their status in the sanctuary as well as their role in the larger Gulf of Maine ecosystem.

Education, Outreach and Citizen Science

Enhancing the public's awareness and appreciation of sanctuary resources is a cornerstone of the SBNMS mission. NOAA is seeking the public's view on developing and enhancing programs designed to enhance public awareness, including opportunities to participate in environmental research and monitoring, integrating outreach into all education levels, and more effective partnering with Federal and state agencies, local businesses and organizations, and other user groups.

Sanctuary Soundscape

SBNMS is an active area with significant populations of marine mammals, as well as extensive human activity and vessel movements, particularly transiting to and from the major US port in Boston Harbor. NOAA is concerned about impacts to the SBNMS soundscape from the cumulative effects of underwater noise generated by a variety of human activities (including the potential offshore energy development), and expanded use of unmanned aircraft systems over the sanctuary.

Maritime Heritage Management

SBNMS contains a rich repository of submerged maritime heritage resulting from over 400 years of maritime activity in the region. NOAA seeks public input on the history and context of the ancient, historic, and modern communities who have depended on sanctuary waters for their livelihood and culture, the ships and the industries of the region and options to best conserve and protect these cultural assets in the future.

Regulatory and Boundary Changes

In preparing for public scoping, NOAA has not identified the need for any changes to SBNMS regulations. However, regulatory changes may be considered based on a review of public scoping comments and, if proposed, would be presented for public review with the publication of a proposed rulemaking.

Public Comments

NOAA is interested in hearing the public's views on:

- The effectiveness of the existing management plan in meeting both the mandates of the NMSA and SBNMS goals and objectives.
- The public's view on the effectiveness of the SBNMS programs, including programs focused on: Resource protection; research and monitoring; education; volunteer; and outreach.
- NOAA's implementation of SBNMS regulations and permits.
- Adequacy of existing boundaries to protect sanctuary resources.
- Assessment of the existing operational and administrative framework (staffing, offices, vessels, etc.).
- The potential impacts of the proposed actions discussed above and ways to mitigate these impacts.
- The relevance and timeliness of management issues identified above.

Federal Consultations

This document also advises the public that NOAA will coordinate its consultation responsibilities under section 7 of the ESA, EFH under the Magnuson-Stevens Act, section 106 of the NHPA (16 U.S.C. 470), and Federal Consistency review under the CZMA. Through its ongoing NEPA process and the use of NEPA documents and public and stakeholder meetings, NOAA will also coordinate compliance with other federal laws.

In fulfilling its responsibility under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures; and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects on historic properties and describe them in any environmental analysis.

NOAA will also initiate communications and consultation steps with relevant federally recognized tribal governments pursuant to Executive Order 13175, Department of Commerce tribal consultation policies, and NOAA procedures for government-to-government consultation with federally recognized Indian Tribes.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2020–02832 Filed 2–12–20; 8:45 am]

BILLING CODE 3510–NE–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92 and 578

[Docket No FR–6130–P–01]

RIN 2501–AD91

Equal Participation of Faith-Based Organizations in HUD Programs and Activities: Implementation of Executive Order 13831

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend U.S. Department of Housing and Urban Development (HUD) regulations to implement Executive Order 13831 (Establishment of a White House Faith and Opportunity Initiative). Among other changes, this rule proposes to provide clarity regarding the rights and obligations of faith-based organizations participating in HUD's programs. This proposed rulemaking aligns with HUD's goal of implementing its programs and activities consistent with the First Amendment to the Constitution and the requirements of Federal law, including the Religious Freedom Restoration Act.

DATES: *Comment Due Date:* April 13, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Youngblood, Director, Center for Faith-Based and Neighborhood Partnerships, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 6230, Washington, DC 20410; telephone number 202–402–5958 (this is not a toll-free number). Individuals with hearing- and speech-impairments may access this number through TTY by calling the Federal Relay, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Shortly after taking office in 2001, President George W. Bush signed Executive Order 13199, ''Establishment of White House Office of Faith-based and Community Initiatives.'' [1] 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 the White House Office of Faith-Based and Community Initiatives, with the 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.'' [2] 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 directed specified agency heads, including the Secretary of HUD, to review and evaluate existing policies that created barriers to faith-based organizations participating equally compared to other community organizations in programs receiving Federal financial assistance 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, HUD promulgated regulations at 24 CFR part 5.

