

organization, the applicant may do so by any of the following means:

(a) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(b) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(1) The organization is a nonprofit organization operating within the State; and

(2) No part of its net earnings may benefit any private shareholder or individual;

(c) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;

(d) Any item described in paragraphs (a) through (c) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or

(e) For an entity that holds a sincerely-held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (a) through (d) of this section.

§ 19.7 [Removed and Reserved]

■ 7. Remove and reserve § 19.7:

■ 8. Revise § 19.8 to read as follows:

§ 19.8 Independence of faith-based organizations.

(a) A faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments; and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance contrary to § 19.4.

(b) Faith-based organizations may use space in their facilities to provide social services using financial assistance from DHS without removing, concealing, or altering religious articles, texts, art, or symbols.

(c) A faith-based organization using financial assistance from DHS for social service programs retains its authority over its internal governance, and it may retain religious terms in its

organization's name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its organization's mission statements and other governing documents.

■ 9. Add a new § 19.11 to read as follows:

§ 19.11 Nondiscrimination Among Faith-Based Organizations

Neither DHS nor any State or local government or other intermediary receiving funds under any DHS social service program shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

■ 10. Revise Appendix A to Part 19 to read as follows:

Appendix A to Part 19—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and subject to the protections and requirements of part 19 of Title 6 of the CFR and 42 U.S.C. 2000bb *et seq.* DHS will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, or a refusal to attend or participate in a religious practice.

■ 11. Add Appendix B to Part 19 to read as follows:

Appendix B to Part 19: Notice of Award or Contract

A faith-based organization that participates in this program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise Clauses of

the Constitution, 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from DHS to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by DHS, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, or a refusal to attend or participate in a religious practice.

Chad F. Wolf,

Acting Secretary of Homeland Security.

[FR Doc. 2019-28142 Filed 1-16-20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

RIN 0510-AA08

Equal Opportunity for Religious Organizations in U.S. Department of Agriculture Programs: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The rule proposes to amend the U.S. Department of Agriculture (USDA or Department) regulation that covers equal opportunity for participation of faith-based organizations in USDA programs and to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes changes to provide clarity about the rights and obligations of faith-based organizations participating in Department programs, clarify the Department's guidance documents for financial assistance in regard to faith-based organizations, and eliminate certain requirements for faith-based organizations that no longer reflect executive branch guidance. This proposed rulemaking is intended to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of federal law, including the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act (RFRA) 42 U.S.C. 2000bb *et seq.*

DATES: Written comments must be postmarked and electronic comments must be submitted on or before February 18, 2020. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference the Regulatory Identification Number 0510-AA08 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through <http://www.regulations.gov> using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at that website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Emily Tasman, Attorney-Advisor, USDA, Office of the General Counsel, Room 107-W, J.L. Whitten Federal Building, 1400 Independence Avenue SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Emily Tasman, USDA, Office of General Counsel, (202) 720-720-3351, emily.tasman@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the

agency’s public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on <http://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

Shortly after taking office, President George W. Bush signed Executive Order 13199, Establishment of White House Office of Faith-based and Community Initiatives, 66 FR 8499 (January 29, 2001). That Executive Order sought to ensure that “private and charitable groups, including religious ones, . . . have the fullest opportunity permitted by law to compete on a level playing field” in the delivery of social services. To do so, it created an office within the White House, the White House Office of Faith-Based and Community Initiatives that would have primary responsibility to “establish policies, priorities, and objectives for the Federal Government’s comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.”

On December 12, 2002, President Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141 (December 12, 2002). Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in America’s

communities. In addition, Executive Order 13279 asked specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social services programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Order. Consistent with Executive Order 13279, the Department of Agriculture promulgated regulations at 7 CFR part 16 (“Part 16”).

