TABLE 1 TO PARAGRAPH (a)—Continued

Pesticide chemical	CAS Reg. No.	Limits
* *	*	* * * * *
phenethyl isobutyrate	103–48–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenethyl phenylacetate	102–20–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
phenylacetaldehyde dimethyl acetal	101–48–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
3-phenyl-1-propanol	122–97–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
propanoic acid, 2-methyl-, 4-formyl-2-methoxyphenyl ester.	20665–85–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
triethyl citrate	77–93–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
delta-1-(2,6,6-trimethyl-3-cyclohexen-1-yl)-2-buten-1-one.	57378–68–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Thiogeraniol	39067–80–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
thymol (8CA)	89–83–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
Vanillin	121–33–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *
veratraldehyde	120–14–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* *	*	* * * * *

[FR Doc. 2022–15017 Filed 7–20–22; 8:45 am]
BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Part 51–4

RIN 3037–AA16

Prohibition on the Payment of Subminimum Wages Under 14(c) Certificates as a Qualification for Participation as a Nonprofit Agency Under the Javits Wagner O'Day Act

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission (''Commission''), is publishing a final rule implementing a new requirement that a nonprofit agency (NPA) seeking both initial and continuing qualification under the Javits Wagner O'Day Act (JWOD Act) to participate in the AbilityOne Program must certify that it will not use certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (''14(c) certificates'') to pay employees on its AbilityOne contracts. Pursuant to the rule, individuals with significant disabilities and those who are blind employed by participating NPAs, and working on AbilityOne contracts, will earn at least the Federal minimum wage, the applicable local or state minimum wage if higher than the Federal minimum wage, or the applicable prevailing wage for contracts subject to the McNamara-O'Hara Service Contract Act, whichever is highest.

DATES: This final rule is effective October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Shelly Hammond, Director of Contracting and Policy, by telephone (571) 457–9468 or by email at *shammond@abiltyone.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The JWOD Act and Implementing Regulations

The JWOD Act leverages the purchasing power of the Federal Government to create employment opportunities through the AbilityOne Program for individuals who are blind or have significant disabilities. The Program is administered by the 15-member, presidentially appointed Commission that, as an independent Federal agency, maintains a Procurement List of products and services that Federal agencies must purchase from participating NPAs who employ individuals who are blind or have significant disabilities. *See* 41 U.S.C. 8503 and 8504. Central nonprofit agencies (CNAs) are responsible for distributing orders to Commission-approved NPAs to provide products and services to Federal agencies. *See* CFR 51–2.4(a)(3) & 51–3.4. NPAs must meet initial qualification requirements and maintain those qualifications throughout their participation in the

AbilityOne Program. *See* 41 CFR 51–4.2 and 51–4.3.

The Commission has five roles stated in the JWOD Act. First, the Commission decides on the addition or removal of products and services on the Procurement List. *See* 41 U.S.C 8503(a). Second, the Commission sets the fair market price that the Federal Government will pay for the products or services. *See* 41 U.S.C. 8503(b). Third, the Commission designates nonprofit agencies to be the CNAs, who are responsible for ''facilitating the distribution of orders'' for products or services among participating NPAs. *See* 41 U.S.C. 8503(c). Fourth, the Commission promulgates regulations ''on other matters as necessary'' to carry out the JWOD Act. *See* 41 U.S.C. 8503(d)(1). Fifth, the Commission engages in a ''continuing study and evaluation of its activities'' to ensure effective administration of the JWOD Act. *See* 41 U.S.C. 8503(e).

To date, pursuant to the JWOD Act, the Commission has designated National Industries for the Blind (NIB) and SourceAmerica as the CNAs responsible for distributing orders to participating NPAs. *See* 41 CFR 51–1.3 (definition of CNA); *see also* 41 CFR 51–3.2 (describing duties of a CNA). The CNAs provide information as needed by the Commission and otherwise assist the Commission in implementing the Commission's regulations. NPAs associated with NIB primarily employ blind and visually impaired individuals; NPAs associated with SourceAmerica primarily employ individuals with significant disabilities, including intellectual and developmental disabilities (IDD). As of April 2022, NIB represented 58 NPAs participating in the AbilityOne Program, and SourceAmerica represented 391 NPAs.

