrest.'' *See* 446 U.S. 544, 547 (1980). Further, a ''seizure'' for the purposes of the Fourth Amendment has occurred when an officer ''by means of physical force or a show of authority, has in some way restrained the liberty of a citizen.'' *Id.* at 548.

(*Terry* v. *Ohio,* 392 U.S. 1, 20, n.16 (1968)). Therefore, the absence of the word ''securely'' before ''detain'' in the JJDPA indicates that, on its face, the statutory term is not limited to juveniles who are ''securely'' detained. Consistent with the definition of ''detain or confine'' in the proposed rule, and with the revised definition included in this partial final rule, the current regulation is being amended by removing the word ''securely''. To understand ''detained'' to refer only to juveniles who are ''securely'' detained would be to read a word into the statute that is simply not there.

Several commenters contended that the proposed definition of ''detain or confine'' is contrary to the intent of the drafters of the JJDPA, which was to protect juveniles held in secure custody. Because the term ''detain or confine'' is itself unambiguous, there is neither room for interpretation of the term nor warrant to attempt to determine—beyond what the plain text of the statute itself indicates—the ''intent'' of the drafters. Thus, OJJDP has not changed the definition to mean only secure detention.[6]

One commenter suggested that OJJDP is proposing a new definition of ''detain or confine,'' in order to address problems in select jurisdictions, and that research should be conducted to determine the extent of the problem of ''youth languishing in law enforcement custody in a non-secure environment.'' In response, OJJDP believes that the commenter misunderstood the purpose for the inclusion of this definition, which is not to address concerns within specific jurisdictions, but to conform more closely to the JJDPA and to clarify for all jurisdictions the plain meaning of the term used in the statute.

Concern About Law Enforcement's Ability To Detain Juveniles Temporarily, for Their Own Safety

Many commenters recommended that OJJDP maintain the current definition of ''detain or confine,'' which requires the physical restraint of a juvenile in a holding cell or locked interview room or by cuffing to a stationary object, because that would allow law enforcement to continue to detain a juvenile non-securely in a law enforcement facility for his own safety, and pending his return to his parent or guardian, without its resulting in an instance of non-compliance. Several commenters also stated that the proposed definition would give law enforcement the incentive to charge juveniles with a delinquent offense, or to charge them as adults because States could then detain them securely without a resulting instance of non-compliance.

In response, as explained above, OJJDP's revised definition in this rule clarifies that when law enforcement personnel are holding a juvenile only pending his return to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency, he is not detained. OJJDP believes that the revised definition will allay the concerns raised by many commenters that under the proposed definition of ''detain or confine,'' law enforcement would have a disincentive to bring status offenders or non-offenders (such as runaways) to a law enforcement facility to hold them until a parent or guardian could pick them up.

One commenter requested that OJJDP clearly specify who qualifies as a parent or guardian, but that is a determination that should be made according to the law of the relevant State.

Several commenters questioned whether liability would attach if law enforcement personnel were to tell a juvenile that he was free to leave a law enforcement facility, the juvenile did leave the law enforcement facility, and as a result the juvenile suffered some harm. OJP believes it would not be appropriate for OJP to provide legal advice to States as to whether law enforcement personnel or a law enforcement agency could be held liable in such a situation.

How will law enforcement know what a juvenile reasonably believes?

Many commenters stated that the proposed definition of ''detain or confine'' is vague, ambiguous, or confusing in that it is difficult to know whether a juvenile in a particular situation would have understood that he was free to leave. Several commenters also stated that the proposed definition is too subjective and will make it extremely difficult for law enforcement to know when a juvenile is being ''detained'' for purposes of the Formula Grant Program.