On March 5, 2004, the Department published a proposed rule, 69 FR 10354, to adopt Departmental regulations to eliminate unwarranted barriers to the participation of faith-based organizations in the Department’s assistance programs. After receiving 22 different comments from both individuals and organizations, the Department subsequently published a final rule on July 9, 2004, 69 FR 41375, adding Departmental regulations to ensure that faith-based organizations could compete on an equal footing with other organizations for Department assistance consistent with the requirements of the U.S. Constitution, including the First Amendment.

President Obama maintained President Bush’s program but modified it in certain respects. Shortly after taking office, President Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President’s Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 9, 2009). This Executive Order changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created an Advisory Council that subsequently submitted recommendations regarding the work of the Office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations, 75 FR 71319 (November 17, 2010). Executive Order 13559 made various changes to Executive Order 13279 including the following: Making minor and substantive textual changes to the fundamental principles; adding a provision requiring that any religious social service provider refer potential beneficiaries to an alternative provider if the beneficiaries object to the first provider’s religious character; adding a

provision requiring that the first provider give notice of this right to the potential beneficiaries; and adding a provision that awards must be free of political interference and not be based on religious affiliation or lack thereof. An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct financial assistance, allowed religious social services providers to maintain their religious identities, and distinguished between direct and indirect assistance. These efforts eventually resulted in amendments to agency regulations, including the Department's Part 16, defining "indirect assistance" as government aid to a beneficiary, such as a voucher, that flows to a religious provider only through the genuine and independent choice of the beneficiary. 7 CFR 16.2(b).

Accordingly, on August 6, 2015, the Department published a proposed rule, 80 FR 47244, to add definitions for "USDA direct assistance," "USDA indirect assistance," and "intermediary." On April 4, 2016, the Department, as part of a multi-agency final rule, 81 FR 19353, implemented Executive Order 13559 by adding new protections for beneficiaries of federally funded social service programs while also requiring decisions about federal financial assistance to be based solely on merit, without regard to an organization's religious affiliation. Following issuance of the final rule in 2016, the Department released detailed guidance providing faith-based and other neighborhood organizations receiving assistance from USDA with instructions (including a sample USDA beneficiary rights notice) on nondiscrimination requirements for recipients of direct and indirect USDA financial assistance. The Department prohibited certain uses of direct USDA financial assistance. USDA also provided for separation requirements for faith based organizations' religious activities after receiving an award. Finally, USDA's regulation ensured beneficiaries did not face discrimination based on religion, a religious belief, or a refusal to participate in a religious practice.

President Trump enhanced the protections for faith-based providers in the program established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, Presidential Executive Order Promoting Free Speech and Religious Liberty, 82

FR 21675 (May 4, 2017). Executive Order 13798 stated that "[f]ederal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections." It further directed the Attorney General to "issue guidance interpreting religious liberty protections in Federal law." Pursuant to this instruction, the Attorney General, on October 6, 2017, issued the Memorandum for All Executive Departments and Agencies, "Federal Law Protections for Religious Liberty," 82 FR 49668 (October 26, 2017) (the "Attorney General's Memorandum on Religious Liberty").

The Attorney General's Memorandum on Religious Liberty stressed that individuals and organizations do not give up religious liberty protections by providing social services, and that "government may not exclude religious organizations as such from secular aid programs . . . when the aid is not being used for explicitly religious activities such as worship or proselytization."

On May 3, 2018, President Trump signed Executive Order 13831, Executive Order on the Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715 (May 3, 2018), amending Executive Order 13279 as amended by Executive Order 13559, and other related Executive Orders. Among other things, Executive Order 13831 changed the name of the "White House Office of Faith-Based and Neighborhood Partnerships" in those previous Orders to the "White House Faith and Opportunity Initiative"; changed the way that initiative is to operate; directed departments and agencies with "Centers for Faith-Based and Community Initiatives" to change those names to "Centers for Faith and Opportunity Initiatives"; and ordered that departments and agencies without a Center for Faith and Opportunity Initiatives designate a "Liaison for Faith and Opportunity Initiatives." Executive Order 13831 also eliminated the alternative provider requirement and requirement of notice thereof in Executive Order 13559 described above.