HUD undertook three rulemakings to implement Executive Order 13279. HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract interest and participation by nonprofit organizations. HUD identified regulations for eight programs administered by HUD's Office of Community Planning and Development that imposed (or appeared to impose) barriers to participation of faith-based organizations in these programs. On September 30, 2003, HUD issued a final rule entitled ''Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of All HUD Program Participants.'' [3] The final rule eliminated the regulatory program barriers identified by HUD, to ensure that these programs were open to all qualified organizations regardless of their religious character.

On July 9, 2004, HUD published a second final rule entitled, ''Equal Participation of Faith-Based Organizations.'' [4] The July 9, 2004, final rule added a new § 5.109 to HUD's regulations in 24 CFR part 5 containing the requirements generally applicable to all of HUD's programs and activities. The new § 5.109 clarified that faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD's programs and activities. By codifying the policy in those HUD regulations that contain across-the-board requirements, HUD ensured the broadest application of the faith-based requirements of Executive Order 13279.

The July 9, 2004, final rule, however, did not apply to HUD's Native American housing programs. HUD determined that making the policies and procedures contained in the final rule applicable to its Native American programs required prior consultation with tribal governments, in accordance with Executive Order 13175.[5] Executive Order 13175 requires Federal departments and agencies, to the extent practicable and permitted by law, to consult with tribal governments prior to taking actions that have substantial direct effects on federally recognized tribal governments. HUD consulted with tribal governments and undertook separate rulemaking to address the applicability of the regulatory changes. HUD's final rule addressing equal participation of faith-based organizations in Native American programs, entitled ''Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants,'' was published on October 22, 2004.[6]

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.'' [7] Among other things, 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 created an Advisory Council that subsequently submitted a report of recommendations to President Obama, including recommendations concerning partnerships between the

[1] Executive Order 13199 was signed by President Bush on January 29, 2001, and subsequently published in the **Federal Register** on January 31, 2001, at 66 FR 8499.

[2] Executive Order 13279 was published in the **Federal Register** on December 16, 2002, at 67 FR 77141.

[3] 68 FR 56395.

[4] 69 FR 41711.

[5] Executive Order 13175 was signed on November 6, 2000, and is entitled ''Consultation and Coordination with Indian Tribal Governments.'' It was subsequently published in the **Federal Register** on November 9, 2000, at 65 FR 67249.

[6] 69 FR 62163.

[7] President Obama signed Executive Order 13498 on February 5, 2009, and it was subsequently published in the **Federal Register** on February 9, 2009, at 74 FR 6533.

Federal Government and religious and other nongovernmental organizations.

On November 17, 2010, President Obama signed Executive Order 13559, ''Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations''.[8] Executive Order 13559 made various changes to Executive Order 13279, which included: (1) Making minor and substantive textual changes to the fundamental principles; (2) adding a provision requiring that any religious social service program provider supported with Federal financial assistance refer beneficiaries or prospective beneficiaries to an alternative provider if the beneficiaries object to the provider's religious character; (3) adding a provision requiring that the faith-based provider give notice of potential referral to potential beneficiaries; and (4) adding a provision that awards must be free of political interference and not be based on religious affiliation of a recipient organization or lack thereof. This Executive order also established an interagency working group tasked with developing model changes to regulations and guidance to implement Executive Order 13279 as amended by Executive Order 13559, including provisions that clarified the prohibited uses of direct Federal financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect Federal financial assistance. These efforts eventually resulted in amendments to agency regulations, including HUD's 24 CFR part 5. The revised regulations defined ''indirect Federal financial 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.[9]

To implement the directives of Executive Order 13559, on August 6, 2015, HUD issued a proposed rule entitled, ''Equal Participation of Faith-Based Organizations in HUD Programs: Implementation of E.O. 13559.'' [10] The proposed rule was made final through an interagency final rule entitled, ''Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations'' published on April 4, 2016.[11] In addition to HUD, eight other Federal departments and agencies joined in the final rule to amend or establish their regulations implementing Executive Order 13559. This final rule required not only that faith-based providers give the notice of the right to an alternative provider specified in Executive Order 13559, but also required faith-based providers, but not other providers, to give written notice to beneficiaries and potential beneficiaries of programs funded with direct Federal financial assistance of various rights, including nondiscrimination based on religion, the requirement that participation in any religious activity must be voluntary and that they must be provided separately from the federally funded activity, and that beneficiaries may report violations.

President Trump has given new direction to the policy established by President Bush and continued by President Obama. On May 4, 2017, President Trump issued Executive Order 13798, ''Promoting Free Speech and Religious Liberty.'' [12] Executive Order 13798 states that ''Federal 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 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,'' (Attorney General's Memorandum on Religious Liberty).[13] The Attorney General's Memorandum on Religious Liberty emphasized that individuals and organizations do not give up religious liberty protections by providing Government-funded social services, and that ''[g]overnment 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.'' [14]

On May 3, 2018, President Trump signed Executive Order 13831, entitled ''Establishment of a White House Faith and Opportunity Initiative.'' [15] Among other things, Executive Order 13831 changed the name of the ''White House Office of Faith-Based and Neighborhood Partnerships,'' as established in Executive Order 13498, to the ''White House Faith and Opportunity Initiative;'' changed the way that the Initiative is to operate; directed departments and agencies with ''Centers for Faith-Based and Neighborhood Partnerships'' 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 referral requirement and requirement of notice thereof in Executive Order 13559 described above.

Finally, recent Supreme Court decisions have addressed the freedoms and anti-discrimination protections that must be afforded religion-exercising organizations and individuals under the U.S. Constitution and Federal law. *See, e.g., Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rights Comm'n,* 138 S. Ct. 1719, 1731 (2018) (Government violates the Free Exercise Clause of the First Amendment when its decisions are based on hostility to religion or a religious viewpoint); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2022 (2017) (Government violates the Free Exercise Clause of the First Amendment when it conditions a generally available public benefit on an entity's giving up its religious character, unless that condition withstands the strictest scrutiny); *Burwell* v. *Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751, 2775 (2014) (the Religious Freedom Restoration Act applies to Federal regulation of the activities of for-profit closely held corporations); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171, 196 (2012) (the ministerial exception, grounded in the Establishment and Free Exercise Clauses of the First Amendment, bars an employment-discrimination suit brought on behalf of a minister against the religious school for which she worked). While these decisions are not specific to HUD, they have reminded the Federal Government of its duty to protect religious exercise—and not to impede it.

[8] Executive Order 13559 was published in the **Federal Register** on November 22, 2010, at 75 FR 71319.

[9] 24 CFR 5.109(b).

[10] 80 FR 47301.

[11] 81 FR 19353.

[12] Executive Order 13798 was subsequently published in the **Federal Register** on May 9, 2017, at 82 FR 21675.

[13] 82 FR 49668.

[14] *Id.* at page 2.

[15] Executive Order 13831 was subsequently published in the **Federal Register** on May 8, 2018, at 83 FR 20715.

II. This Proposed Rule

A. Overview

HUD proposes to amend its regulations governing equal participation of faith-based organizations to implement Executive Order 13831 and conform more closely to the Supreme Court's current First Amendment jurisprudence; relevant Federal statutes such as the Religious Freedom Restoration Act of 1993 (RFRA) (42 U.S.C. 2000bb *et seq.*); 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 delete the requirement in 24 CFR 5.109(g) that faith-based social service providers that carry out programs and activities with direct Federal financial assistance provide written notice to beneficiaries and refer beneficiaries objecting to the organization's religious character to an alternative provider, and the requirement that faith-based organizations provide notices that are not required of secular organizations.

This proposed rule would also make clear that a faith-based organization that applies or requests to participate in any HUD funded program or activity, is assessed for eligibility in any HUD funded programs or activity, or actually participates in any HUD funded program or activity retains its autonomy, right of expression, religious character, and independence. It would further clarify that none of the guidance documents that HUD or any intermediary or recipient uses in administering HUD's financial assistance shall require faith-based organizations to provide assurances or notices where similar requirements are not imposed on secular organizations and that any restrictions on the use of grant funds apply equally to faith-based and secular organizations.

This proposed rule would also require that HUD's notices of funding availability (NOFAs), grant agreements, and cooperative agreements include language clarifying the rights and obligations of faith-based organizations that apply for and receive Federal funding. The language provides notice to those applying for HUD funds that, among other things, faith-based organizations may apply for awards on the same basis as any other organization; that HUD 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 applies to participate in, participates in, or is assessed for eligibility to participate in, a HUD 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 First Amendment to the Constitution.

This proposed rule, in the event of any conflict, will control over any HUD guidance document. This is intended to be consistent with Executive Order 13891, dated October 9, 2019, which provides that guidance documents lack the force of law, except as authorized by law or as incorporated into a contract.

Finally, the proposed rule would directly reference the definition of ''religious exercise'' in the Religious Land Use and Individualized Persons Act of 2000, 42 U.S.C. 2000cc–5(7)(A), and would amend the definition of ''indirect Federal Financial assistance'' to align more closely with the Supreme Court's definition in *Zelman* v. *Simmons–Harris,* 536 U.S. 639 (2002).

B. Alternative Provider and Alternative Provider Notice Requirement

Executive Order 13559 imposed notice and referral burdens on faith-based organizations not imposed on secular organizations. Section 1(b) of Executive Order 13559, entitled ''Fundamental Principles,'' amended section 2 of Executive Order 13279 by, in pertinent part, adding a new subsection (h) to section 2. As amended by Executive Order 13559, section 2(h)(i) directed agencies to ensure that ''[i]f 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 ''receive[] written notice of the protections set forth in this subsection prior to enrolling in or receiving services from such program.''

In revising its regulations, HUD explained in 2015 that the revisions would implement the alternative provider provisions in Executive Order 13559. Executive Order 13831, however, has removed the alternative provider requirements articulated in Executive Order 13559. HUD also explained that the alternative provider provisions would protect religious liberty rights of social service beneficiaries. But the methods of providing such protections were not required by the Constitution or any applicable law. Indeed, the selected methods are in tension with more recent Supreme Court precedent regarding nondiscrimination against religious organizations, with the Attorney General's Memorandum on Religious Liberty, and with the RFRA, 42 U.S.C. 2000bb–2000bb–4.

As the Supreme Court recently clarified in *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2019 (2017): ''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 (1993) (alteration in original)). 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.* (quoting *McDaniel* v. *Paty,* 435 U.S. 618 (1978) (plurality opinion); *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 raises implications 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). The World Vision OLC opinion makes clear that when a faith-based grant recipient carries out its social service programs, it may engage in an exercise of religion protected by RFRA. *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 (June 29, 2007).

Requiring faith-based organizations to comply with certain conditions in receiving social service grants may substantially burden their religious exercise. *Id.* at 174–83. When imposing the alternative provider requirement in 2016, the agencies asserted an interest in informing beneficiaries of protections of their religious liberty. 81 FR 19353, 19365. 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.

With adoption of this rule, HUD would no longer require its program participants to identify or refer beneficiaries to alternate providers. In addition, the absence of a secular alternate provider will no longer be a block to the application, eligibility, or participation by faith-based entities in any HUD program or activity.

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.

C. 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. While Executive Order 13559's requirement of notice to beneficiaries was limited to notice of alternative providers, 24 CFR part 5 as recently amended goes further than Executive Order 13559 by requiring that faith-based social service providers that carry out programs and activities with direct Federal financial assistance from HUD 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, Executive Order 13279, as amended, clearly set forth the underlying requirements of nondiscrimination, voluntariness, and the holding of religious activities separate in time or place from any federally funded activity. Faith-based providers of social services, like other providers of social services, are required to follow the law and the requirements of awards they receive. (*See, e.g.,* 2 CFR part 200). There is no basis on which to presume that they are less likely than other social service providers to follow the law. *See Mitchell,* 530 U.S. at 856–57 (O'Connor, J., concurring in judgment) (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 prophylactic protections that create administrative burdens on faith-based providers and that are not imposed on other providers.

D. Definition of Indirect Federal Financial Assistance

Executive Order 13559 directed its Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) 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, the 2016 joint final rule amended 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 emphasized that the government may provide indirect aid to a faith-based where the aid reaches the faith-based entity by way of ''true private choice,'' with ''no evidence that the State deliberately skewed incentives'' to faith-based service providers. 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 (quotation marks and citations omitted). While the Court noted the availability of secular providers, it specifically declined to make its definition 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. The Court found 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, 19407–19426 (2016). In other words, the rule amended regulations to make the definition of ''indirect'' aid hinge on the availability of secular providers. A regulation defining ''indirect Federal financial assistance'' to require the actual availability of ''one adequate secular option'' 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.*

Explanations for the Proposed Amendments

HUD proposes to revise § 5.109 entitled, ''Equal participation of faith-based organizations in HUD programs and activities,'' consistent with Executive Order 13831, 83 Fed. 20715 (May 8, 2018). Specifically, the definition in § 5.109(b) of ''Indirect Federal financial assistance'' is proposed to be changed in order to align the text more closely with the First Amendment as described in II(D) above. *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 5.109(b) would also be revised to add a definition of ''Religious exercise'' in order 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 5.109(c) would also be revised by adding clarifying language and to align it more closely with RFRA. The language would clarify that religious organizations may be eligible for religious accommodations appropriate under the Constitution or other provisions of federal law, including but not limited to 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. It would also require notices of funding availability, grant agreements, and cooperative agreements to include Appendix A, which clarifies the rights of religious applicants. *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).

Appendix A adds language to all Notices of Funding Availability that clarifies the rights of faith-based organizations applying for the relevant award, including rights that spring from the First Amendment and 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).

HUD also proposes to revise § 5.109(d) to eliminate extraneous language relating to direct Federal financial assistance that is covered in § 5.109(e) and provide language to align it more closely with the First Amendment and with RFRA. This language clarifies the scope of the independence that faith-based organizations receive when they apply for or participate in a HUD program, and that they do not lose any protections of law highlighted by the Attorney General's Memorandum on Religious Liberty merely by applying for or participating in such programs. *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 5.109(e) would be revised to bring consistency with Executive Order No. 13559, 75 FR 71319 (November 22, 2010), by further clarifying that the restrictions in § 5.109(e) do not apply to the use of indirect Federal financial assistance.

As discussed in II(B)–(C) above, § 5.109(g) would be deleted in accordance with Executive Order 13831. These changes would also 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 5.109(g) ''Nondiscrimination requirements,'' as redesignated, is proposed to be changed in order to align the text more closely with the First Amendment and with RFRA by clarifying that organizations receiving indirect financial aid may require attendance to fundamentally important programmatic activities. This follows the definition of indirect financial assistance as discussed in II(D) above. *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).

HUD proposes to add a new § 5.109(h) in order to clarify the text and align it more closely with the First Amendment and with RFRA. This section prevents HUD or intermediaries from targeting faith-based organizations by asking them to provide additional assurances that similarly situated secular organizations do not have to provide. *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 5.109(l) is proposed to be added in order to align more closely with RFRA. This clarifies HUD's treatment of tax-exempt organizations including for entities that sincerely believe that they cannot register for tax exemption. *See, e.g.,* principles 10–15 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

Section 5.109(m) is proposed to be added in order to align the text more closely with the First Amendment by providing a rule of construction to interpret these provisions in a way that does not favor or disfavor religious organizations. *See, e.g., Larson* v. *Valente,* 456 U.S. 228 (1982)); principle 8 of the Attorney General's Memorandum on Religious Liberty, 82 FR 49668 (October 26, 2017).

III. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the process on matters that have tribal implications. Accordingly, on July 16, 2019, HUD sent letters to all tribal leaders participating in HUD programs, informing them of the nature of this forthcoming rulemaking. HUD received one comment in response to those letters, regarding the ability of faith-based organizations to access funds designated for Indian tribes under

the Indian Community Development Block Grant program. Tribal leaders are welcome to provide public comments on this proposed rule.

IV. Findings and Certifications

Executive Order 12866 and 13563—Regulatory Planning and Review

This proposed rule has been drafted in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' of January 18, 2011, 76 FR 3821, and Executive Order 12866, ''Regulatory Planning and Review,'' of September 30, 1993, 58 FR 51735. 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 whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). 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 regulatory action is a significant, but not economically significant, regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this rule.

HUD 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.* OIRA 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.*

HUD is issuing these proposed regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, HUD selected those approaches that maximize net benefits. Based on the analysis that follows, HUD believes that this proposed regulation is consistent with the principles in Executive Order 13563. It is the reasoned determination of HUD 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 for those organizations. HUD 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, HUD has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs and cost savings 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. HUD recognizes that the removal of the notice and referral requirements could impose some costs on beneficiaries who may now need to investigate alternative providers on their own if they object to the religious character of a potential provider. HUD invites comment on any information that it could use to quantify this potential cost. HUD also notes a quantifiable cost savings of the removal of the notice requirements. HUD estimates this cost savings as $656,128. HUD 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 accurately quantify the cost savings of removing these requirements.

In terms of benefits, HUD recognizes a 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.* HUD also recognizes a benefit to grant recipients and beneficiaries alike that comes from increased clarity in the regulatory requirements that apply to faith-based organizations' operating programs and activities 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 reassured that the government will not impose burdensome obligations based on their religious character.

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. 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. HUD has determined that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, HUD 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'' (61 FR 4729, February 6, 1996). 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 13132: Federalism

Executive Order 13132 (64 FR 43255, August 4, 1999) 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, and does not preempt State law within the meaning of the Executive Order, HUD has concluded that compliance with the requirements of section 6 is not necessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current collection for this rule is approved as OMB control number 2535–0122. HUD previously estimated a cost of no more than 2 burden hours and $100 annual materials cost for the notices and 2 burden hours per referral. 81 FR 19389. The overall reporting and recordkeeping burden will be removed if this rule is finalized as proposed and the hours reduced by 25,620 and costs of $656,128. The change to the information collection will be as follows:

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	New burden hours
5.109(g) (Written Notice of Rights)	726,053	1	.0333	24,178	0
5.109(g) (Referral)	726	1	2	1,452	0
Total Savings				25,620	0

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. The proposed information collection requirements in this rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR–6085) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947.

and

Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, parts 5, and 92 of Title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141; E.O. 13559, 75 FR 71319; E.O 13831, 83 FR 20715.

■ 2. Amend § 5.109 by:
■ a. Revising paragraphs (a);
■ b. In paragraph (b), revising the definition ''Indirect Federal financial assistance'' and adding the definition ''Religious exercise'' in alphabetical order;
■ c. Revising paragraphs (c) and (d);
■ d. In paragraph (e), adding a sentence at the end of the paragraph;
■ e. Removing paragraph (g);
■ f. Redesignating paragraph (h) as paragraph (g) and revising newly redesignated paragraph (g)''; and
■ g. Adding paragraphs (h), (l), and (m).

The revisions and additions read as follows:

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

(a) *Purpose.* Consistent with Executive Order 13279, entitled ''Equal Protection of the Laws for Faith-Based and Community Organizations,'' as amended by Executive Order 13559, entitled ''Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations,'' and as amended by Executive Order 13831, entitled ''Establishment of a White House Faith and Opportunity Initiative,'' this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of HUD's Native American Programs, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes.

* * *

(b) * * *

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the 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. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

* * * * *

Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

(c) *Equal participation of faith-based organizations in HUD programs and activities.* Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity, considering any permissible accommodations, particularly under the Religious Freedom Restoration Act. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character, affiliation, or lack thereof, or exercise. In addition, decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not based on the organization's religious character, affiliation, or lack thereof, or exercise. Notices of funding availability, grant agreements, and cooperative agreements shall include language substantially similar to that in Appendix A to this subpart, where faith-based organizations are statutorily eligible for such opportunities.

(d) *Independence and Identity of Faith-Based Organizations.* (1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its autonomy, right of expression, religious character, authority over its governance, and independence, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives Federal financial assistance from HUD does not lose the protections of law.

Note 1 to paragraph (d)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing federal law protections for religious liberty).

(2) A faith-based organization that receives direct Federal financial assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and may retain religious terms in its organization's name, select its board members and employees 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.

(e) * * * The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HUD's authority under applicable Federal law to fund activities, that can be directly funded by the Government consistent with the Establishment Clause of the U.S. Constitution.

* * * * *

(g) *Nondiscrimination requirements.* Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services with such assistance or carrying out activities with such assistance, discriminate against a beneficiary or prospective 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, this section does not require any organization that only receives indirect Federal financial assistance to modify its program or activities to accommodate a beneficiary that selects the organization to receive indirect aid or prohibit such organization from requiring attendance at all activities that are fundamental to the program.

(h) *No additional assurances from faith-based organizations.* A faith-based organization is not rendered ineligible by its religious nature to access and participate in HUD programs. No notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering Federal financial assistance from HUD shall require otherwise eligible faith-based organizations to provide assurances or notices where they are not required of similarly situated secular organizations. All organizations that participate in HUD programs or activities, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate accommodation, particularly under the Religious Freedom Restoration Act, and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering financial assistance from HUD shall disqualify otherwise eligible faith-based organizations from participating in HUD's programs or activities because such organization is motivated or influenced by religious faith to provide such programs and activities, or because of its religious exercise or affiliation.

* * * * *

(l) *Tax exempt organizations.* In general, HUD does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HUD programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Notices of funding availability that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the notice of funding availability. In addition, if any notice of funding availability requires an organization to maintain tax-exempt status, it will expressly state the statutory authority for requiring such status. Applicants should consult with the appropriate HUD program office to determine the scope of any applicable requirements. In HUD programs in which an applicant must show that it is a nonprofit organization but this is not statutorily defined, the applicant may do so by any of the following means:

(1) 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;

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

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

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

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

(4) Any item described in paragraphs (l)(1) through (l)(3) 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

(5) 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 (l)(1) through (l)(4) of this section.

(m) *Rule of construction.* Neither HUD nor any recipient or other intermediary receiving funds under any HUD program or activity 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.

■ 3. Add Appendix A to Subpart A of Part 5 to read as follows:

Appendix A to Subpart A of Part 5—Notice of Funding Availability

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 42 U.S.C. 2000bb *et seq.,* HUD 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, 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, particularly under the Religious Freedom Restoration Act.

A faith-based organization may not use direct financial assistance from HUD 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 HUD, discriminate against a program beneficiary or prospective program

beneficiary on the basis of a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 4. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

§ 92.508 [Amended]

■ 5. Amend § 92.508 by removing paragraph (a)(2)(xiii).

Dated: January 2, 2020.

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2020–02495 Filed 2–12–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0019

RIN 1625–AA00

Safety Zone; Tanapag Harbor, Saipan, CNMI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone for navigable waters within Tanapag Harbor, Saipan. This safety zone will encompass the designated swim course for the Escape from Managaha swim event in the waters of Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands. This action is necessary to protect all persons and vessels participating in this marine event from potential safety hazards associated with vessel traffic in the area. Race participants, chase boats, and organizers of the event will be exempt from the safety zone. Entry of persons or vessels into the safety zone is prohibited unless authorized by the Captain of the Port (COTP) Guam. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0019 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Robert Davis, Sector Guam, U.S. Coast Guard, by telephone at (671) 355–4866, or email at *WWMGuam@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Escape from Managaha swim event is a recurring annual event. We have established safety zones for this swim event in past years.

The purpose of this rule is to ensure the safety of the participants and the navigable waters in the safety zone before, during, and after the scheduled swim event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C 70034 (previously codified in 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 6:30 a.m. to 8:30 a.m. on March 28, 2020 or April 04, 2020. This safety zone is necessary to protect all persons and vessels participating in this marine event from potential safety hazards associated with vessel traffic in the area. Race participants, chase boats, and organizers of the event will be exempt from the safety zone. Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of Tanapag Harbor for 2 hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.