

and obligations. In B-333732, for instance, we concluded that USDA's 2021 Thrifty Food Plan substantially affected non-agency parties because it increased the maximum benefit allotments for qualifying families under the Supplemental Nutrition Assistance Program (SNAP).

Here, by reference to the above cases, the Multimodal NOFO has substantial effects on the rights and obligations of non-agency parties. While the Multimodal NOFO does not, itself, establish a new grant program like the USDA notice in B-334146, it defines the FY 2023-2024 eligibility requirements, selection criteria, and funding ranges for three existing DOT grant programs. Multimodal NOFO, at 4-5. Each of these programs offers potential DOT funding to a wide range of non-agency parties, as discussed above, which makes DOT's actions in the Multimodal NOFO comparable to USDA's actions in B-334146 and B-333732. In the present case, as in B-334146 and B-333732, the agency's actions "determine[d] whether and in what amount [a non-agency] entity may receive funding", which ?substantially affects the rights or obligations of those non-agency parties." B-334146.

In its response to us, DOT asserts that the Multimodal NOFO is an "exempt procedural rule." DOT relies upon four prior GAO decisions: B-330190, Dec. 19, 2018, B-329926, Sept. 10, 2018, B-329916, May 17, 2018, and B-292045, May 19, 2003. Response Letter, at 5.⁴ Each of these decisions is distinguishable, however, because they involved changes to agencies' internal conduct with only indirect and insubstantial effects on the rights and obligations of non-agency parties. See B-330190 (finding CRA inapplicable to agency memorandum that "outline[d] the agency's internal procedure for addressing violations of 8 U.S.C. 51325(a)"); B-329926 (finding CRA inapplicable to agency manual governing "the use of evidence from the Internet" by agency officials during adjudicatory proceedings); B-329916 (finding CRA inapplicable to Internal Revenue Service action that "shifts the timing of a step in the agency's process" for reviewing tax returns); B-292045 (finding CRA inapplicable to a Department of Veterans Affairs (VA) memorandum announcing a change in VA's procedures for disposal of real property because it "relat[ed] to agency management" and did not "affect any party's right or obligation"). None of these actions was directed at non-agency parties or concerned, like the Multimodal NOFO and the agency actions in B-334146 and B-333732, with specifying the terms and conditions for non-agency parties to apply to receive federal funds. B-330190; B-329926; B-329916; B-292045.

Relatedly, DOT relies on *Batterton v. Marshall*, 648 F.2d 694 (D.C. Cir. 1980) to distinguish "legislative" from "procedural" rules and urge that rules "may alter the manner in which the parties present themselves or their viewpoints to the agency" without affecting rights or interests. Response Letter, at 4 (citation omitted). However, *Batterton* concerned the distinction between "legislative" and other rules for purposes of applying APA notice-and-comment requirements. See *Batterton*, 648 F.2d at 707. As the legislative history of CRA makes clear, a rule may be nonlegislative and exempt from APA notice-and-comment requirements while still being subject to CRA's submission requirements. A principal sponsor of the CRA legislation stated that:

Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code, these types of documents are covered under the congress-

sional review [CRA] provisions of the new chapter 8 of title 5.

142 Cong. Rec. H3005 (daily ed. Mar 28, 1996) (Statement of Rep. McIntosh); see also B-331171, Dec. 17, 2020 ("The sponsors of CRA intended the definition of rule to be as broad as possible to ensure congressional review of agency action."). Here, as discussed above, the Multimodal NOFO does more than just alter the manner in which certain parties present themselves to DOT, it determines whether and in what amount non-agency entities may receive funding from the federal government.