Alternative Provider and Alternative Provider Notice Requirement

Executive Order 13831 removed the requirement in Executive Order 13559 that faith-based social services providers refer beneficiaries who object to receiving services from them to an alternative provider. Section 1(b) of Executive Order 13559 had amended section 2 of Executive Order 13279,

entitled "Fundamental Principles," by, in pertinent part, adding a new subsection (h) to section 2. As amended, section 2(h)(i) provided: "If a beneficiary or a prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider." Section 2(h)(ii) directed agencies to establish policies and procedures to ensure that referrals are timely and follow privacy laws and regulations; that providers notify agencies of and track referrals; and that each beneficiary "receives written notice of the protections *set forth in this subsection* prior to enrolling on or receiving services from such program" (emphasis added). The reference to "this subsection" rather than to "this Section" indicated that the notice requirement of section 2(h)(ii) was referring only to the alternative provider provisions in subsection (h), not to all of the protections in section 2. The Department of Agriculture has revised its regulations to conform to these provisions. 7 CFR 16.4

The alternative provider provisions of Executive Order 13559, which Executive Order 13831 removed, were not required by the U.S. Constitution or any applicable law. Indeed, they are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations and with the Attorney General's Memorandum on Religious Liberty.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (*Trinity Lutheran*): "The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (internal quotation marks omitted)). The Court in *Trinity Lutheran* added: "[T]his Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest 'of the highest order.'" *Id.* at 2019 (quoting *McDaniel v. Paty*, 435 U.S. 618 (1978) (plurality opinion) (internal citations omitted); see also *Mitchell v. Helms*, 530 U.S. 793, 827 (2000) (plurality opinion) ("The religious nature of a recipient

should not matter to the constitutional analysis, so long as the recipient adequately furthers the government's secular purpose."); Attorney General's Memorandum on Religious Liberty, principle 6 ("Government may not target religious individuals or entities for special disabilities based on their religion.").

Applying the alternative provider requirement categorically to all faith-based providers and not to other providers of federally funded social services is thus in tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney General's Memorandum on Religious Liberty.

In addition, the alternative provider requirement could in certain circumstances raise concerns under RFRA. Under RFRA, where the Government substantially burdens an entity's exercise of religion, the Government must prove that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. 2000bb-1(b). When a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA and certain conditions on receiving those grants may substantially burden the religious exercise of the recipient. See *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to a Juvenile Justice and Delinquency Prevention Act*, 31 O.L.C. 162, 169-71, 174-83 (June 29, 2007). Requiring faith-based organizations to comply with the alternative provider requirement could impose such a burden, such as in a case in which a faith-based organization has a religious objection to referring the beneficiary to an alternative provider that provided services in a manner that violated the organization's religious tenets. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720-26 (2014). And it is far from clear that this requirement would meet the strict scrutiny that RFRA requires of laws that substantially burden religious practice. The Department is not aware of any instance in which a beneficiary has actually sought an alternative provider, undermining the suggestion that the interests this requirement serves are in fact important, much less compelling enough to outweigh a substantial burden on religious exercise.

Executive Order 13831 chose to eliminate the alternative provider requirement for good reason. This decision avoids tension with the nondiscrimination principle articulated in *Trinity Lutheran* and the Attorney

General's Memorandum on Religious Liberty, avoids problems with RFRA that may arise, and fits within the Administration's broader deregulatory agenda.

Other Notice Requirements

As noted above, Executive Order 13559 amended Executive Order 13279 by adding a right to an alternative provider and notice of this right.

Although Executive Order 13559's requirement of notice to beneficiaries was limited to notice of the alternative provider requirement, Part 16 as most recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers of services funded with direct Federal funds provide a much broader notice to beneficiaries and potential beneficiaries. This requirement applies only to faith-based providers and not to other providers. In addition to the notice of the right to an alternative provider, the rule requires notice of nondiscrimination based on religion; that participation in religious activities must be voluntary and separate in time or space from activities funded with direct federal funds; and that beneficiaries or potential beneficiaries may report violations.