OJJDP disagrees that the definition is vague, ambiguous or confusing. As noted above, the key question is whether the juvenile was, in fact, free to leave the law enforcement facility, because the juvenile's state of mind is irrelevant if he was not free to leave. Under the revised definition in this partial final rule, it is only in instances where law enforcement personnel assert that the juvenile actually was free to leave that the inquiry next proceeds to whether the juvenile understood that he was free to leave. Contrary to the commenters' assertions, however, this second inquiry does not necessitate that law enforcement ''read the minds of juveniles'' or determine whether a ''reasonable juvenile'' would have felt free to leave. Rather, in keeping with applicable Fourth Amendment jurisprudence, this second determination requires an objective examination of the circumstances surrounding the juvenile's interaction with law enforcement, including any circumstance that would have affected how a reasonable person in the juvenile's position would perceive his or her freedom to leave. Because a juvenile's age may affect how a reasonable person in his position would perceive his freedom to leave, consistent with U.S. Supreme Court precedent, where the juvenile's age is known to law enforcement, it must be a factor that is taken into consideration in making the determination. *See J.D.B.,* 564 U.S. at 275–77. It bears noting that the juvenile's age may not be determinative, or even a significant factor, in every case; but it is one objective factor that must be taken into consideration, along with other objective factors such as the location(s) of the juvenile's interaction(s) with law enforcement, the duration of law enforcement's interaction(s) with the juvenile, the number of law enforcement officers present during the interaction(s), and any other circumstances surrounding the juvenile's time in the presence of law enforcement that may inform a determination as to whether the juvenile understood he was free to leave.

One commenter stated that whether a juvenile believes he is free to leave is irrelevant to whether he is protected from potential harm by being in contact with an adult inmate. The same commenter stated that law enforcement personnel have the ability ''simply by their presence . . . [to] limit conversation or other interaction between the juvenile and any adult inmate, thus limiting potential for harm.'' In response, OJJDP believes that the commenter's quarrel is with the JJDPA itself. By its express terms, the statute's separation requirement is implicated when a juvenile is detained or confined in any institution in which he has contact with an adult inmate, regardless of whether law enforcement

[6] A juvenile could be non-securely detained in a secure facility or secure area of an adult jail or lockup. For instance, the juvenile might physically be in the jail or lockup area, sitting in a chair without handcuffs or other restraints, but ''detained'' as the result of a show of authority by a law enforcement official present, making it clear the juvenile is not free to leave, which would result in an instance of non-compliance with the jail removal and possibly separation requirements.

personnel are present and able to limit his interaction with an adult inmate.

How will law enforcement document whether a juvenile knew that he was free to leave?

At least one commenter noted that the proposed definition of ''detain or confine'' would cause a burden to law enforcement and complicate compliance monitoring activity, noting it will be cumbersome for law enforcement officers to collect relevant information every time a juvenile is brought to their departments. Additionally, several commenters questioned how law enforcement would document whether a juvenile knew that he was free to leave. In the preamble to the proposed rule, OJJDP gave as an example that law enforcement could produce a video recording of the juvenile indicating that he understood that he was free to leave. Commenters stated that requiring law enforcement personnel to make such a video recording is impractical and cost-prohibitive. OJJDP understands the additional burden that would create for a law enforcement agency. A more practical method of indicating that a juvenile understood that he was free to leave would be for law enforcement personnel to have the juvenile sign a form indicating that he understood he was free to leave, or for a law enforcement official to sign a form certifying that the juvenile was advised that he was free to leave.

One commenter expressed concern that juveniles who would not otherwise have their information put into a law enforcement database might now be entered into the system. We note that States could use paper forms that would be made available to the State's compliance monitor but need not be entered into any law enforcement computer system.

Applicability of Term ''Detain or Confine'' to the DSO Requirement

Several commenters questioned the use of the term ''detain or confine'' within the context of the DSO requirement. The commenter is correct that, unlike the separation and jail removal requirements, in which the term ''detain or confine'' is used, the DSO requirement is implicated when a juvenile is ''placed'' in a secure detention or secure correctional facility. The commenter asserted that the use of a different term—''placed''—for the DSO requirement—thus indicates that the term means something other than simply ''detained or confined.''

In response, OJJDP notes that the ''placement'' of a juvenile in a secure detention or secure correctional facility means, at a minimum, that he is not free to leave and is, therefore detained (and confined). Therefore, a juvenile who has been ''placed'' has *necessarily* been ''detained or confined.''

In the proposed rule, for the purposes of determining whether the DSO requirement would be applicable, OJJDP had included a proposed definition of the term ''placed or placement'' to clarify that it would refer, not to *mere* ''detention or confinement,'' but to circumstances where detention or confinement within a secure juvenile detention or correctional facility has resulted in a ''placement.'' Many commenters noted concerns about the proposed definition of ''placed or placement.'' The partial final rule does not include a definition of ''placed or placement.'' This issue will be addressed in a future final rule, and OJJDP will respond to all comments regarding this issue in detail in the subsequent final rule.