DOT also asserts that the Multimodal NOFO's "requirements for eligible applicants, cost sharing requirements, eligible project types, and eligible project costs" did not originate with the Multimodal NOFO but come directly from the "detailed statutory authorit[ies]" governing DOT's grant programs. Response Letter, at 4. In other words, according to DOT, "any rights and obligations" at issue in this matter "are prescribed by existing laws," not by the Multimodal NOFO. Id. We acknowledge that the statutes governing DOT's grant programs are detailed in many respects and establish eligibility and other criteria outlined in the Multimodal NOFO. However, it is not the case that the Multimodal NOFO did nothing more than echo terms and conditions already set forth in DOT's program statutes. Those statutes left DOT with clear discretion and gap-filling authority in many respects. For example, the statute governing the National Infrastructure Project Assistance program states that applications shall be submitted "at such time, in such manner, and containing such information as [DOT] determines to be appropriate." 49 U.S.C. § 6701 (c). It also instructs DOT to "determin[e]" whether a given project applying for grant funds "is in need of significant Federal funding" and "will be cost-effective," among other things. Id. § 6701 (f). In the Multimodal NOFO, DOT exercised its discretion to elaborate upon these statutory terms by defining the "time" and "manner" in which applications must be submitted and specifying detailed "information" requirements. See, e.g., Multimodal NOFO, at 1-3 (stating deadlines and "anticipated" funding amounts not set forth in DOT's program statutes). With respect to the issue of whether projects will be "cost-effective," for example, the Multimodal NOFO outlines a "recommended approach for the completion and submission of a benefit-cost analysis (BCA) narrative and calculation file," as well as encouraging applicants to "review DOT's detailed guidance" cited in the Multimodal NOFO. Id. at 42. By providing detailed instructions in this and other respects, the Multimodal NOFO affected "whether and in what amount [non-agency] entit[ies] may receive funding", which, once again, "substantially affects the[ir] rights or obligations." B-334146.

Finally, DOT asserts that the Multimodal NOFO is "not a final agency action" and is "exempt" from CRA because no applicant is "obligated to apply for" or "entitled to receive" the advertised funding, and because DOT has yet to make the "final project selections" that may result in grant awards. Response Letter, at 6 (citation omitted). However, DOT did not distinguish the funding notice in B-334146, which, like the Multimodal NOFO, was discretionary and left final award decisions contingent upon further action by USDA. See, e.g., USDA, Partnerships for Climate-Smart Commodities, USDA-NRCS-COMM-22-NOF00001 139, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppld=337878> (last visited Sept. 19, 2023) (outlining an opportunity for "[d]iscretionary" grants). A grant notice need not announce mandatory funding or

make final award decisions in order to have a substantial effect on the rights and obligations of non-agency parties. B-334146. Rather, as we have explained, an agency action may be "non-binding" and contemplate "further action" without therefore becoming "eligible for CRA's procedural exception." B-334032.2, Apr. 5, 2023 ("CRA's requirements are applicable to general statements of policy that lack legally binding effects.") (citation omitted). Here, DOT's announcement of criteria that "determine[d] whether and in what amount [a non-agency] entity may receive funding" is sufficient to make the Multimodal NOFO ineligible for that exception. See B-334146.

CONCLUSION

The Multimodal NOFO is a rule under CRA because it meets the APA's definition of a rule and no CRA exception applies. Therefore, the Multimodal NOFO is subject to CRA's requirement that it be submitted to Congress before it can take effect.

(Signed) Edda Emmanuelli Perez, General Counsel.

ENDNOTES

1. Under the general rubric of improving highways, highway-safety, and transit programs, each program focuses on particular types of improvement projects, in line with their titles and corresponding IIJA provisions. Two of these programs—the Rural Surface Transportation grant program and the National Infrastructure Project Assistance grants program—originated with the LLJA. LLJA §§ 11110, 11132; id. § 21201.

2. DOT previously announced and awarded funding for the FY 2022-2023 period via a publication titled Notice of Funding Opportunity for the Department of Transportation's Project Discretionary Grant Opportunity, 87 Fed. Reg. 17108 (Mar. 25, 2022).

3. Alternatively, an agency can find for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, and the rule will then take effect at a time the agency determines. 5 U.S.C. § 808(2).

4. Additionally, DOT urges that the Multimodal NOFO is distinguishable from the grant notices in B-33416 because USDA in that case exercised "general statutory authority" to "accomplish certain enumerated statutory ends." Response Letter, at 5. However, GAO's determination that the notice of funding opportunities at issue in B-334146 did not qualify for the CRA's third exception was based on the effects of USDA's actions on non-agency parties, as discussed above, not on the general or specific nature of USDA's statutory authority.

COMMEMORATING THE CHRISTENING OF THE USCGC "ARGUS"

Mr. SCOTT of Florida. Mr. President, this week marks a monumental occasion in enhancing our national security when Eastern Shipbuilding Group's Nelson Shipyard in Panama City, FL, officially christens and launches the U.S. Coast Guard Offshore Patrol Cutter Argus (WMSM-915). The first in its class, the Argus is paving the way of replacing an aging fleet of cutters and improving the capabilities needed to respond to an array of national security threats across a dynamic maritime domain.

Businesses like Eastern Shipbuilding Group and their many skilled workers and suppliers, are the backbone of our economy as they continue to create opportunities for the people of Florida

and expand the national security capabilities of our country. The official christening and launch will be celebrated on October 27, 2023. We, members of the U.S. Senate, recognize the ongoing service of Eastern Shipbuilding Group to provide our military with capable, war-ready ships and thank the U.S. Coast Guard for ensuring the safety and well-being of Americans across the Nation.

ADDITIONAL STATEMENTS

REMEMBERING COOKIE BIBLE

• Ms. CORTEZ MASTO. Mr. President, today I rise to recognize the life and legacy of Cookie Bible, an extraordinary Nevadan who touched the lives of countless women and families in her adopted State. She passed peacefully in Reno, NV, on Saturday, June 3, 2023, at the age of 77.

LaVerne Jo "Cookie" McManus was born in San Francisco; on July 30, 1945, and grew up under her grandmother's care to become widely known as a strong advocate for women's health. Cookie was a fourth-generation San Franciscan; however, she was proud to be a "true blue" Nevadan. She fell in love with the Nevada side of Lake Tahoe where she met and married into the family of U.S. Senator Alan Bible and was a resident of Zephyr Cove ever since. Her neighbors affectionately called her "Mayor of the Cove."

Following graduation from Orvis School of Nursing at the University of Nevada, Reno, with a bachelor of science in nursing in 1971, Cookie became a certified Nurses Association of The American College of Obstetricians and Gynecologists Nurse Practitioner in OB/GYN in 1980. She rose to State and national prominence, serving on the Nevada Board of Nursing, as well as the National Council of State Boards of Nursing in leadership positions.

In 2003, she received the Exceptional Leadership Award from the National Council of State Boards of Nursing, where she chaired the nurse practice, education, and regulatory and nominating committees.

Cookie was the lead nurse practitioner with Planned Parenthood Mar Monte region for nearly 20 years. She served as an adjunct faculty member for Orvis School of Nursing and held contracts with both the State of Nevada and Washoe County Health Department. She was in private women's healthcare practice from 2004–2017. She was also a founding member of Douglas County Council for Abused Women and the Nevada Women's Fund.

In addition, Cookie dedicated much of her life to Girl Scouts—12 years as a girl and 56 years as a Girl Scout adult. She was a past president of the Sierra Nevada region of Girl Scouts of America. She continued to buy cartons of Girl Scout cookies to share with charities and dinner guests.

Seeing patients from ages 14 to 80-plus years old was her professional pas-

sion, in addition to teaching and training at the University of Nevada, Reno, and Truckee Meadows Community College and lecturing before various groups. With a second home in Boulder City, Cookie was a dedicated women's care provider for Volunteers in Medicine in southern Nevada.

Cookie was a member of St. John in the Wilderness Episcopal Church for more than 30 years, serving in leadership positions, as well as greeting guests and parishioners in the historic lakeside church on the grounds of Camp Galilee at Glenbrook, Lake Tahoe.

A world traveler, Cookie enjoyed great adventures from China to Italy to the Galapagos Islands. But she loved Nevada best. She was happiest hiking on trails in the Sierra Nevada Mountains with her dog Zephyr, spending time on the beach, and gathering her family and friends for barbecues in her backyard.

At every opportunity, Cookie demonstrated her strong commitment to the women of Nevada. I know that her work, advocacy, and dedication to women's health will not be forgotten. I ask my colleagues to join me in remembering Cookie for her significant impact in Nevada. I celebrate Cookie's legacy, and I extend my deepest condolences to her family and friends.●

TRIBUTE TO SHERM ANDERSON

• Mr. DAINES. Mr. President, today I have the distinct honor of recognizing Sherm Anderson of Powell County for his long-standing dedication to Montana's timber industry, carrying out his family's entrepreneurial spirit in his hometown of Deer Lodge and for selflessly serving the greater Powell County community. His perseverance in his personal and professional life helps the State of Montana maintain its vital wood products industry.

Sherm's dedication to healthy Montana forests first began when he was a teenager driving a logging truck. Years later, he and his wife Bonnie went on to form the Sun Mountain Lumber forest products company, which employs hundreds of people and serves as the Treasure State's largest lumber mill and North America's largest finger joint plant. Sun Mountain Lumber plays a vital role in the Deer Lodge Valley economy and continues to have an impact across the State. Earlier this year, Sherm purchased R-Y Timber, a Livingston, MT, sawmill, that was shuttered following a devastating fire—and saved even more logging jobs. Montanans are lucky to have this forest products powerhouse right in our backyard.

When it comes to Sherm's accomplished work history, he served in the Montana State Legislature, branched out into real estate and construction, operates a fitness center, contributes to a local auto museum, maintains his own 1,200-acre ranch, and most recently invested in the town's old hos-

pital complex in order to renovate it into workforce housing. As Sherm continues to weather the volatility of the timber industry, he understands that collaboration is critical to keeping important wood product jobs viable and also ensuring our forest lands remain healthy for generations to come. It is clear Sherm understands the importance in working with folks from all backgrounds to make southwestern Montana a better place to live and work.

It is my distinct honor to recognize Sherm Anderson for his passion to preserve our shared Montana way of life. The Anderson family has created a multigenerational legacy that promotes fruitful forest stewardship. "Montana Proud!"●

RECOGNIZING SECRET SERENITY SALON AND SPA

• Ms. ERNST. Mr. President, as ranking member of the Senate Committee on Small Business and Entrepreneurship, each week I recognize an outstanding Iowa small business that exemplifies the American entrepreneurial spirit. This week, it is my privilege to recognize Secret Serenity Salon and Spa of Harlan, IA, as the Senate Small Business of the Week during National Women's Small Business Month.

Founded by Tami Kloewer in 2007, Secret Serenity Salon and Spa is a full-service salon serving customers in western Iowa communities. Secret Serenity Salon and Spa offers hair, nail, and skin care services, as well as a spa and retail store in their shop. Secret Serenity Salon and Spa started with Tami as the only employee but has grown to now employ 21 full- and part-time employees. In addition to their in-store services, their retail store offers a variety of beauty care products for all types of skin and hair needs. In 2023, Secret Serenity Salon and Spa celebrated its 16th business anniversary.

In addition to providing beauty services, Secret Serenity Salon and Spa is also actively involved in the Harlan community. In February 2022, Secret Serenity Salon and Spa participated in a Women's Health Night event hosted by Myrtue Medical Center in Harlan. The event provided local women with routine health screenings while Secret Serenity Salon and Spa offered free chair massages to participants. The team has also supported philanthropies to help the local schools, retirement centers, and hospital. Secret Serenity Salon and Spa is a member of the Shelby County Chamber of Commerce and Industry and has hosted the chamber's annual Holiday Open House. Owner Tami Kloewer is also involved in the Iowa community. In 2020, Tami Kloewer was nominated to serve on the Iowa Board of Cosmetology Arts and Sciences by Gov. Kim Reynolds and served on the board until 2023.

Secret Serenity Salon and Spa's commitment to providing beauty care in