Separate and apart from these notice requirements, the Orders clearly set forth the underlying requirements of nondiscrimination, voluntariness, the holding of religious activities separate in time or place from any federally funded activity, and the right to file complaints of violations. Faith-based providers of social services, like other providers of social services, are required to sign assurances that they will follow the law and the requirements of grants and contracts they receive. (See, e.g., 28 CFR 38.7). There is no basis on which to presume that they are less likely than other social service providers to follow the law. See *Mitchell v. Helms*, 530 U.S. 793, 856-57 (2000) (O'Connor, J. concurring) (noting that in *Tilton v. Richardson*, 403 U.S. 672 (1971), the Court's upholding of grants to universities for construction of buildings with the limitation that they only be used for secular educational purposes "demonstrate[d] our willingness to presume that the university would abide by the secular content restriction."). There is thus no need for additional notice procedures that create administrative burdens on faith-based providers and that are not imposed on other providers.

Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships to propose model regulations and guidance documents regarding, among other things, "the distinction between 'direct' and 'indirect' Federal financial assistance[.]" 75 FR 71319, 71321 (2010). Following issuance of the Working Group's report, a final rule was issued to amend existing regulations to make that distinction, and to clarify that "organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs," need not provide notices or referrals to beneficiaries, and need not separate their religious activities from supported programs. 81 FR 19355, 19358 (2016). In so doing, the final rule attempted to capture the definition of "indirect" aid that the U.S. Supreme Court employed in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). See 81 FR 19355, 19361-62 (2016).

In *Zelman*, the Court concluded that a government funding program is "one of true private choice"—i.e., an indirect-aid program—where there is "no evidence that the State deliberately skewed incentives toward religious" providers. *Id.* at 650. The Court upheld the challenged school-choice program because it conferred assistance "directly to a broad class of individuals defined without reference to religion" (i.e., parents of schoolchildren); it permitted participation by both religious and nonreligious educational providers; it allocated aid "on the basis of neutral, secular criteria that neither favor nor disfavor religion"; and it made aid available "to both religious and secular beneficiaries on a nondiscriminatory basis." *Id.* at 653-54 (internal quotation marks omitted). Although the Court noted the availability of secular providers, it specifically declined to make its approval of indirect aid hinge on the "preponderance of religiously affiliated private" providers in the city, as that preponderance arose apart from the program; doing otherwise, the Court concluded, "would lead to the absurd result that a neutral school-choice program might be permissible in some parts of Ohio, . . . but not in" others. *Id.* at 656-58. In short, the Court concluded that "[t]he constitutionality of a neutral . . . aid program simply does not turn on whether and why, in a particular area, at a particular time,

most [providers] are run by religious organizations, or most recipients choose to use the aid at a religious [provider].” *Id.* at 658.

The final rule issued after the Working Group’s report included among its criteria for indirect Federal financial assistance a requirement that beneficiaries have “at least one adequate secular option” for use of the Federal financial assistance. *See* 81 FR 19355, 19407 (2016). In other words, the rule amended regulations to make approval of “indirect” aid hinge on the availability of secular providers. A regulation defining “indirect Federal financial assistance” to require the availability of secular providers is in tension with the Supreme Court’s choice not to make the definition of indirect aid hinge on the geographically varying availability of secular providers. Thus, it is appropriate to amend existing regulations to bring the definition of “indirect” aid more closely into line with the Supreme Court’s definition in *Zelman*.

Overview of Proposed Rule

The Department proposes to amend Part 16 to implement Executive Order 13831 and conform more closely to the Supreme Court’s current First Amendment jurisprudence; relevant federal statutes such as RFRA; Executive Order 13279, as amended by Executive Orders 13559 and 13831; and the Attorney General’s Memorandum on Religious Liberty.

Consistent with these authorities, this proposed rule would amend part 16 to conform to Executive Order 13279, as amended, by deleting the requirement that faith-based social service providers refer beneficiaries objecting to receiving services from them to an alternative provider.