Whether a Juvenile's Participation in a ''Scared Straight'' or ''Shock Incarceration'' Program Would Result in Non-Compliance With the Jail Removal and/or Separation Requirements

A commenter questioned whether, under the proposed rule, a juvenile under public authority could be required to participate in a ''Scared Straight'' or ''shock incarceration'' program in which he is brought into contact with an adult within an adult jail or lockup or in a secure correctional facility for adults, as a means of modifying his behavior. The commenter asked whether such participation would result in an instance of non-compliance with the jail removal and/or separation requirements when a parent has consented to the child's participation in the program, or in an instance in which the juvenile who is participating in the program as a form of diversion fails to complete the program and the original charge is reinstated. The commenter is apparently questioning whether the voluntariness of a juvenile's participation, and whether there would be consequences for not participating, in such a program would determine whether or not he was ''detained'' within sight or sight or sound contact of an adult inmate, resulting in an instance of non-compliance.

In response, OJJDP notes that whether such programs may result in instances of non-compliance with the separation and/or jail removal requirements will depend on the specific manner in which the program operates and the circumstances of the juveniles' participation in the program. A key factor in determining whether instances of non-compliance have occurred is whether juveniles participating in the program were free to leave the program while in sight or sound contact with adult inmates, regardless of whether the juvenile's initial participation was voluntary. If a parent or guardian has consented to his child's participation and may withdraw that consent at any time, the juvenile is not detained. States are encouraged to contact OJJDP for guidance about whether a particular program is resulting in—or has resulted in—instances of non-compliance. Generally speaking, if a juvenile participates in a program as a condition of diversion from the juvenile justice system, and does so with a parent's or guardian's consent, he is not detained, regardless of whether his failure to complete the program would result in the reinstatement of a charge against him.

Applicability of Proposed Definition of ''Detain or Confine'' to the Six-Hour Exception in the JJDPA at 42 U.S.C. 5633(a)(13)(A)

Several commenters questioned how the proposed definition would apply to the provision allowing States to detain an accused delinquent offender for up to six hours for processing or release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, without a resulting instance of non-compliance. In response, OJJDP believes that no change in the final definition is needed in response to this comment. The definition in this rule would not alter the JJDPA exception at 42 U.S.C. 5633(a)(13)(A) that allows States to detain an accused delinquent offender for up to 6 hours for those purposes.

Applicability of Proposed Definition of ''Detain or Confine'' to Juveniles Under Criminal Jurisdiction

One commenter stated that there should be an exception to the application of the proposed definition of ''detain or confine'' for juveniles waived or transferred to a criminal court. In response, OJJDP believes that no change in the final definition is needed in response to this comment. The core requirements do not apply to juveniles who are under criminal court jurisdiction.

Recommending a ''Rural Exception'' to the New Definition

Another commenter recommended that if OJJDP decides to alter the current definition of ''detain or confine'', it should create a ''rural exception'' to the rule that would allow non-metropolitan areas to continue to use the current

definition. OJJDP has no authority under the JJDPA to allow certain States or localities to use a different definition of the term ''detain or confine.''

Proposed Alternative Definition of ''Detain or Confine''

One commenter recommended that OJJDP remove the word ''detain'' from the definition and focus only on the confinement of juveniles, which the commenter asserts would be consistent with guidance provided in a memo from the OJJDP Administrator dated February 13, 2008. The Administrator's memorandum discusses the definition of an adult lockup, relevant to determining the facilities in which an instance of non-compliance with the jail removal requirement can occur. In response, OJJDP believes that no change in the definition is needed in response to this comment. The instances of non-compliance with the jail removal requirement addressed in the Administrator's memorandum can occur only in facilities that meet the definition of a ''jail or lockup for adults'' as defined in the JJDPA at 42 U.S.C. 5603(22). That definition requires that the facility must be a ''locked facility.'' Thus, instances of non-compliance with the jail removal requirement cannot occur in non-secure facilities. Nor, as discussed above, would a juvenile's detention in the non-secure portion of a law enforcement facility implicate the jail removal requirement.