In making its determination on whether to add a product or service to the Procurement List, the Commission assesses four suitability criteria. *See* 41 CFR 51–2.4. First, the Commission considers whether there is the potential for the NPA to employ enough individuals who are blind or have significant disabilities as needed to carry out the contract. Second, the Commission determines that the NPA meets all the qualification requirements set forth in 41 CFR part 51–4. Third, the Commission assesses the capability of the NPA to provide the product or service, including the required labor operations, Government quality standards, and delivery schedules. Finally, if there is a current contractor providing the product or service the Commission determines the level of impact on that contractor.

B. Notice of Proposed Rulemaking

On October 12, 2021, the Commission issued a notice of proposed rulemaking (NPRM) in the **Federal Register**. The proposed rule required an NPA seeking initial qualification for the Program to provide certification that it would not pay subminimum or sub-prevailing wages (where applicable) by using wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (FLSA) to employees on any new contract or subcontract awarded under the Program, or any renewal or extension of such contract. *See* 29 U.S.C. 214(c). The NPRM required the same certification on an annual basis for NPAs to maintain their qualification under the Program.

The NPRM invited comments through November 12, 2021. *See* 86 FR 56679 (Oct. 12, 2021). After requests, the Commission extended the comment period through December 12, 2021. *See* 86 FR 62768 (Nov. 12, 2021). The NPRM requested comments and supporting data on several specific questions. The Commission asked whether the rule should apply to new contracts, extensions and renewals of existing contracts once they expire, and the exercise of contract options. The Commission asked how much time, if any, would be necessary for NPAs to come into compliance with the rule. Finally, the Commission asked what impact, if any, the rule would have on the receipt by AbilityOne employees of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant Government benefits such as Medicare and Medicaid.

The Commission received 183 total comments to the NPRM. Of this total, nearly 60 comments were from disability rights and advocacy organizations, seven comments were from the two CNAs (SourceAmerica and NIB) and five NPAs; more than 100 comments were from private individuals (commenters who did not assert or self-identify organizational membership); one comment was from a labor organization, one from a Fortune 500 company, and one from a Member of Congress.

The Commission carefully considered and analyzed each comment but did not address technical and other minor changes requested by commenters.

C. Changes From the Proposed Rule

The final rule applies the certification requirement to the exercise of options on existing contracts, as well as to new contracts and extensions and renewals of contracts. The final rule is effective 90 days after publication in the **Federal Register**. However, an NPA may apply for an extension for up to 12-months in order to come into compliance if it can provide evidence for why it cannot make the wage adjustments by the effective date (due to budgetary limitations, because doing so will necessarily harm employees, or for other good cause) and if it provides a corrective action plan describing the steps it intends to take to achieve compliance within the approved extension period.

II. Analysis of Comments and Changes

A. Utility of the Rule

1. Comments

Of the 183 comments received, the overwhelming majority of both individual and organizational commenters supported the utility and appropriateness of the rule. Numerous organizational commenters supported the rule as a means of ensuring access to economic independence and self-sufficiency for individuals with disabilities. Individuals with disabilities similarly claimed their right to earn equal wages for equal work and to be able to afford life's necessities, including housing. Several commenters noted that evolutions in disability rights law, modernizations and advancements in the business marketplace and available community supports rendered section 14(c) certificates no longer necessary or acceptable.

Only five commenters opposed the rule in its entirety. These commenters predicted that increasing wages for individuals with disabilities would result in the loss of government assistance and attendant benefits, resulting in significant adverse impacts on individuals with disabilities. One NPA stated that the impact on employees with disabilities would be devastating, especially for those working on product contracts. Two commenters stated that the justification for 14(c) certificates remained as valid now as it had been in 1938, given the inability of some individuals with disabilities to work as productively as individuals without disabilities doing the same job.