This proposed rule would also clarify that a faith-based organization that participates in Department-funded programs or services shall retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments. It would further clarify that none of the guidance documents that the Department or any State or local government uses in administering the Department’s financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on non-faith-based organizations, and that any restrictions on the use of grant funds shall apply equally to faith-based and non-faith based organizations.

This proposed rule would additionally require that the Department’s notices or announcements

of award opportunities and notices of awards or contracts include language clarifying the rights and obligations of faith-based organizations that apply for and receive federal funding. The language will clarify that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that the Department will not, in the selection of recipients, discriminate against an organization on the basis of the organization’s religious exercise or affiliation; and that a faith-based organization that participates in a federally funded program retains its independence from the government and may continue to carry out its mission consistent with religious freedom protections in federal law, including the Free Speech and Free Exercise clauses of the U.S. Constitution.

Finally, the proposed rule would directly refer to the definition of “religious exercise” incorporated in RFRA, and would amend the definition of “indirect Federal Financial assistance” to align more closely with the Supreme Court’s definition in *Zelman*.

Explanations for the Proposed Amendments to 7 CFR Part 16

Section 16.1

Purpose and Applicability

Section 16.1(b) is proposed to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.2

Definitions

Section 16.2(a) is proposed to be changed to clarify the text and make it more consistent with other federal regulatory definitions. *See, e.g.*, 28 CFR. 38.3.

Section 16.2(b) is proposed to provide clarity.

Section 16.2(c) is proposed to provide clarity.

Section 16.2(d) is proposed to be changed to clarify the text and make it more consistent with other federal regulatory definitions. *See, e.g.*, 28 CFR 38.3. The proposed changes will also align the text more closely with the First Amendment. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

Section 16.2(e) is proposed to provide clarity.

Section 16.2(f) is proposed to be changed to align the text more closely with the definitions used in the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, and with the Religious Land Use and Individualized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc–5(7)(A). *See, e.g.*, principles 10–15 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.3

Faith-Based Organizations and Federal Financial Assistance

Section 16.3(a) is proposed to be changed to clarify the text by eliminating extraneous language and to align it more closely with RFRA. *See, e.g.*, principles 6, 10–15, and 20 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162 (2007) (World Vision Opinion).

Section 16.3(b) is proposed to be changed to clarify the text by eliminating extraneous language, and to align it more closely with the First Amendment and with RFRA. *See, e.g.*, Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018); principles 9–15, 19, and 20 of the Attorney General’s Memorandum on Religious Liberty, 82 FR. 49668 (October 26, 2017).

Section 16.3(c) is proposed to be changed to clarify the text.

Section 16.3(d) is proposed to be changed to clarify the text and make it more consistent with other federal regulations. *See, e.g.*, 28 CFR 38.5. The proposed changes will also clarify the text and align it more closely with the First Amendment of the U.S. Constitution and with RFRA. *See, e.g., Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 6, 7, and 10–15 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.3(e) is proposed to be changed to provide clarity.

Section 16.3(f) is proposed to be changed to provide clarity.

Section 16.4

Responsibilities of Participating Organizations

Section 16.4(a) is proposed to be changed to align the text more closely with the First Amendment and with

RFRA. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); principles 10–15 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 16.4(b) is proposed to be changed to clarify the text reflecting the provisions of Exec. Order No. 13279, 67 FR 77141 (December 12, 2002).

Section 16.4(c) is proposed to be changed to clarify the text.

Section 16.4(d) is proposed to be moved to Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3(f) to provide clarity to the text.

Section 16.4(e) is proposed to be included in Section 16.4(b) and to clarify the text by removing extraneous language.

Section 16.4(f) is proposed to be deleted to align the text more closely with the First Amendment of the U.S. Constitution and with RFRA. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Section 16.4(g) is proposed to be deleted to align the text more closely with the First Amendment and with RFRA. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

Section 16.4(h) is proposed to be included under Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3 (d) and (e) to clarify the rights of a faith based or religious organization that receives Federal financial assistance in accordance with the First Amendment and RFRA.