Whether the Definition of ''Detain or Confine'' Will Expand the Monitoring Universe

Many commenters expressed concerns about whether the proposed rule would expand the types of facilities that must be included in the monitoring universe. In response, OJJDP has concluded that the definition of ''detain or confine'' in this final rule does not expand the current monitoring universe and that no change in the definition in the final rule is needed in response to this comment. Under OJJDP's current guidance, the following facilities must be monitored: Adult jails and lockups, secure detention facilities, secure correctional facilities, court holding facilities, and collocated facilities (which includes facilities previously listed). Non-secure facilities must be monitored periodically to ensure that they have not changed characteristics such that they have become secure facilities. OJJDP will respond to all comments regarding the scope of the monitoring universe in greater detail in the subsequent final rule that will be published in the future with respect to matters not covered in this partial final rule.

What data are expected for a compliance monitor to collect in order to monitor adequately?

Many commenters questioned what additional data would be required under the proposed definition of ''detain or confine,'' and how those data should be collected. Under the proposed rule, as well as under the revised definition in this rule, law enforcement personnel in adult jails and lockups and other secure facilities in which both juveniles and adult inmates are detained, would be required to keep logs regarding juveniles who are detained securely *and* non-securely (and not merely those *securely* detained, as States have done previously). It is important to note here that such logs should not include juveniles detained—either securely or non-securely—in a non-secure area of a law enforcement facility, as the separation and jail removal requirements are not applicable in that context. It should be stressed here that the revised definition of ''detain or confine'' in this final rule does not include juveniles who are held solely pending return to their parents or guardians or pending transfer to a social service or child welfare agency, thus eliminating the need for States to collect data on juveniles held for these reasons. Similarly, law enforcement personnel in institutions (secure facilities) in which (1) accused or adjudicated delinquent offenders, (2) status offenders, and (3) non-offenders who are aliens (or are alleged to be dependent, neglected, or abused) might have contact with adult inmates, would be required to keep logs on when such juveniles did, in fact, have contact with adult inmates.

Need for Training and Technical Assistance

Several commenters expressed concern that OJJDP has not provided any training on the implementation of the ''detain or confine'' guidance, stating that it is unrealistic to expect States to apply this new guidance until appropriate training and technical assistance has been provided. Other commenters stated that it would be cost-prohibitive for States to provide such training to law enforcement personnel. Another commenter suggested that OJJDP should highlight successful models both for determining in what common situations a juvenile would likely believe he is not free to leave as well as examples of best practices for States with rural and/or diffuse populations.

In response, OJJDP intends to provide additional guidance materials regarding implementation of the proposed definition of ''detain or confine'' and is also planning to provide States with training in 2017 on how to monitor for, and collect and report data on compliance in accordance with that definition.

C. Requirement That 100% of Facilities Must Report Compliance Data

Many commenters expressed concern about the proposed requirement that 100% of facilities in their States be required to report annual compliance data.[7] Commenters expressed concern that it would not be possible to achieve the 100% threshold, raising a number of challenges they would face in collecting data from 100% of the facilities in their States, including lack of legislative authority, time constraints, and an increase in associated costs.

In response, OJJDP believes that many of the commenters' concerns may have arisen from the belief that the proposed rule would have expanded the monitoring universe to include additional facilities with respect to which States are not currently collecting data. As discussed above, under the proposed rule and, more importantly, under this partial final rule, the monitoring universe does not change, and States will continue to be required to monitor adult jails and lockups, secure detention facilities, secure correctional facilities, and any other institutions (secure facilities) in which juveniles might have contact with adult inmates. (States must also continue to monitor non-secure facilities to ensure that they have not changed physical characteristics such that they have become secure facilities.)

A few commenters suggested that the number of facilities that must report be reduced. (Various commenters respectively suggested 85%, 90%, or 95% as being a more practical requirement than the 100% level in the proposed rule.) In response, OJJDP acknowledges and understands the challenges described by the States in their comments, and this partial final rule has revised the proposal, so that States will be required to collect and report compliance data for 85% of facilities and to demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities.

Under the JJDPA at 42 U.S.C. 5633(a)(14), the state plan that each

[7] This requirement was included in OJJDP's Policy: Monitoring of State Compliance with the Juvenile Justice and Delinquency Prevention Act, provided to States in October 2015.