2. Discussion

Ending the payment of subminimum or sub-prevailing wages in the AbilityOne Program is designed to help break cycles of poverty and dependence and assist in moving individuals with disabilities to careers of meaningful employment, increased economic independence, greater dignity, enhanced self-worth, self-determination,

and self-sufficiency. Ending wage disparities between employees based solely on disability places the economic power of individuals with disabilities on par with their work colleagues who do not have disabilities and paying the same wage to individuals with disabilities and those without conveys a message of equality and a commitment to inclusion.

Changes in societal expectations of people with disabilities, together with the availability of reasonable accommodations and employment supports, have significantly changed the employment landscape for individuals with disabilities. The assumptions that existed in 1938 regarding the inability of individuals with disabilities to work as productively as individuals without disabilities doing the same job are not supported by existing data.

As discussed in greater detail below, there are Federal and state programs that can mitigate the adverse effects that increased wages may have on an employee's receipt of government benefits. Moreover, the Commission believes that any possible adverse effects in this area are outweighed by the benefits of the rule.

3. Change

The Commission has made no change to this section of the rule.

B. Scope of the Rule's Application: New Contracts, Renewals, Extensions and Options

1. Comments

The Commission requested comment on whether the rule should apply to new contracts, extensions, and renewals of contracts and/or the exercise of options on contracts. Twenty-two commenters, primarily from disability advocacy organizations and NPAs, supported application of the rule to new contracts, extensions and renewals of contracts, and the exercise of options. These commenters noted that AbilityOne Program contracts tend to be long term contracts with a base year and an additional four to nine option years. If option years were not included, an NPA could avoid applying the proposed rule for an additional five to ten years after the effective date. Additionally, some commenters stated that since more states are prohibiting the payment of 14(c) wages by requiring adherence to state minimum wage laws, there was no reason to delay application until a contract was ready for renewal or extension. A major corporation and two large AbilityOne NPAs commented that ending section 14(c) wages should apply universally, including options, and a labor union commented that not including options would introduce new inequities in the Program given the likelihood that contracts contain multiple option years.

The two CNAs did not directly comment on the rule's application to new contracts, extensions, or options, but both CNAs supported the rule. However, SourceAmerica noted that ''it is critical that the final regulatory change include language that clarifies that at the time when a contract is up for renewal, the NPA will need to certify that they will not pay subminimum wages for that specific contract.'' This final rule does, in fact, clarify that NPAs must certify it will not use a 14(c) certificate after the effective date on any AbilityOne existing contract at the point of renewing a contract renewal, executing an extension, or exercising an option.

Once again, five commenters opposed the rule, but, of those, two commenters stated that, if implemented, the rule should only apply to either new contracts or contract renewals, and the remainder did not address the issue.

2. Discussion

The purpose of the rule is to ensure that individuals with disabilities are paid equally for the work they perform as are individuals without disabilities performing the same or similar work. Applying the rule to extensions and renewals of contracts, as well as to options, avoids a piecemeal application of the rule. Given the variety and timing of contracts currently being performed, and their respective expiration or renewal dates, there is a possibility NPAs with more than one contract could potentially pay the Federal or higher state minimum wage, or prevailing wage, on new contracts, but a lower wage on existing contracts that were renewed or extended. Differences in contract timing could improperly incentivize NPAs to selectively assign employees to those AbilityOne contracts that are not yet subject to the rule.[1] In addition, by including contract options, the Commission is more closely aligned with the Department of Labor (DOL) rule, implementing Executive Order 14026.[2] That rule generally requires Federal contractors to pay employees workers performing on or in connection with covered Federal contracts at least the Executive order minimum wage (currently $15.00 per hour); that rule applies to new contracts entered into on or after January 30, 2022, and also covers existing contracts that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022, on Federal contracts, including options. The DOL rule generally covers employees working on AbilityOne service contracts.

3. Change

The Commission has retained application of the rule to new contracts and to extensions and renewals. The Commission has changed the rule to apply its requirement to the exercise of options on contracts.

C. Effective Date of the Rule

1. Comments

The proposed rule did not include an effective date. The Commission requested comment on how much time, if any, would be necessary for NPAs to comply with the new wage requirement.

One commenter stated that the rule should be effective immediately, another stated the rule should be effective 90 days following publication, and two commenters felt the rule should be effective six months following publication. Two NPAs with experience eliminating the use of section 14(c) certificates noted that a two- or three-year phase in period might be appropriate.

The primary reason provided for immediate coverage, as well as for short implementation time periods, was that NPAs had been given sufficient notice and lead time on eliminating the use of subminimum wages under section 14(c) certificates, in light of a statement made by the Commission in 2019 that NPAs should not be using 14(c) certificates on AbilityOne contracts. These commenters stated that the transition process away from subminimum wages should therefore be well underway at all NPAs.

A coalition of more than 100 national disability organizations recommended the Commission adopt the timeline recommendation set forth in the report issued by the National Council on Disability (NCD) in 2012. In that report, NCD recommended that individuals with disabilities in a certificate setting for ten years or less be transitioned within two years, those in the setting from ten to 20 years be transitioned in four years, and those in a certificate setting longer than 20 years be transitioned within six years.[3] The

[1] This rule does not preclude an NPA from transferring employees to its non AbilityOne contracts and using 14(c) certificates to pay those employees. We address that issue below.

[2] *See* 86 FR 67126 (Nov. 24, 2021).

[3] *https://ncd.gov/publications/2012/August232012/recommendations* (last viewed June 2022).

recommendations of the NCD report applied to the elimination of all 14(c) certificates. The commenters did not specifically explain why the same timeline should apply to the smaller number of affected individuals in the AbilityOne Program.

One commenter observed that NPAs employing individuals with disabilities are as different as their respective employees. This commenter suggested an individualized approach, recommending that the Commission establish different timelines based on factors such as an NPA's size, number and types of contracts and number of employees, geography and access to transportation, and an NPA's ability to recruit new employees.

Twenty commenters, including many organizational commenters, recommended a one-year implementation period, others recommended a two-year implementation period, and nearly ten commenters recommended a two to three-year implementation period, with a possible one-time extension. The rationale for implementation periods of one to three years was that NPAs would need significant time to adapt to the new wage requirement, including restructuring contracts and budgets. The rationale also included a need for NPAs to acquire or add services such as benefits counseling for their employees to ensure that any adverse impact on receipt of benefits by their employees would be mitigated.

2. Discussion

In 2019, the Commission sent a letter to SourceAmerica stating that the use of 14(c) certificates on AbilityOne contracts was inappropriate and that the time had come to pay all AbilityOne employees the Federal minimum wage or the state minimum wage if higher. The Commission charged SourceAmerica with developing a strategic plan for assisting affiliated NPAs with transitioning from the use of 14(c) certificates. The letter stated as its goal that all AbilityOne NPAs would be paying the Federal minimum wage or the state minimum wage if higher within three years (February 2022) and the prevailing wage within six years (February 2025).[4]

In response to the Commission's letter, SourceAmerica initiated a ''14(c) Transition Program.'' The program provided interested NPAs with financial and technical assistance in eliminating their use of 14(c) certificates. Since October 2019, SourceAmerica has provided consultation services to 86 NPAs, enrolled 35 NPAs in at least one program support, and awarded NPAs more than $600,000 in transition support grants.[5]

According to SourceAmerica, the program has been quite successful. The number of employees paid under 14(c) certificates by its affiliated NPAs has declined from 9,654 employees in mid-2018 to 2,900 employees as of the first quarter of fiscal year (FY) 2022. Of this number, 1,750 employees were working on services contracts subject to Executive Order 14026, which took effect in January 2022. Employees working on such contracts are required to be paid at least the Executive order minimum wage of (currently $15.00 per hour,), but under a section 14(c) certificate can be paid less than the prevailing wage. Data self-reported to SourceAmerica by associated NPAs shows approximately 770 employees being paid at least the Federal minimum wage but less than the prevailing wage.