Section 16.5

Effect on State and Local Funds

Section 16.5 is proposed to be moved to Faith-Based or Religious Organizations and Federal Financial Assistance Section 16.3(g) to clarify the text.

Section 16.6

Compliance

Section 16.6 is proposed to be deleted to remove extraneous language that is already included in the Department’s authorizing laws, rules, and regulations.

Appendix A and Appendix B

Appendix A is proposed to be changed and Appendix B is proposed to be added to align more closely with the First Amendment and with RFRA. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017); principles 2, 3, 6–7, 9–17, 19, and 20 of the Attorney General’s Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017); Exec. Order No. 13279, 67 FR 77141 (December 12, 2002), *as amended by* Exec. Order No. 13559, 75 FR 71319 (November 17, 2010), *and* Exec. Order No. 13831, 83 FR 20715 (May 8, 2018).

III. Regulatory Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This NPRM has been drafted in accordance with Executive Order 13563 of January 18, 2011, 76 FR 3821, Improving Regulation and Regulatory Review, and Executive Order 12866 of September 30, 1993, 58 FR 51735, Regulatory Planning and Review. Executive Order 13563 directs agencies, to the extent permitted by law, 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 qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) must determine which of each agency’s planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of the Executive Order. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a regulation that may

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as an “economically significant” regulation);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in Executive Order 12866.

OIRA has determined that this proposed rule is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. This proposed action would impact the costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559 as part of participating in the operation of the following USDA programs:

- National Institute for Food and Agriculture: Community Foods Projects Competitive Grants Program
- Food and Nutrition Service: The Emergency Food Assistance Program (TEFAP)
- Food and Nutrition Service: The Commodity Supplemental Food Program (CSFP)
- Rural Development: Community Facilities
- Rural Development: Business Programs
- Rural Development: Housing

(Please note that the April 4, 2016 final rule included exemptions for USDA’s Child Nutrition Programs and International Programs.)

The Department has also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” *Id.* The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.” Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Re: Executive Order 13563, “Improving Regulation and Regulatory Review”, at 1 (Feb. 2, 2011), available at: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-10.pdf>.

The Department is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Department selected the approach that it believes maximizes net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

It is the reasoned determination of the Department that this proposed action would, to a significant degree, eliminate costs that have been incurred by faith-based organizations as they complied with the requirements of section 2(b) of Executive Order 13559, while not adding any other requirements on those organizations, and imposing only limited costs on beneficiaries. The Department has determined in addition that this proposed action would result in benefits to beneficiaries, described in more detail below.

The Department also has determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from the removal of the notification and referral requirements of Executive Order 13279, as amended by Executive Order 13559 and further amended by Executive Order 13831, and those determined to be necessary for administering the Department’s programs and activities. Specific categories of these costs include:

- The cost to service providers of making referrals for beneficiaries to service providers in the event that they object to the religious character of the provider;
- The cost to service providers of tracking and reporting these referrals to USDA or intermediary agencies; and
- The costs to beneficiaries to use their own means to investigate alternative providers on their own in lieu of the existing referral process.

The effect of the rule would be to eliminate the first two categories of costs, and add the third category.

The Department recognizes a quantifiable benefit of the removal of the notice and referral requirements, which the Department previously estimated, as imposing 7,421 burden hours. 80 FR 47250; 81FR 19383. We have added one program (CSFP) to the list since the previous estimate, and therefore have revised this estimate up to 8,084 burden hours, valued at roughly \$58,600. The Department invites comment on any data by which it could assess the actual implementation costs of the notice and referral requirement—including any estimates of staff time spent on compliance with the requirement, in addition to the printing costs for the notices referenced above—and thereby more precisely quantify the benefits of removing these requirements.