State must submit in order to be eligible for Formula Grant Program funding must ''provide for an adequate system of monitoring jails, detention facilities, corrections facilities, and non-secure facilities to insure that the [DSO, separation, and jail removal requirements] are met, and for *annual reporting of the results of such monitoring* to the Administrator.'' (Emphasis added.) The statutory provision does not specifically require reporting from *100%* of facilities in a State's annual monitoring report, thus giving OJJDP the administrative discretion to permit States to report for less than 100% of all facilities in the State, provided that its monitoring system be adequate. It is in the exercise of this same administrative discretion that OJJDP for decades used (and promulgated in its regulations for this program) various *de minimis* standards that allowed for less than full compliance by States under appropriate circumstances. *Cf. Washington Red Raspberry Comm'n* v. *United States,* 859 F. 2d 898, 902 (Fed. Cir. 1988) (''The *de minimis* concept is well-established in federal law. Federal courts and administrative agencies repeatedly have applied the *de minimis* principle in interpreting statues, even when Congress failed explicitly to provide for the rule.'')

A few commenters indicated concern with the ''good cause'' standard in the proposed rule allowing for waiver of the proposed requirement for States to report data from 100% of facilities. In response, OJJDP notes that the reduction from 100% to 85% of the number of facilities required to report eliminates the need for a waiver exception to the reporting requirement, and that proposal is not included in this final rule.

D. Issues Relating to Reporting Compliance Data for Core Requirements

1. Reporting of Compliance Data Based on Federal Fiscal Years and Deadline for Reporting Compliance Data

Many commenters objected to the language in the proposed rule requiring that States provide compliance data on a fiscal-year basis, because of the shortened period States will have for submitting compliance data from the time the reporting period ends on September 30th of each year and the proposed deadline of January 31st for submitting their data. A few commenters noted that the period in which States will be collecting and verifying their data includes several holidays during which staff often take leave and also occurs during a period in which weather conditions make travel difficult within many States.

Additionally, commenters expressed concern that this shortened timeframe would present significant challenges to submission of accurate data (especially in light of the requirement to collect data from 100% of facilities) and would require additional resources to do so. A few commenters recommended extending the deadline, for instance, to March 15th or March 31st.

OJJDP has carefully considered these comments. The JJDPA itself requires reporting data on a fiscal-year basis, which was the reason for conforming the regulatory reporting period to the statutory requirement.

In response to the concerns raised and balancing them with OJJDP's need for sufficient time to complete compliance determinations that will inform that year's awards, OJJDP has extended the deadline in this partial final rule to February 28th, with the possibility of an extension to March 31st if a State were to demonstrate good cause.

2. Requirement That States Report Twelve Months of Data for Each Reporting Period

One commenter questioned whether the proposed requirement that 100% of facilities report compliance data annually would affect the requirement in section 31.303(f)(5) of the current regulation that States may submit a minimum of six months' of data for a reporting period. The proposed rule indicated that States' compliance monitoring reports must contain data for ''one full federal fiscal year.''

In response, OJJDP has clarified the applicability of this language. This partial final rule amends section 31.303(f)(5) to delete the language allowing States to report ''not less than six months of data,'' thus making it clear that States are required to provide compliance data for the full twelve-month reporting period. (And, as noted above, this partial final rule provides that States must submit data from 85% of facilities that are required to report compliance data.)

IV. Regulatory Certifications

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Office of Juvenile Justice and Delinquency Prevention has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The Formula Grant Program provides funding to States pursuant to a statutory provision, which is not affected by this regulation. Because States have complete discretion as to which local governments and other entities will receive formula grant funds through subgrants, as well as the amount of any subgrants, this rule will have no direct effect on any particular local governments or entities.

OJJDP received more than one comment disagreeing with OJJDP's assessment that the proposed regulation will not have a significant economic impact on a substantial number of small entities. OJJDP's basis for so certifying is that the rule regulates only States and territories, which are the recipients of funding under the Formula Grant Program. Commenters argued that the proposed rule, if made final as proposed, potentially would result in as many as 48 States being out of compliance with one or more of the core requirements. One commenter notes that because the States are required by statute to pass through 66⅔ percent of the funding, the basis for certifying there is no significant impact on a substantial number of small governmental entities is not plausible and that cutting the funding to that number of States would certainly affect a substantial number of small entities.