The remaining approximately 1,200 employees work primarily on product contracts and are clustered within approximately 24 NPAs. Data collected by the Commission indicates that the average wage paid such employees is $5.11 per hour.

As noted above, SourceAmerica has invested significant resources toward transitioning its associated NPAs from using 14(c) certificates since 2019, and it has pledged to continue to do so after this rule has been formally implemented. Given the fact that NPAs have been on notice since 2019 of the Commission's position on phasing out use of 14(c) certificates, and the availability of CNA support to do so, the Commission believes that a 90-day implementation period is sufficient time to allow the remaining NPAs to effectuate the necessary change. For this reason, the Commission also does not adopt the lengthy implementation dates set force in the NCD report that applies to use of 14(c) certificates nationwide.

The Commission recognizes that some NPAs have not taken advantage of SourceAmerica's transition program or are still in the process of transitioning from use of 14(c) certificates. For that reason, the Commission will accept applications from NPAs for an extension of up to 12 additional months to come into compliance with the rule. The Commission will use its existing authority under 41 CFR 51–4.5 to grant such extensions. The NPA must provide evidence for why it cannot make the wage adjustments by the effective date (due to budgetary limitations, because doing so will necessarily harm employees, or for other good cause) and must have a corrective action plan in place that the NPA will follow to come into compliance with the rule. Requests for an extension must be submitted no later than 30 days prior to the effective date of the rule. If an extension is granted, the Commission will not award any new Procurement List additions to that NPA during the extension period, absent exigent circumstances, and a written request from the Federal customer.

3. Change

The Commission includes an effective date of 90 days after the publication date of the final rule, with the possibility of a one-time extension of up to 12 months.

D. Impact on Receipt of Government Benefits

1. Comments

The Commission sought comment on what impact, if any, the proposed rule would have on the receipt of social security benefits, such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant government health insurance, such as Medicare and Medicaid, by employees with disabilities, and requested recommendations on how to address any adverse impacts that were identified.

Several commenters, including a Member of Congress, stated that increased wages for individuals with disabilities could adversely impact the receipt of government income and health care by individuals with disabilities. However, the comments did not discuss Federal or state programs employees could utilize to mitigate a reduction or loss of benefits due to increased earnings. The commenters also did not describe any efforts to ensure their employees had access to benefits counseling or training to raise awareness about their eligibility for additional or alternative benefits. Finally, the commenters did not include data substantiating the adverse impact they predicted.

Many organizational commenters acknowledged the reduction or loss of government benefits was a concern for some employees once their wages

[4] Letter from Mr. Thomas Robertson, Chair of the AbilityOne Commission to Mr. Norman Lentz, Chair of the Board of SourceAmerica (February 19, 2019). *https://www.abilityone.gov/media_room/documents/Commission%20Ltr%20to%20SourceAmerica%20-%20Subminimum%20Wage%20-%2020190219.pdf.*

[5] SourceAmerica, 14(c) Transition Program Update, AbilityOne Public Meeting, October 7, 2021, Slides 15–17. *https://www.abilityone.gov/commission/documents/US%20AbilityOne%20Commission%20Public%20Meeting%207Oct2021%20Advance%20Slides%20Post.pdf.*

increased. However, these organizations, as well as NPAs that successfully transitioned their employees from 14(c) certificates, highlighted the various government programs designed to assist employees with disabilities who are concerned that increased wages may adversely impact their benefits. These include assistance through a Medicaid Buy-In option in many states, the Ticket to Work program under the Social Security Act, and establishment of Achieving a Better Life Experience Act (ABLE) accounts (which are tax-favored accounts enabling individuals with disabilities to save money for disability-related expenses including education, housing, transportation, employment training and support, assistive technology and personal support services, health care prevention and wellness services, and financial management). A number of commenters also stated there was evidence that NPAs could pay above the minimum wage, and also provide healthcare and other important benefits for their employees, so that employees would not need to rely on government health care.

Several commenters stated that an essential component of mitigating any adverse impact on continued receipt of government benefits was for employees to have access to professional benefits counseling. Some commenters recommended that the Commission require NPAs to offer such services as a qualification for participation in the Program; other commenters recommended that the CNAs be required to provide such services to the NPAs; and some commenters called for NPAs to educate their employees that a benefits reduction was not an inevitable outcome of a wage increase.

Ultimately, these commenters stated that any potential loss of benefits was not a legitimate reason to scale back or not implement the proposed rule. They argued that the overall benefit the proposed rule would provide for AbilityOne NPA employees with disabilities on AbilityOne contracts outweighed the benefit reduction risk that some employees might face. These commenters also observed that reductions or loss of benefits was not a problem specific to the AbilityOne Program, but rather a broader issue about how the nation's system to assist individuals with disabilities can limit full employment. One NPA that noted this point stated that the focus should be on advocating for legislative efforts aimed at benefits reform.

2. Discussion

The Commission has been concerned from the outset that the elimination of subminimum and sub-prevailing wages could harm individuals with disabilities who rely on government income and health benefits. As the comments indicate, however, there is a wide range of Federal and state government programs designed to mitigate the impact and fear of benefits reduction. The Commission has also determined that the potential loss of government benefits for some employees is not a sufficient basis to abandon a rule that will provide significant financial benefits to a large number of individuals.

It is beyond the scope of this rule for the Commission to mandate that all NPAs have professional benefits counselors on staff or for the CNAs to provide such resources. However, SourceAmerica's ''14(c) Transition Program'' has already provided such resources to participating NPAs and can continue to do so for additional NPAs. The AbilityOne Commission will also develop a list of resources that NPAs can access and will make that list available on its website. Finally, the Commission observes that concerns regarding benefit reductions because of increased wages is a larger issue that requires engagement beyond the AbilityOne Program. The Commission will share the relevant comments with the Department of Health and Human Services, the Social Security Administration, and other agencies with cognizance over these topics.

3. Change

The Commission has made no change to this section of the rule.

E. Concerns Regarding Reduced Working Hours and Job Losses

1. Comments

One NPA stated that its budget could not absorb the increased salary expenses that the rule would require. This commenter stated they would need to reduce working hours for their employees with disabilities or, in some cases, terminate their employment. The commenter did not provide specific data to substantiate the anticipated adverse impact on employment or hours worked by employees with disabilities.

Two NPAs shared their success in transitioning away from section 14(c) certificates without dramatic adverse impacts on their employees in terms of working hours or jobs. Each of these NPAs described how they were able to pay their workers fair wages and benefits within their existing contracts.

2. Discussion

The Commission recognizes that NPAs vary in size and budget and will thus experience different budget constraints in increasing wages. The allowance of a request for an extension of up to 12 months is designed to provide NPAs a more individualized approach to plan for change in a way that benefits its workforce without causing an adverse impact on the delivery of products and services to Federal customers.

3. Change

The Commission has made no change to this section of the rule.

F. Expansion of the Current Rule

1. Comments

Several commenters asked the Commission to expand the rule and prohibit NPAs, as a matter of Program qualification, from using 14(c) certificates at all, whether their employees were working on an AbilityOne contract or not. The commenters observed that since the 75 percent direct labor hour ratio requirement extended to the entire NPA, and not simply to its AbilityOne contracts, the prohibition on use of section 14(c) certificates should similarly apply to the entire NPA.

Several commenters applauded the rule as significant progress in advancing the rights of individuals with disabilities. However, they noted that more needed to be done to achieve competitive, integrated employment for people who are blind or have significant disabilities. Commenters offered a range of ideas for how the Commission could achieve such changes in the Program, including requirements for NPAs to help their employees move to employment outside of AbilityOne jobs.

2. Discussion

The Commission appreciates the argument that to be qualified to participate in the AbilityOne program, NPAs should be precluded from using 14(c) certificates anywhere in their workforce. However, such a requirement would be a significant change from the proposed rule and the Commission believes it should provide an opportunity for separate notice and comment if it decides such a requirement is appropriate.

This rule is a foundational step for ensuring that all AbilityOne NPA employees with disabilities on AbilityOne contracts receive competitive wages for the work they perform. The Commission also agrees that additional steps must be taken to

modernize the AbilityOne Program, but those changes are beyond the scope of this rule.

3. Change

The Commission has made no change to this section of the rule.

Regulatory Procedures

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility. E.O. 13563 further recognizes that some benefits are difficult to quantify and provided that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

A. Costs of Prohibiting the Use of Section 14(c) Certificates as a Qualification for Participation in the AbilityOne Program

The Commission believes the costs of requiring all new NPAs seeking initial qualification to participate in the Program, and participating NPAs wishing to maintain Program qualification, to certify they will not pay subminimum or sub-prevailing wages under a 14(c) certificate on AbilityOne contracts are not substantial and are outweighed by the benefits of the rule.

No NIB-associated NPA uses 14(c) certificates to pay its employees on AbilityOne contracts. Those NPAs will not be affected by this rule.

SourceAmerica-associated NPAs performing services contracts are generally subject to Executive Order 14026 and its implementing DOL regulation. Under that regulation, the covered NPAs must pay at least the Executive order minimum wage (currently $15.00 per hour and will be subject to inflationary increases in future years) for work on or in connection with covered Federal contracts. This rule will therefore not have an impact on those NPAs covered by Executive Order 14026 and DOL's implementing rule, except where the prevailing wage is higher than the Executive order minimum wage (currently $15.00 per hour).

The NPAs who will be affected by this rule are those who hold product contracts with the Federal Government and use 14(c) certificates to pay their employees below the federal or state minimum wage. Given the concerted efforts by NPAs, supported by SourceAmerica, to reduce their use of 14(c) certificates, 120 of the 449 participating NPAs still use such certificates on some AbilityOne contracts. Those workers are clustered within 24 of the 120 NPAs. In terms of absolute numbers, this translates into approximately 1,200 employees, or approximately 3% of the AbilityOne workforce.

Based on first quarter (Q1) FY 2022 data collected by AbilityOne, there are also approximately 550–750 employees working on services contracts who earn at least the Federal minimum wage but less than the prevailing wage. To the extent that the prevailing wage is higher than the Executive order minimum wage (currently $15.00 per hour), this rule will result in increased wages for those employees. Those commenters who stated they could not absorb the increased costs did not provide the Commission with any specific budget numbers for such increases or details on why they could not manage those costs.

The Commission recognizes that increased wages may trigger benefit reductions for some individuals with disabilities depending on their individual circumstances. However, as described in this **SUPPLEMENTARY INFORMATION**, there are various Federal and state programs designed to mitigate this risk.

With regard to benefits of the rule, paying individuals with disabilities the same hourly wage as individuals without disabilities performing same or similar work provides both tangible and intangible benefits. Individuals with disabilities earning subminimum or sub-prevailing wages will now earn the Federal minimum wage, state minimum wage or prevailing wage. The tangible benefits to these individuals are identical to any worker experiencing a wage increase, including increased personal wealth and economic independence, and an increased ability to improve aspects of daily life requiring a higher level of financial resources.

The intangible benefits are harder to quantify, but these benefits accrue to individuals with disabilities as well as our larger society. Paying individuals with disabilities wages equal to the legal wage requirements for individuals without disabilities performing same or similar work sends a clear message of equity and fairness that work should be valued equally. Removing subminimum or sub-prevailing wages helps further a culture of inclusion and enhances the dignity and life experiences of individuals with disabilities. Opportunities to earn higher wages leads to increased levels of self-sufficiency and less dependence on services or government assistance.

Final Regulatory Flexibility Analysis

This final rule was reviewed under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and is likely to have a significant economic impact on a substantial number of small entities. The RFA also requires preparation of a final regulatory flexibility analysis, or a certification by the head of the agency that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and a factual statement supporting the certification.

The rule only imposes a burden on NPAs still paying subminimum or sub-prevailing wages under section 14(c) certificates. When the NPRM was published, the Commission stated that SourceAmerica's available data revealed 142 associated NPAs were utilizing section 14(c) certificates. Following publication, SourceAmerica provided updated data from first quarter FY 2022 showing 120 NPAs still paying either subminimum or sub-prevailing wages to just over 2,900 individuals with disabilities, which is slightly higher than ten percent of the total SourceAmerica AbilityOne work force of approximately 28,000 employees.

Of this number, 1,750 employees were working on services contracts that would be governed by the provisions of the DOL rule implementing E.O. 14026, which took effect January 2022. Employees working on or in connection with such contracts would therefore be paid at least the new Executive order minimum wage (currently $15.00 per hour) for work on or in connection with

covered contracts as required by the rule. However, if such employees are being paid pursuant to a section 14(c) certificate, they can still be paid less than the prevailing wage. Data self-reported to SourceAmerica by associated NPAs shows approximately 550–750 employees being paid at least the Executive order minimum wage but less than the prevailing wage. After the effective date of this rule, those employees will be required to be paid the prevailing wage.

The remaining approximately 1,200 employees work primarily on product contracts and are clustered within a handful of NPAs (approximately 24) relative to the overall number of just under 450 participating NPAs. After the effective date of this rule, these employees will be paid at least the Federal minimum wage or the higher state minimum wage.

Accordingly, the Commission certifies this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no final regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The final rule requires the Commission to collect information within its Annual Representations and Certifications regarding the certification not to pay subminimum wages under 14(c) certificates to employees. The Commission collects similar information (overall wages) but does not currently or specifically collect a certification not to pay subminimum or sub-prevailing wages under section 14(c) certificates to employees.

A more complete discussion of the need for this final rule is located throughout the Supplementary Information. In summary, the Commission has determined that payment of subminimum or sub-prevailing wages under 14(c) certificates to individuals with disabilities working in the AbilityOne Program is not consistent with modern disability policy. Paying individuals with disabilities less than individuals without disabilities performing same or similar work continues wage disparity in the Program.

For the reasons set forth above, the Commission is adding a new requirement for NPAs to initially qualify and maintain qualification in the Program. Pursuant to this rule, NPAs must certify that after the effective date, on all new AbilityOne contracts awarded, after the effective date, on options exercised on existing contracts, and on contract extensions or renewals, the NPA will not pay individuals with disabilities subminimum or sub-prevailing wages under a 14(c) certificate. The Commission will collect information regarding compliance with this new requirement through documentation submitted for initial qualification, and on the Annual Representations and Certifications form.

Unfunded Mandates Reform Act of 1995

The final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, taken together, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Authority: 41 U.S.C. 8503(d).

List of Subjects in 41 CFR Part 51–4

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Commission amends 41 CFR part 51–4 as follows:

PART 51–4–NONPROFIT AGENCIES

■ 1. The authority citation for part 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

■ 2. Amend § 51–4.2 by adding paragraph (a)(1)(iv) and revising paragraph (b) to read as follows:

§ 51–4.2 Initial qualification.

(a) * * *

(1) * * *

(iv) A certification that the nonprofit agency will not use wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract awarded under the AbilityOne Program.

* * * * *

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status and certification under paragraph (a)(1)(iv) of this section under the under the Javits-Wagner-O'Day Act.

* * * * *

■ 3. Amend § 51–4.3 by adding paragraph (b)(10) to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(10) Certify the nonprofit agency will not use wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract under the AbilityOne Program.

* * * * *

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–15561 Filed 7–20–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2019–0115; FF09E23000 FXES1111090FEDR 223]

RIN 1018–BD84

Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (''the Service'') is rescinding the rule titled ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat'' that published on December 18, 2020, and became effective January 19, 2021. The rule set forth new regulations addressing how we exclude areas of critical habitat under section 4(b)(2) of the Endangered Species Act of 1973, as amended, outlining when and how the Service will undertake an exclusion analysis. This action removes the regulations established by that rule.

DATES: This final rule is effective August 22, 2022.

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are available on the internet at *https://www.regulations.gov* in Docket No. FWS–HQ–ES–2019–0115.

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–2171. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.