Specific information is not available on these costs to roughly 3,500 estimated beneficiaries who seek services but then object to the religious character of the provider, thus requiring them to seek other service providers under the proposal where referrals had previously been made by the provider. We assume for the purposes of this analysis that up to 2 hours may be needed for each beneficiary to find alternative services. Valuing that time at the

Federal minimum wage rate (\$7.25 per hour), we estimate that this reflects roughly \$50,000 in total annual cost for beneficiary time. Here again, the Department invites comment on any information that it could use to better quantify these cost increases.

In terms of benefits, the Department recognizes a non-quantifiable benefit to religious liberty that comes from removing requirements imposed solely on faith-based organizations, in tension with the principles of free exercise articulated in *Trinity Lutheran*. The Department also recognizes a non-quantifiable benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations operating social-service programs funded by the federal government. Beneficiaries will also benefit from the increased capacity of faith-based social-service providers to provide services, both because these providers will be able to shift resources otherwise spent fulfilling the notice and referral requirements to provision of services, and because more faith-based social service providers may participate in the marketplace once relieved of the concern of excessive governmental entanglement in their affairs.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017). Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the 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 two prior regulations. OMB’s interim guidance, issued on April 5, 2017, <https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation> explains that for Fiscal Year 2017 the above requirements only apply to each new “significant regulatory action that imposes costs.”

This proposed rule is expected to be an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Department has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Executive Order 13132: Federalism

Executive Order 13132 directs that, to the extent practicable and permitted by law, an agency shall not promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and

local governments, that is not required by statute, or that preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Because each change proposed by this rule does not have federalism implications as defined in the Executive Order, does not impose direct compliance costs on State and local governments, is required by statute, or does not preempt State law within the meaning of the Executive Order, the Department has concluded that compliance with the requirements of section 6 is not necessary.

Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department is proposing a number of changes to this regulation to enhance its clarity and satisfy the plain language requirements, including revising the organizational scheme and adding headings to make it more user-friendly. If any commenter has suggestions for how the regulation could be written more clearly, please provide comments using the contact information provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule does not contain any new or revised “collection[s] of information” as defined by the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 7 CFR Part 16

Administrative practice and procedure, Grant programs.

Accordingly, for the reasons set forth in the preamble, part 16 of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 16—EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

■ 1. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 13279, 67 FR 77141; E.O. 13280, 67 FR 77145; E.O. 13559, 75 FR 71319; E.O. 13831, 83 FR 20715.

■ 2. Amend § 16.1 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 16.1 Purpose and applicability.

* * * * *

(b) The requirements established in this part do not prevent a USDA awarding agency or any State or local government or other intermediary from accommodating religion in a manner consistent with federal law and the Religion Clauses of the First Amendment to the U.S. Constitution.

■ 3. Revise § 16.2 to read as follows:

§ 16.2 Definitions.

As used in this part:
Direct Federal financial assistance, Federal financial assistance provided directly, Direct funding, or Directly funded means financial assistance received by an entity selected by the government or intermediary (under this part) to carry out a service (e.g., by contract, grant, loan agreement, or cooperative agreement). References to *Federal financial assistance* will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly*. Except as otherwise provided by USDA regulation, the recipients of sub-grants that receive Federal financial assistance through State-administered programs (e.g., flow-through programs such as the National School Lunch Program authorized under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*) are not considered recipients of *USDA indirect assistance*. These recipients of sub-awards are considered recipients of USDA direct financial assistance.

Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, or proselytization. Any such activities must be offered separately, in time or location, from the programs or services funded under the agency’s grant or cooperative agreement, and participation must be voluntary for beneficiaries of the agency grant or cooperative agreement-funded programs and services.

Federal financial assistance does not include a guarantee or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits.

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* refers to situations where the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment in accordance with the First Amendment of the U.S. Constitution.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that accepts USDA direct assistance and distributes that assistance to other organizations that, in turn, provide government-funded services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance by the recipient of a contract, grant, or agreement with this part and any implementing rules or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions. *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc-75(7)(A).