OJJDP disagrees with these comments because, as noted above, only grants to States and territories are regulated by the rule. Nonetheless, in this partial final rule, OJJDP has revised significantly the compliance standards, and expects that under the revised standards only eight States are likely to be out of compliance with one or more of the core requirements under the Act, and to receive a reduction in funding as a result.

Executive Orders 12866 and 13563—Regulatory Review

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563 ''Improving Regulation and Regulatory Review'' section 1(b), General Principles of Regulation.

The Office of Justice Programs has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. This partial final rule makes important improvements in the setting of annual compliance standards for the States, clarifies the definition of ''detain or confine,'' and makes other

improvements in the administration of the Formula Grant Program. The total formula grant appropriation funding available to States for the last five years has been less than $43 million per year.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This most significant provision of this rule updates the standards for determining compliance with the DSO, separation, and jail removal requirements, which have not been updated since 1981 for DSO, 1994 for separation, and 1988 for jail removal. The new compliance standards in this rule were carefully considered in light of the potential costs and benefits that would result and are narrowly tailored to recognize the significant progress that States have made over the last 35 years while ensuring that States continue to strive to protect juveniles within the juvenile justice system.

Executive Order 13132—Federalism

One commenter stated that in the Regulatory Certifications section of the preamble to the proposed rule (section V.), ''the classical argument between state rights vers[u]s federal powers is mentioned in great detail and so we feel should be addressed.'' OJJDP does not agree that that section includes any discussion of States' rights in relation to the federal government, or that any such discussion would be relevant. The Formula Grant Program does not impose any mandates on States; nor does it interfere with States' sovereignty, authorities, or rights. States, rather, participate in the program voluntarily and, as a condition of receipt of funding to improve their juvenile justice systems and to operate juvenile delinquency prevention programs, agree to comply with the program's requirements.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government, as the rule only affects the eligibility for, and use of, federal funding under this program. The rule will not impose substantial direct compliance costs on State and local governments, or preempt any State laws. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) & (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within subpart B of part 94 of title 28 of the Code of Federal Regulations.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The Formula Grant Program provides funds to States to improve their juvenile justice systems and to support juvenile delinquency prevention programs. As a condition of funding, States agree to comply with the Formula Grant Program requirements. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule does not propose any new, or changes to existing, ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and its implementing regulations at 5 CFR part 1320.

List of Subjects in 28 CFR Part 31

Administrative practice and procedure, Formula Grant Program, Juvenile delinquency prevention, Juvenile justice, Juvenile Justice and Delinquency Prevention Act (JJDPA).

Accordingly, for the reasons set forth in the preamble, part 31 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 31—OJJDP GRANT PROGRAMS

■ 1. The authority citation for 28 CFR part 31 is revised to read as follows:

Authority: 42 U.S.C 5611(b); 42 U.S.C. 5631–5633.

Subpart A—Formula Grants

§ 31.303 Substantive requirements.

■ 2. Amend § 31.303 as follows:

■ a. In paragraphs (e)(2), (e)(3)(i), and (f)(4)(vi), remove the words ''secure custody'' and add in their place ''detention''.

■ b. Revise paragraph (f)(5) introductory text.

■ c. In paragraph (f)(5)(i)(D), remove the words ''securely detained'' and add in their place ''detained''.

■ d. In paragraphs (f)(5)(iii)(C) and (f)(5)(iii)(D), remove the words ''secure detention and confinement'' and add in their place ''detention and confinement''.

■ e. In paragraphs (f)(5)(iv)(F), (G), (H), and (I), remove the words ''held securely'' and add in their place ''detained''.

■ f. Revise paragraph (f)(6).

The revisions read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for the core requirements in the JJDPA at 42 U.S.C. 5633(a)(12), (13), and (14). The reporting period should provide 12 months of data for each federal fiscal year, for 85% of facilities within the State that are required to report compliance data, and States must extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities. The report shall be submitted to the Administrator of OJJDP by February 28 of each year, except that the Administrator may grant an extension of the reporting deadline to March 31st, for good cause, upon request by a State.

* * * * *

(6) *Compliance.* The State must demonstrate the extent to which the requirements of sections 223(a)(11), (12), and (13) of the Act are met.

(i) In determining the compliance standards to be applied to States' FY 2016 compliance monitoring data, the Administrator shall collect all of the data from each of the States' CY 2013 compliance reports, remove one negative outlier in each data collection period for DSO, separation, and jail removal, and apply a standard deviation factor of two to establish the compliance standards to be applied, which shall be posted on OJJDP's Web site no later than March 3, 2017.

(ii) In determining the compliance standards to be applied to States' FY 2017 compliance monitoring data, the Administrator shall collect all of the data from each of the States' CY 2013 and FY 2016 compliance reports (removing, when appropriate or applicable, one negative outlier in each data collection period for DSO, separation, and jail removal) and apply a standard deviation factor of not less than one to establish the compliance standards to be applied, which shall be posted on OJJDP's Web site by August 31, 2017.

(iii) In determining the compliance standards to be applied to States' FY 2018 and subsequent years' compliance monitoring data, the Administrator shall take the average of the States' compliance monitoring data from not less than two years prior to the compliance reporting period with respect to which the compliance determination will be made (removing, when applicable, one negative outlier in each data collection period for DSO, separation, and jail removal) and apply a standard deviation of not less than one to establish the compliance standards to be applied, except that the Administrator may make adjustments to the methodology described in this paragraph as he deems necessary and shall post the compliance standards on OJJDP's Web site by August 31st of each year.

* * * * *

■ 3. Amend § 31.304 by adding paragraph (q) to read as follows:

§ 31.304 Definitions.

* * * * *

(q) *Detain or confine* means to hold, keep, or restrain a person such that he is not free to leave, or such that a reasonable person would believe that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition.

Dated: January 10, 2017.

Karol V. Mason,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2017–00740 Filed 1–13–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Sudanese Sanctions Regulations to authorize all prohibited transactions, including transactions involving property in which the Government of Sudan has an interest. OFAC is issuing this general license in connection with ongoing U.S.-Sudan bilateral engagement and in response to positive developments in the country over the past six months related to bilateral cooperation, the ending of internal hostilities, regional cooperation, and improvements to humanitarian access.

DATES: *Effective:* January 17, 2017.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*).

Background

OFAC is amending the Sudanese Sanctions Regulations (the ''Regulations'') to add section 538.540, authorizing all transactions prohibited by the Regulations and by Executive Orders 13067 and 13412, effective as of January 17, 2017. Newly authorized transactions include the processing of transactions involving persons in Sudan; the importation of goods and services from Sudan; the exportation of goods, technology, and services to Sudan; and transactions involving property in which the Government of Sudan has an interest.

OFAC is issuing this rule in connection with ongoing U.S.-Sudan bilateral engagement and in order to support and sustain positive developments in the country over the past six months. In conjunction with this engagement, the U.S. government has supported the Sudanese government's ongoing efforts, including its cessation of military offensives in Darfur and the Two Areas, its cooperative efforts to resolve the ongoing conflict in South Sudan and cease any activity to undermine stability there, to improve access for humanitarian assistance by reducing government obstruction and streamlining governing regulations, and to enhance bilateral counterterrorism and security cooperation, including efforts to counter the Lord's Resistance Army.

Notwithstanding these positive developments in Sudan and the decision to amend the Regulations today to authorize all transactions prohibited by the Regulations, section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201 *et seq.*) (TSRA), continues to require in pertinent part that the export of agricultural commodities, medicine, and medical devices to Sudan shall be made pursuant to one-year licenses issued by the U.S. government, except that the requirements of such one-year licenses shall be no more restrictive than general licenses administered by the Department of the Treasury. *See* 22 U.S.C. 7205(a)(1). Section 906 of TSRA also specifies that procedures be in place to deny licenses for certain exports of agricultural commodities, medicine, and medical devices to Sudan. As with a general license added to the Regulations in 2011 that authorized the exportation or reexportation of food to Sudan (*see* 31 CFR 538.523; 76 FR 63191 (October 12, 2011)), the new general license added today includes the one-year license requirement and, along with counter-terrorism sanctions implemented by OFAC set forth in 31 CFR chapter V and other continuing requirements and authorities, satisfies TSRA's requirement that procedures be in place to deny authorization for exports to Sudan that are determined to be