■ 4. Revise § 16.3 to read as follows:

§ 16.3 Faith-Based Organizations and Federal Financial Assistance.

(a) A faith based or religious organization is eligible, on the same basis as any other organization, and considering a religious accommodation, to access and participate in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate against an organization on the basis of the organization's religious exercise or affiliation. Additionally, decisions about awards of USDA direct assistance or USDA indirect assistance must be free from political interference and must be made on the basis of merit, not on the

basis of the religious affiliation of a recipient organization or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in Appendix A and B to this part.

(b) A faith based or religious organization that participates in USDA assistance programs will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use USDA direct assistance to support any ineligible purposes, including explicitly religious activities that involve overt religious content such as worship, religious instruction, or proselytization. A faith based or religious organization may:

(1) Use its facilities to provide services and programs funded with financial assistance from USDA awarding agency without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols,

(2) Retain religious terms in its organization's name,

(3) Select its board members and otherwise govern itself on a religious basis, and

(4) Include religious references in its mission statements and other governing documents.

(c) In addition, a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when an organization participates in a USDA assistance program.

(d) A faith-based or religious organization is eligible to access and participate in USDA assistance programs on the same basis as any other organization. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-religious organizations.

(1) Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations.

(2) All organizations that participate in USDA awarding agency programs or services, including organizations with

religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(3) No grant or agreement, document, loan agreement, covenant, memorandum of understanding, policy or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based or religious organizations from participating in the USDA awarding agency's programs or services because such organizations are motivated by or influenced by religious faith.

(e) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is delegated the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal government, the intermediary must ensure compliance by the subrecipient with the provisions of this part and any implementing regulations or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

(f)(1) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during

the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).

(2) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the religious organization in accordance with applicable laws, regulations, and guidance.

(3) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

(g) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement USDA awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

■ 5. Revise § 16.4 to read as follows:

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services, or, in the case of direct Federal financial assistance, outreach activities funded by such financial assistance, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

(b) Organizations that receive USDA direct assistance under any USDA program may not engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, as part of the programs or services funded by USDA direct assistance. If an organization conducts such activities, the activities must be offered separately, in time or location,

from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the Department's authority under applicable Federal law to fund activities that can be directly funded by the Government consistent with the Establishment Clause.

(c) Nothing in paragraphs (a) or (b) of this section shall be construed to prevent faith-based organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*, the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*, or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

§§ 16.5 and 16.6 [Removed]

■ 6. Remove §§ 16.5 and 16.6.

■ 7. Add Appendix A and Appendix B to Part 16 to read as follows:

Appendix A to Part 16—Notice or Announcement of Award Opportunities

Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at and, subject to the protections and requirements of part 16 and 42 U.S.C. 2000bb *et seq.*, USDA will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious exercise or affiliation.

A faith-based organization that participates in this program will retain its independence from the government and may continue to carry out its mission consistent with religious freedom protections in the U.S. Constitution and federal law, including 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Appendix B to Part 16—Notice of Award or Contract

A faith-based organization that participates in this program retains its independence

from the government and may continue to carry out its mission consistent with religious freedom protections in the U.S. Constitution and federal law, including 42 U.S.C. 2000bb *et seq.*, 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e–1(a) and 2000e–2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom protection laws.

A faith-based organization may not use direct financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by USDA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Stephen L. Censky,
Deputy Secretary.

[FR Doc. 2019–28541 Filed 1–16–20; 8:45 am]

BILLING CODE 3410–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1075; Product Identifier 2019–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42 airplanes and Model ATR72 airplanes. This proposed AD was prompted by reports of interference and chafing between a propeller brake hydraulic pipe and an electrical wire bundle bracket screw installed in the underwing box of the right-hand (RH) engine nacelle. This proposed AD would require a modification of the electrical wiring routing in the engine nacelles, a one-time detailed visual inspection (DVI) of the propeller brake hydraulic pipe and electrical wire bundle bracket screw head in the underwing box of the RH engine nacelle and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated