

of paragraph (c)(1), insert the word “the” between “on” and “nature”.

**Aron L. Cosby,**

*Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2024–27427 Filed 11–22–24; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 81

[Docket No. CRM 120; AG Order No. 6090–2024]

RIN 1105–AB57

### Implementing the Child Pornography Victims Reserve

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule finalizes with changes the Notice of Proposed Rulemaking (“NPRM”) published by Department of Justice (“Department” or “DOJ”) to implement the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, which established the Child Pornography Victims Reserve to provide defined monetary assistance to eligible individuals who are depicted in child pornography that is the basis for certain convictions.

**DATES:** This final rule is effective November 25, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Pierce, Senior Advisor, Office for Victims of Crime, 810 7th Street NW, Rm. 2246, Washington, DC 20531, telephone (202) 307–6785 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### I. Executive Summary

Congress established the Child Pornography Victims Reserve (“Reserve”) to provide defined monetary assistance to eligible individuals who are depicted in child pornography that is the basis for certain convictions under chapter 110 of title 18. The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (“the AVAA” or “the Act”), Public Law 115–299, secs. 4–5, 132 Stat 4383, 4385–88, codified at 18 U.S.C. 2259, 2259A, and 2259B, and 34 U.S.C. 20101(d). Under 18 U.S.C. 2259(d), a United States district court may order payment from the Reserve to a victim of a defendant convicted in Federal court of trafficking in child pornography depicting that victim. The Department,

pursuant to this final rule, will make a payment from the Reserve to such child pornography victims based on orders obtained in United States district courts.<sup>1</sup>

The Department published an NPRM on June 5, 2023, Implementing the Child Pornography Victims Reserve, 88 FR 36516, proposing to implement the AVAA, and received public comments.

The Department is now issuing this final rule pursuant to 18 U.S.C. 2259B(c), which provides that the Attorney General shall issue regulations to implement the payment of defined monetary assistance out of the Reserve. This final rule outlines procedures for persons to request to apply through the Department for a court order determining eligibility and directing payment of defined monetary assistance. It is not intended to limit how a claimant might seek an order for defined monetary assistance directly from a court.

As set forth in more detail below, if a claimant chooses to proceed through the Department, the Department may present the claimant’s application for a court order. (“Claimant” means the person who claims to be a victim of trafficking in child pornography and to be eligible for the defined monetary assistance under 18 U.S.C. 2259(d), and “victim” or “victim of trafficking in child pornography” means a person whom a Federal court has determined, under 18 U.S.C. 2259(d)(1)(B), to be a victim of trafficking in child pornography.) The Department will provide payment from the Reserve to the victim (or an authorized representative, if applicable) pursuant to a court order issued under 18 U.S.C. 2259(d)(1)(C), upon receipt of the order and the requisite information from the claimant following instructions on the Department’s website for this program: <https://www.justice.gov/DMAVR>.

The final rule also sets forth procedures by which persons may submit requests to the Department, including through their attorney, a legal guardian (in the case of claimants under the age of 18 or who are incompetent, incapacitated, or deceased), or a representative authorized by the claimant, which includes a personal representative of an estate (for deceased claimants) (collectively, “authorized

<sup>1</sup> This rule uses the term “child pornography,” instead of the currently preferred term “child sexual abuse material,” to match the language used in the Act. To avoid using the term “child pornography” in resource and application materials directed to potential claimants, however, the Department will describe the Child Pornography Victims Reserve established by the Act as the “Defined Monetary Assistance Victims Reserve” in such resource and application materials.

representative”). The final rule is procedural in nature, implementing a process by which a claimant may request that the Department facilitate the claimant’s request that a court make a determination of eligibility pursuant to the eligibility requirements of the Act. It does not create new rights or impose obligations independent of the statute, and it does not create an attorney-client relationship between the claimant and any Department attorney.

#### II. Background

Under Federal law, victims of child pornography offenses are entitled to full and timely restitution from defendants charged and convicted in Federal court, including restitution for losses caused by conduct such as the possession, receipt, viewing, transportation, and distribution of child pornography. See 18 U.S.C. 2259. Restitution is imposed upon an individual criminal defendant by a Federal court in connection with sentencing, and the obligation to pay restitution is part of the defendant’s criminal sentence. See *id.*; see also 18 U.S.C. 3663A. The Federal Government bears the burden of proving that the defendant owes restitution to a victim, although a defendant can agree to pay restitution as part of a plea agreement. In order for a court to impose a restitution obligation on a child pornography trafficking defendant, the Federal Government, represented by the prosecutor, must prove the following:

- **Victim status:** This element means that the person seeking restitution is a victim, *i.e.*, that the person has been harmed as a result of the commission of a Federal child pornography trafficking crime.

- **Losses:** This element refers to the amount of losses incurred by the victim, both since the offense took place and that are reasonably projected to be incurred in the future. There is no statutory limit on how much restitution may be ordered to be paid to a victim, but there must be a sufficient evidentiary basis to prove that all of the losses have been or are reasonably projected to be incurred. The statute permits recovery for the following types of losses: medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; reasonable attorneys’ fees, as well as other costs incurred; and any other relevant losses incurred by the victim. 18 U.S.C. 2259(c)(2). Restitution losses are limited to actual monetary losses and should not be confused with amounts of money a victim might be

awarded for pain and suffering or punitive damages in a civil tort lawsuit.

- *Causation*: As discussed in more detail below, this element requires proof that the losses were caused in the aggregate by the trade in child pornography depicting the victim.

- *Amount*: In cases where multiple defendants contributed to the victim's losses, the court must determine how much each individual defendant should pay to the victim.

In all Federal cases, restitution is obtained on a case-by-case basis. Because child pornography can be possessed and shared by many different unrelated criminal defendants and distributed repeatedly, a single child pornography trafficking victim may receive restitution orders in hundreds of individual criminal cases being brought in different Federal courts all over the country. Under current law, each of these defendants is ordered to pay some portion of the victim's overall losses. Once the victim has collected payment for the full amount of the victim's losses from one or more defendants, no further restitution orders can be imposed on additional defendants on the victim's behalf unless new losses are incurred. See 18 U.S.C. 2259(b)(2)(C).

In 2009, a victim sought restitution for the first time, not from the individual who sexually abused her and produced and shared the images, but from individuals who subsequently traded and collected those images. A small number of other child pornography victims subsequently sought similar restitution. Federal prosecutors across the country were soon seeking restitution for victims in Federal courts in child pornography possession, receipt, and distribution cases.

Despite the Department's overall success in obtaining orders of restitution for these victims, courts were inconsistent in their approach to restitution claims. Some courts struggled to determine whether an individual defendant convicted of possession, receipt, or distribution proximately caused a victim's losses. If a defendant was only one of thousands who harmed the victim, then some courts indicated that the defendant could not be said to have caused the victim's losses because those losses would be essentially the same if that particular defendant had never committed the crime. On that logic, some courts simply denied the restitution requests. Others demanded a showing as to how much an individual defendant's crime incrementally increased the victim's losses, imposing a generally insurmountable evidentiary burden. Among courts that awarded

restitution, many grappled with how to determine the amount that the defendant should pay to the victim.

These issues were brought to the Supreme Court in *Paroline v. United States*, 572 U.S. 434 (2014). After finding that section 2259 required proof of proximate causation for all the categories of losses referenced in the statute, the Court summed up the problem this way:

In this case . . . , a showing of but-for causation cannot be made. . . . From the victim's perspective, Paroline was just one of thousands of anonymous possessors. . . . [I]t is not possible to prove that her losses would be less (and by how much) but for one possessor's individual role in the large, loosely connected network through which her images circulate. Even without Paroline's offense, thousands would have viewed and would in the future view the victim's images, so it cannot be shown that her trauma and attendant losses would have been any different but for Paroline's offense.

*Id.* at 450 (internal citations omitted).

To resolve this dilemma, the Court adopted the less demanding aggregate causation standard:

[A]lternative and less demanding causal standards are necessary in certain circumstances to vindicate the law's purposes. It would be anomalous to turn away a person harmed by the combined acts of many wrongdoers simply because none of those wrongdoers alone caused the harm. And it would be nonsensical to adopt a rule whereby individuals hurt by the combined wrongful acts of many (and thus in many instances hurt more badly than otherwise) would have no redress, whereas individuals hurt by the acts of one person alone would have a remedy.

*Id.* at 452. Therefore, the Court concluded:

In this special context, where it can be shown both that a defendant possessed a victim's images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual defendant by recourse to a more traditional causal inquiry, a court applying § 2259 should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses.

*Id.* at 458. The Court then considered how district courts might determine the amount a given defendant should pay a victim in restitution. To provide guidance, the Court cited a number of factors courts might consider, including "the number of past criminal defendants found to have contributed to the victim's general losses; . . . whether the defendant reproduced or distributed images of the victim; whether the defendant had any connection to the

initial production of the images; how many images of the victim the defendant possessed; and other facts relevant to the defendant's relative causal role." *Id.* at 460.

The aggregate causation standard is easily understood and applied. To the extent that restitution is contested, the dispute is often solely over how much a defendant should be ordered to pay a given victim.

Nonetheless, even after *Paroline*, few victims exercised their right to restitution. It appeared that the process of tracking hundreds of cases around the country over the course of years was too burdensome. Almost all victims seeking restitution in child pornography trafficking cases hire an attorney to help coordinate the logistics. In addition, although the Government bears the burden of proving restitution, in order to submit estimates of future losses, many victims hire psychological experts and economic analysts to help prepare their claims. The necessity of engaging multiple experts has served as a barrier that prevents victims from seeking restitution at all.

Congress therefore enacted the AVAA to create an alternative system to allow victims of trafficking in child pornography to obtain some measure of compensation (called "defined monetary assistance") without having to prove their losses. The process of obtaining defined monetary assistance is an alternative to the traditional means of seeking restitution as part of a Federal prosecution. Providing the defined monetary assistance alternative is meant to ameliorate the structural impediments that prevent victims from claiming restitution while preserving the option of obtaining full restitution for those who wish to do so. Under the terms of the statute, victims of these types of child pornography offenses can choose whether to present their full restitution claims in court through prosecutors, as is currently done, obtain a one-time payment of defined monetary assistance, or both, depending on the circumstances. The amount of defined monetary assistance in 2019 was \$35,000, but the amount is adjusted for inflation over time. 18 U.S.C. 2259(d)(1)(D).

The Act provides that the "Attorney General shall administer" the Reserve. See 18 U.S.C. 2259B(c). The determination regarding victim eligibility for the payment is made by the court. The procedural details of the Department's administration of the Reserve and the substantive law applicable to the court's determination are discussed in Part IV of this preamble.

### III. Discussion of Comments Received on the NPRM

Notice of the proposed rule was published in the **Federal Register** on June 5, 2023. Before the comment period closed on August 4, 2023, comments were received from 11 commenters.<sup>2</sup> These comments were largely supportive of the rule and focused primarily on seeking additional information about how the Department plans to implement the rule. The Department has made a few amendments to the rule in response to some of the comments. The Department also amended § 81.55(c) to clarify that claimants should not submit videos, in addition to not submitting images, of child pornography as supporting information because transmitting videos of child pornography could also potentially violate Federal law. A discussion of comments received, and the Department's responses, follows.

#### A. Comment From the Administrative Office of the United States Courts ("AO")

1. The AO stated that the proposed rule does "not provide specifics as to the information the Department will require victims to provide as part of th[e] application process" and does "not address how the applications will be presented to the courts for a determination of eligibility." Another commenter similarly stated that the rule should provide that the Department's website contain certain specified information and be accessible for at least 30 days before "program commencement."

*Response.* The proposed rule stated that the Department, through its website, will set out the specific information that a claimant will be required to submit. The Department declines to amend the rule to require that the website be accessible for 30 days before requests for applications to a court can be submitted, given uncertainty about the time it will take to build the new website and portal; requiring a fixed amount of time before submission of requests would delay the ability of eligible victims to submit their requests through the Department if they choose to do so. The Department will address how applications will be presented to the courts through internal guidance. The Department anticipates that it and the AO will continue to

collaborate on the implementation of the Reserve.

#### B. Comments From the National Center for Missing & Exploited Children ("NCMEC")

1. NCMEC stated that the proposed rule is "largely silent . . . regarding the timing and details of the process for when DOJ will present a victim's claim for payment to a federal court" and that, absent more specific deadlines or assurances of promptness, the Department's process may be delayed, which would in turn impede victims from obtaining payment. Two commenters stated that the proposed rule should contain specific time limitations by which the Department will act in connection with a claimant's request for payment from the Reserve.

*Response.* The statute does not provide any deadline or limitations period for submitting a claim for defined monetary assistance to a court. The Department likewise declines to impose a deadline or limitations period on itself because it lacks sufficient information at this time to do so. It does not know, for example, the number of individuals who will request that the Department apply for an order of defined monetary assistance, the number of claims that will be pending in court at any given moment, or the extent to which the Department will need to adopt additional internal measures to ensure that only those individuals determined by a court to be eligible for payment under the statute receive such payment. The Department does, however, commit itself to taking reasonable measures to ensure prompt payment to eligible individuals. Moreover, and in any event, the procedures set forth in this rule do not limit a claimant's ability to request an order for defined monetary assistance directly from a court.

2. NCMEC stated that the proposed rule does "not provide any details or even basic descriptions of what actual information a survivor will be required to submit to DOJ to support a claim." Relatedly, NCMEC stated that the proposed rule should make clear that although a victim can fairly be required to provide some information in support of a claim for payment from the Reserve, "the research and effort needed to draft a suitable federal court submission in this situation remains DOJ's responsibility."

*Response.* A court will ultimately determine what information is necessary to support a claim for defined monetary assistance, and this rule does not limit a claimant's ability to request an order for defined monetary assistance

directly from a court. If a claimant requests that the Department submit an application for an order for defined monetary assistance on the claimant's behalf, and the Department determines under the procedures set forth in this rule that it will do so, the Department will use reasonable efforts to facilitate the submission of the application to the court. In general, where the Department is presenting an application to a court to determine a claimant's eligibility, the research and drafting of the court submission remains the responsibility of the Department attorney representing the Government. However, the claimant is responsible for providing the information to support their claim and for providing responses to follow-up requests for information from the Department.

The proposed rule requested comment on the appropriate criteria to be included in the claim form and noted that, to enable the Department to collect information from claimants to facilitate applications to courts and payments from the Reserve, the Department would submit an information collection request and publish a notice of a new Privacy Act system of records upon publication of the final rule. 88 FR at 36521. These procedural requirements are set forth by law, and the Department declines to change the rule to provide for a different process. Following this process, the Department anticipates posting a "claim form" on its website that will allow claimants (1) to request that the Department present an application to the court or (2) if a claimant already has a court order determining eligibility and directing payment, to provide the information necessary for the Department to facilitate that payment.

The proposed rule further explained that the Department's website will set forth the information that a claimant will be required to submit to the Department in furtherance of a claim for payment from the Reserve. Because the information required may be modified by the courts, the Department needs the flexibility to update its claim form in response to case law as it develops. And because the Department believes that the website will be sufficient to provide appropriate information to claimants, no change will be made to the rule in that respect. The Department notes that, in general, it will collect information to establish the identity of the claimant, the basis for the claim for eligibility for defined monetary assistance, the identity and authority of the person submitting the form, and the identity of any attorney representing the claimant

<sup>2</sup> The Department also received one web submission from a person who indicated that the person's comment was included as an attachment. No attachment was included, however, and the Department did not receive any response from the submitter after inquiring about the apparently missing attachment.

or person submitting the form, if applicable.

3. NCMEC stated that the proposed rule should contain “more specific and concrete language . . . about the efforts” the Department will take to ensure a claimant’s privacy. Another commenter also expressed concerns about protections for claimant privacy.

*Response.* In response to this comment, the Department is revising the final rule to state that the Department will not publicly disclose any claimant’s personally identifiable information, except as necessary to process a request or as required by law or court order. More generally, the Department will undertake to protect all victims’ privacy consistent with applicable laws, rules, and Department policies and procedures. *See, e.g.,* 18 U.S.C. 3509(d)(1) (providing for confidentiality of information that discloses the name or any other information concerning a child); 18 U.S.C. 3771(a)(8) (stating victims’ right to be treated with respect for privacy); *see also* 5 U.S.C. 552a (Privacy Act).

4. NCMEC stated that the proposed rule “contain[s] no indication of how DOJ will interpret constitutional and statutory disclosure obligations to defendants or whether disclosure of victim information will be handled differently if a claim is submitted to the court after a defendant has already been sentenced.”

*Response.* The AVAA establishes an entitlement to defined monetary payment to a victim of a “defendant who was convicted of trafficking in child pornography.” 18 U.S.C. 2259(d)(1)(B). The Department interprets the conviction component of this requirement to mean a final judgment of conviction, after sentencing, although the Department may submit an application for an order of defined monetary assistance for the court to decide in conjunction with a defendant’s sentencing. The Department does not anticipate handling victim information differently based on whether a defendant has been sentenced. Moreover, the Department cannot opine in advance on how a particular constitutional or statutory provision will apply to the facts of a specific case. The Department will, however, abide by all constitutional and statutory disclosure obligations and, as noted above, protect all victims’ privacy consistent with applicable laws, rules, and Department policies and procedures.

5. NCMEC stated that the proposed rule should require the Department to “submit any facially valid application” to the court and “leave it to the court

alone to make” eligibility determinations.

*Response.* The Department declines to modify the rule as suggested. Because the Department is obligated to administer the Reserve in a manner consistent with the AVAA and other applicable law, the Department declines to adopt a requirement that it submit any facially valid application. Instead, the Department will take reasonable steps to ensure that defined monetary assistance is paid only to claimants who qualify for payment under the statute, and it will determine whether to support a claimant’s application accordingly. Moreover, the procedures set forth in this rule do not limit a claimant’s ability to request an order for defined monetary assistance directly from a court. In addition, the AVAA establishes, and the rule already provides, that courts have the sole authority to determine whether an individual is entitled to payment under the statute.

#### C. Other Comments

1. One commenter stated that the proposed rule should provide that the Department must seek to obtain an order of payment within 90 days after the claimant’s request is complete, absent extraordinary circumstances.

*Response.* Due to uncertainty regarding the number of individuals who will request that the Department apply for payment, the number of claims that will be pending at any given moment, and the Department’s need to ensure that only those individuals determined by a court to be eligible for payment under the statute receive such payment, the Department has decided not to impose specific timelines on itself. The Department does, however, commit itself to taking reasonable measures to ensure prompt payment to eligible individuals.

2. One commenter suggested that the proposed rule make clear that victims of open or closed (or “completed”) cases are entitled to seek payment and that the Department will consider both open and closed or “completed” cases in determining the claimant’s eligibility for payment.

*Response.* The statute does not distinguish between victims in open and closed cases. The Department has revised the final rule to clarify that victims of open or closed cases are eligible to seek payment under the statute. Although victims in open or closed cases may request that the Department apply for a court order of payment from the Reserve, the requirements for eligibility for payment are established by statute, and

satisfaction of those requirements are determined by a court. One of the requirements for eligibility is that the claimant is a victim of a defendant who has been convicted of trafficking in child pornography.

3. One commenter stated that the proposed rule should make clear that if the Department determines that it will recommend against payment to a claimant, the Department: (1) will give the claimant at least 14 days advance notice before informing the court of its position; (2) will meet and confer with the claimant and give meaningful consideration to the claimant’s concerns; and (3) will, if the Department maintains its position, inform the claimant that the claimant can seek payment through the court independent of the Department.

*Response.* The Department has revised the final rule to clarify that if the Department determines that it will recommend against the court ordering payment, the Department will make reasonable efforts to inform the claimant (or the claimant’s authorized representative, if applicable) of that recommendation prior to providing that recommendation to the court. However, due to uncertainty regarding the number of individuals who will request that the Department apply for payment, the number of claims that will be pending at any given moment, and the Department’s need to ensure that only those individuals determined by a court to be eligible for payment under the statute receive such payment, the Department cannot commit itself to acting within a prescribed time limit. A claimant may submit a new application to the Department to correct shortcomings in an earlier application, so long as the new application contains material, additional information supporting the claimant’s eligibility for defined monetary assistance. A claimant may also choose to present an application without proceeding through the Department under this final rule.

4. Two commenters stated that the proposed rule should make clear that payment can be paid to a claimant’s representative. One of those commenters further offered that the rule should state what documentary evidence is required for the Department to deem a representative “authorized.”

*Response.* The Department has revised the final rule to clarify that payment can be made to a victim’s authorized representative, where appropriate. *See* 18 U.S.C. 2259(c)(4) (“In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative

of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the crime victim's rights under this section."'). The Department's website will provide information concerning the types of documentation that will suffice to prove that a representative is "authorized."

5. One commenter stated that the proposed rule should, at least with respect to claims supported by a verified Federal judgment or restitution order, provide for a "presumption of eligibility" regarding those claims.

*Response.* The statute establishes the criteria for eligibility and does not include a presumption of eligibility. A court ultimately determines whether a claimant is eligible.

6. One commenter stated that the proposed rule should make clear "that criminal restitution or civil damages amounts collected *before* submitting a claim . . . need not be deducted from the defined monetary assistance remitted to the claimant."

*Response.* The AVAA contains provisions outlining the relationship between payment from the Reserve and payment in the form of restitution. See 18 U.S.C. 2259(d)(2)–(3). Section 2259(d)(2)(C) specifies that the amount a victim received in defined monetary assistance must be deducted from the total amount of losses subsequently sought in restitution. The Department has added a statement in the rule to make it clear that this statutory deduction applies only to restitution sought after a victim receives defined monetary assistance. The amount of restitution received need not be deducted from the amount of defined monetary assistance. Once a victim has collected restitution in an amount greater than the amount of defined monetary assistance, however, the victim would be ineligible for defined monetary assistance in any amount.

Regarding amounts received before the receipt of defined monetary assistance, section 2259(d)(3) provides that "[a] victim who has collected payment of restitution pursuant to this section in an amount greater than the amount [of defined monetary assistance] shall be ineligible to receive defined monetary assistance." In preparing this final rule, the Department determined that the discussion regarding this provision in the preamble of the NPRM, see 88 FR at 36519, was incorrect because it assumed that a victim who received restitution in an amount *equal* to the amount of defined monetary assistance would be ineligible to seek defined monetary assistance. This assumption is incorrect because the

statute provides for ineligibility only if the victim has collected restitution in an amount "greater than" the amount of defined monetary assistance. The Department clarifies here that the examples in the preamble of the NPRM were inaccurate and that a victim who has received restitution in an amount less than *or equal* to the amount of defined monetary assistance may continue to seek the full amount of defined monetary assistance.

7. One commenter stated that the proposed rule should clarify "all" potential reasons that the Department might cite as a basis to decline a request for payment.

*Response.* The Department is committed to taking reasonable measures to ensure that eligible claimants receive payment from the Reserve, consistent with the statute. Because the Department is unable to predict all possible requests that it might receive, the Department declines to provide an exhaustive list of reasons why the Department would decline a request to support an application for payment. Moreover, only a court, not the Department, can order, or decline to order, payment to a claimant.

8. One commenter stated that the proposed rule should make clear that funds paid out from the Reserve "ought not be considered taxable income as a matter of public policy."

*Response.* The Department does not have the authority to determine what is considered taxable income. The Internal Revenue Code defines income and provides specific items that are excluded from income. As a general rule, unless a payment or benefit is specifically excluded, it is considered income.

9. One commenter stated that claimants may have a difficult time submitting the necessary documentation to the Department and recommended that the rule "give greater deference to delaying the adjudication of requests than the returning of them."

*Response.* The Department is committed to taking reasonable measures to ensure that eligible victims receive payment from the Reserve, consistent with the statute. In that respect, the Department is committed to working with claimants to obtain missing information before returning a request to them. The rule provides that the Department will make "reasonable efforts" to request missing information from a claimant and will make "reasonable efforts" to identify a Federal criminal case in which a claimant's application might be submitted. The Department under the rule accordingly has discretion to

determine, based on the claimant's circumstances, whether to delay the return of an application to allow a claimant additional time to submit documentation. If, however, after reasonable efforts, the Department is unable to obtain the necessary information or identify such a case, it cannot present the claimant's application to a court and will return the request to the claimant. The Department does not "adjudicate" the application in doing so. Neither this rule nor the Department's return of a request limits the claimant's ability to present an application to a court. Moreover, a claimant may submit a new application to the Department to correct shortcomings in an earlier application, so long as the new application contains material, additional information supporting the claimant's eligibility for defined monetary assistance.

10. One commenter recommended that the Department inform victims of their right potentially to obtain compensation from "their particular state jurisdiction."

*Response.* The Department declines to amend the rule to include information about other sources of compensation because this rule focuses on defined monetary assistance. The Department already provides information about other victim compensation and assistance on its website: <https://ovc.ojp.gov/help-for-victims/help-in-your-state>.

11. One commenter stated that the proposed rule should require the creation of a system "to notify potential claimants" of their "potential eligibility" for payment.

*Response.* The Department declines to amend the rule to require creation of a notification system. The AVAA does not provide for the creation of such a system, and the Department does not possess the information necessary to set up a system of that nature. For example, the Department does not regularly track restitution payments and thus would not know whether a claimant has already received more than the amount of defined monetary assistance in restitution, which would make the claimant ineligible under the statute. Moreover, a court, not the Department, determines whether a claimant is eligible.

#### IV. Process To Obtain Defined Monetary Assistance From the Reserve

Pursuant to 18 U.S.C. 2259(d)(1)(B) and (C), a district court determines whether a claimant is eligible to receive defined monetary assistance, and, if it makes such a finding, orders payment of defined monetary assistance to the

victim or the victim's authorized representative. The Act does not specify any application process, but it does authorize the Attorney General to administer the Reserve. Pursuant to this authorization, the Department has established the process set forth in this final rule to allow claimants to request that the Department facilitate obtainment of the requisite district court order for the victim.

#### A. Request and Review Process

This final rule is designed to assist claimants in obtaining court determinations of eligibility for payment of defined monetary assistance from the Reserve. As discussed more fully below, defined monetary assistance is distinct from court-ordered restitution.

Under the final rule, claimants may choose to request that the Department present an application to a court for the court's determination of eligibility for defined monetary assistance. The Department will review the request and may follow up as needed to seek additional information from the claimant or the claimant's authorized representative in order to resolve any gaps in the claimant's supporting information. It is the claimant's responsibility to present evidence sufficient to establish a complete request, but in no instance will the claimant be required to send—nor shall the claimant send—any images or videos of child pornography. A request is complete where it is supported by all information required by the claim form and by responses to follow-up requests for information. The Department will not present an application based on a request that is incomplete or duplicative of a request that the Department has already received. The Department will provide notice to a claimant if it decides not to present the requested application to the court.

After the Department receives a claimant's request, and the Department has exhausted reasonable efforts to obtain any needed additional information from the claimant, the Department will use reasonable efforts to identify a Federal child pornography trafficking case in which a visual depiction of the claimant was involved. The Department will consider any cases identified by the claimant as well as any in which the Department has independent information linking the claimant to a Federal child pornography trafficking case. If, based on the information in the request, the claimant might be eligible for defined monetary assistance as a result of more than one case, the Department, in its sole

discretion, will decide in which case it will present the application.

It may take time for the Department to identify an appropriate case to seek the required court order or to determine which of several potential cases is the most appropriate. The Department will endeavor to obtain the order in a timely manner.

#### B. Presentment of an Application for an Order Affirming Eligibility

Once the Department identifies an appropriate case, the Department will present the claimant's application to the district court, which may then issue an order affirming the claimant's eligibility for payment. The mere presentment of an application to a court does not imply that the Department has taken a position on the ultimate merits of the application. The Department may or may not (as it deems appropriate) present the application with an accompanying recommendation—for example, the Department may include a recommendation that the court grant the application where the Department is persuaded that the statutory standard for payment is met. Conversely, the Department may recommend that the court deny the application if it is not persuaded that the statutory standard for payment is met. If the Department determines that it will recommend against the court ordering payment, the Department will make reasonable efforts to inform the claimant (or the claimant's authorized representative, if applicable) of such recommendation prior to any presentation of the claimant's application to the court.

In the event that the Department disagrees with the court's eligibility determination, the Department may decide to seek appellate review of a ruling by a district court regarding the claimant's eligibility for defined monetary assistance. The Department will make reasonable efforts to consult with the claimant (or the claimant's authorized representative, if applicable), on the issue of seeking appellate review.

Depending on the basis for the court's ruling, the Department may seek to present the claim underlying a denied application in another case when it would be appropriate to do so. The Department will make reasonable efforts to consult with the claimant (or the claimant's authorized representative, if applicable) about any decision to present a claim in another case.

If an application is denied by the district court, no appellate review is taken or such appellate review is unsuccessful, and the claim underlying an application is not presented in another case, the claimant will not

receive defined monetary assistance on the basis of the claimant's request to the Department. If the claimant resubmits a request to the Department with material, additional supporting information, the Department may present that new application as consistent with these regulations.

#### C. Payment

Once the court issues an order of payment, the Department will pay the victim (or an authorized representative, if applicable) the defined monetary assistance from the Reserve, as specified in the order. Payment will typically be made via electronic funds transfer facilitated by the Department of the Treasury, but the Department may use other methods (e.g., physical check) depending on the circumstances and technology or systems in place at the time of payment. Any money received may be subject to Federal, State, or local taxes.

#### D. Limits on Attorney Representative Fees and Costs

There is no fee to submit a request to the Department when seeking defined monetary assistance from the Reserve, and a claimant (or authorized representative, if applicable) may submit a request for defined monetary assistance without being represented by an attorney. Nonetheless, a claimant (or authorized representative, if applicable) may hire an attorney for this purpose; it will be entirely the claimant's or authorized representative's decision whether to do so. Under 18 U.S.C. 2259(d)(4), if the claimant or authorized representative is represented by counsel, the attorney shall not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any defined monetary assistance paid under the Act on such claim. An attorney who violates this provision is subject to fine, imprisonment of up to one year, or both.

#### E. Privacy

Claimant submissions will not be made public and will be protected and used only in accordance with applicable law, including the Privacy Act of 1974, 5 U.S.C. 552a. Pursuant to 5 U.S.C. 552a, 18 U.S.C. 3509(d)(1), and 18 U.S.C. 3771(a)(8), the Department will not disclose to the public the names of the individuals who have requested defined monetary assistance from the Reserve or the names of the deceased claimants for whom defined monetary assistance is sought from the Reserve, or their personally identifiable information, except as necessary to

process a request or application or obtain a court order, to bring a criminal or civil case against an individual for obtaining defined monetary assistance by fraud, or pursuant to law or court order. However, the fact that a victim has received defined monetary assistance may be introduced in a Federal criminal proceeding where the amount of the victim's losses is at issue.

In Department filings, the Department will protect the confidentiality of names and other personally identifiable information, including by submitting filings under seal, consistent with applicable law, rules, and Department policies and procedures.

The process of providing a claimant with access to information held by the Government will be subject to all applicable laws and regulations, including the Privacy Act of 1974, 5 U.S.C. 552a, and subpart B of part 16 of title 28, Code of Federal Regulations.

#### *F. Victim Choice as to Defined Monetary Assistance Versus Restitution*

Victims may choose to pursue restitution; to pursue defined monetary assistance; or to pursue some combination of the two, whether in the same case or in multiple cases, as appropriate. 18 U.S.C. 2259(d)(3) provides that a victim who has previously collected restitution in an amount greater than the amount of the defined monetary assistance available under section 2259(d)(1)(D) is ineligible to seek defined monetary assistance. A victim who has collected restitution in an amount less than or equal to the amount of defined monetary assistance (*i.e.*, less than or equal to \$35,000, adjusted for inflation as of the date of application and as described above) is eligible to seek defined monetary assistance. Although the statute does not define the term "collected," the word "collected" ordinarily means amounts actually received, not merely amounts ordered but not yet paid. *See, e.g., Collect*, Oxford English Dictionary, <https://www.oed.com/view/Entry/36263> (last visited July 22, 2024) (defining "collect" to mean "to receive money"). There is often a lag between order and payment. The amount collected is the aggregated payment from all defendants. Once victims have collected an amount of restitution greater than the amount of defined monetary assistance, they become ineligible to obtain defined monetary assistance. For example, a defendant may have been ordered to pay a victim \$50,000 in restitution, but the victim to date might have received only \$5,000. That victim would remain eligible for defined monetary assistance until the victim collects more than

\$35,000 (inflation-adjusted) in restitution. If a victim obtains orders for restitution, and then receives defined monetary assistance, the amount of the defined monetary assistance must be disclosed if the victim is later asked to provide information to a court concerning the amount of recovery collected pursuant to 18 U.S.C. 2259. *See* 18 U.S.C. 2259(b)(2)(C), (d)(2)(C). Collection of forms of monetary recovery other than restitution, such as from a civil suit, does not affect a victim's eligibility for defined monetary assistance.

#### *G. One-Time Defined Monetary Assistance Payment; Effect on Restitution and Civil Remedies*

Under 18 U.S.C. 2259(d)(2)(A), a victim may receive a payment of defined monetary assistance only once. Even after receiving such a payment, a victim can, under 18 U.S.C. 2259(d)(2)(B), decide to seek restitution in court pursuant to 18 U.S.C. 2259. However, 18 U.S.C. 2259(d)(2)(C) specifies that the amount a victim received in defined monetary assistance must be deducted from the total amount of losses subsequently sought in restitution. For example, if a victim obtains defined monetary assistance in the amount of \$35,000, and in a later case pursues a restitution claim for \$100,000, the maximum amount recoverable on the latter claim would be \$65,000.

Obtaining restitution or defined monetary assistance does not bar victims from seeking a civil remedy, such as under 18 U.S.C. 2255, although either may impact the amount the victims recover in a civil suit.

#### *H. Statutory Requirements for Eligibility*

Defined monetary assistance is available to any eligible "victim of . . . trafficking in child pornography." 18 U.S.C. 2259(d)(1)(A). The Act imposes three requirements for payment of defined monetary assistance.

First, the claimant must appear in child pornography that has been trafficked. "Trafficking in child pornography" is defined in 18 U.S.C. 2259(c)(3) by reference to statutes that prohibit advertising, transporting, distributing, receiving, or possessing child pornography, or accessing child pornography with intent to view it.

Second, at least one defendant must have been convicted in Federal court of conduct (advertising, transporting, distributing, receiving, or possessing child pornography, or accessing child pornography with intent to view it) involving a visual depiction of the claimant. The Act imposes no time

limits on when the conviction must have occurred. Any qualifying conviction serves as a basis for establishing a claimant's eligibility for defined monetary assistance, so long as there is sufficient evidence to obtain a court order as required under the statute.

Sometimes the evidence may suggest that the defendant possessed child pornography depicting a particular victim, but the defendant's conviction was for a different crime. This could happen if child pornography involving Victim A was found on a defendant's computer, but the defendant was actually convicted of producing child pornography of Victim B or distributing child pornography depicting Victim C. Victim A would not be entitled to defined monetary assistance based upon that case, though Victim A might be eligible in a different case.

A single conviction is sufficient to establish a claimant's eligibility. There is no need under the Act to prove that the claimant was a victim in more than one conviction for trafficking in child pornography.

Third, the claimant must appear in a visual depiction that shows "sexually explicit conduct" as defined in 18 U.S.C. 2256(2)(A) and must have been under the age of 18 at the time the visual depiction was created.

Not all images of children being traded online meet this definition of sexually explicit conduct. As one example, some individuals may appear in imagery that is illegal under State law, but that is not prohibited under Federal law. Because such images do not depict "sexually explicit conduct" as defined in section 2256, individuals appearing in such material would not be eligible for defined monetary assistance. In order to obtain defined monetary assistance, the claimant would need to establish that a defendant was convicted of a Federal offense involving the sexually explicit imagery.

A claimant need not be a United States citizen and need not reside in the United States in order to be eligible for defined monetary assistance.

#### *I. Section-by-Section Overview of Final Rule*

Section 81.51 sets forth the statutory basis for and the purpose of the Reserve, as well as the statutory one-time payment amount.

Section 81.52 provides the definitions applicable to this subpart. If a term is not defined in section 81.52, the term has the statutory definition at 18 U.S.C. 2256, 2259, 2259A, or 2259B.

Section 81.53 provides certain requirements for eligibility for a

payment from the Reserve, including burden of proof and eligibility exclusions, and specifies the effect of collecting defined monetary assistance on later requests for restitution.

Section 81.54 provides a description for how persons may submit requests to the Department for funds from the Reserve using an online portal located on the Department's website for this program. Additional information as to how to submit a request to the Department will be available on the website.

Section 81.55 explains that the claimant must follow the directions on the Department's website for this program to submit a request to the Department for monetary assistance. Failure to submit all required documentation would potentially result in delay of the adjudication or return of the request by the Department.

Section 81.56 details the procedures to determine a personal representative to request and receive funds on the claimant's behalf.

Section 81.57 provides the process by which requests submitted to the Department for defined monetary assistance and court orders requiring payment will be processed by the Department.

Section 81.58 sets forth signatures and certifications required for a request to the Department to be considered complete.

Section 81.59 provides information related to privacy and confidentiality of claimants' names and other personally identifiable information during the course of the request process.

## V. Regulatory Analyses

### A. Administrative Procedure Act

This final rule concerns matters relating to "benefits," 5 U.S.C. 553(a)(2), and also to "rules of . . . agency procedure," 5 U.S.C. 553(b)(A). Therefore, it is exempt from the requirement of prior notice and comment and from a delay in its effective date.

Nevertheless, the Department believed that comments from the public would be useful in developing these regulatory changes. Consequently, on June 5, 2023, 88 FR 36516, the Department published a notice of proposed rulemaking and solicited public comments on this matter. The comments received and the Department's responses thereto are set forth in Part III above.

### B. Executive Orders 12866, 13563, and 14094 (Regulatory Review)

This final rule has been drafted and reviewed in accordance with Executive

Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation; in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation; and in accordance with Executive Order 14094, "Modernizing Regulatory Review".

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866. The rule is primarily procedural, dealing with the administrative process of submitting requests to the Department for defined monetary assistance. The key eligibility standards are set forth in the statute, and the Department is not by this final rule making any changes to those standards.

As set forth in the cost-benefit analysis below, this final rule will not have the economic effects described in section 3(f)(1) of Executive Order 12866.

This regulation has no cost to State, local, or Tribal governments, or to the private sector. The Child Pornography Victims Reserve is funded by assessments paid by certain Federal offenders, as well as gifts, bequests, or donations from private individuals, deposited into the Crime Victims Fund in the United States Treasury and set aside in the Reserve; those funds may not be obligated in an amount above \$10 million in any given year. See 18 U.S.C. 2259B(a); 34 U.S.C. 20101(d)(6).

The cost to the Federal Government consists both of administrative expenses and amounts distributed to victims. Both types of costs depend on the number of claimants, including both prospective and retroactive claimants.

Although spending is anticipated to be higher in the initial years as a result of the number of potential retroactive claimants, the program will not spend more than the statutory maximum of \$10 million each fiscal year. That is, even if claimants submit requests for defined monetary assistance that, in the aggregate, exceed \$10 million in one year, the Department will spend no more than \$10 million, and will pay only those claims that can be satisfied from that amount. In such a circumstance, claims will be paid based on the date on which courts ordered the payments, with the earliest-ordered payments made first. See 18 U.S.C. 2259B(b). Once the Department has paid out the allotted \$10 million dollars in any given fiscal year, the requests that remain unpaid will roll over into the next fiscal year and will be processed in the original order in which they were ordered. The Department will also follow the same order-of-payment procedure in any other situation in

which the Reserve has insufficient funds to make all of the payments ordered under section 2259(d).

The Department has assessed the benefits and costs anticipated from this rulemaking and has considered whether there are reasonably feasible alternatives to this rulemaking, including whether there are reasonably viable non-regulatory actions that could be taken in lieu of this rulemaking. The purpose of this rulemaking is to provide the legal and administrative framework for defined monetary assistance to be given to any individual (or an authorized representative of such individual) who is determined by a Federal court to be a victim of trafficking in child pornography as defined by 18 U.S.C. 2259(c) and (d). The Department concludes that there are no viable non-regulatory actions that it could take to implement the AVAA in a fair and efficient manner.

### C. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, the Department has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.

### D. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This regulation pertains to defined monetary assistance for eligible individuals who are depicted in child pornography that is the basis for certain convictions under 18 U.S.C. chapter 110. The Reserve will provide payment to such child pornography victims based on orders obtained in U.S. district courts.

### E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.



*F. Paperwork Reduction Act of 1995*

This final rule implements 18 U.S.C. 2259, 2259A, 2259B, and 34 U.S.C. 20101(d), which establish the Reserve and define eligibility for payments from the Reserve. In order to evaluate requests and provide defined monetary assistance, the Department must collect certain information from individuals who are depicted in child pornography that is the basis for certain convictions under 18 U.S.C. chapter 110, or from their authorized representatives. Accordingly, the Department's Executive Office for United States Attorneys will submit an information collection request for review and clearance in accordance with the procedures of the Paperwork Reduction Act of 1995.

*G. Privacy Act of 1974*

The Department will publish a notice of a new Privacy Act system of records upon publication of the final rule, which will become effective upon publication, subject to a 30-day comment period for the routine uses claimed in the notice. In the interim, disclosures necessary to process requests will be made only with the prior written consent of claimants or as otherwise authorized under 5 U.S.C. 552a(b).

*H. Severability*

It is the Department's intent that if any provision of this rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the remainder of the provision or rule shall be workable and construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this part and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**List of Subjects in 28 CFR Part 81**

Child abuse, Child pornography, Victims, Restitution, Benefits.

By the authority vested in the Attorney General under 5 U.S.C. 301 and 28 U.S.C. 509, 510, and for the reasons stated in the preamble, 28 CFR part 81 is amended as follows:

**PART 81—CHILD ABUSE AND CHILD PORNOGRAPHY REPORTING DESIGNATIONS AND PROCEDURES, AND CHILD PORNOGRAPHY VICTIMS RESERVE**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 28 U.S.C. 509, 510; 42 U.S.C. 13031, 13032.

■ 2. Revise the heading for part 81 to read as set forth above.

**§§ 81.1 through 81.5 [Designated as Subpart A]**

■ 3. Designate §§ 81.1 through 81.5 as subpart A.

■ 4. Add a heading for newly designated subpart A to read as follows:

**Subpart A—Child Abuse and Child Pornography Reporting Designations and Procedures****§§ 81.14 through 81.50 [Added and Reserved]**

■ 5. Amend subpart B by adding and reserving §§ 81.14 through 81.50.

■ 6. Add subpart C to read as follows:

**Subpart C—Child Pornography Victims Reserve**

Sec.

81.51 Child Pornography Victims Reserve.

81.52 Definitions.

81.53 Eligibility.

81.54 Submission of requests to the Department.

81.55 Supporting information.

81.56 Procedures for determining the personal representative of an estate.

81.57 Request and order processing.

81.58 Signatures and certifications.

81.59 Privacy.

**Authority:** 18 U.S.C. 2259, 2259A, 2259B; 28 U.S.C. 509, 510; 34 U.S.C. 20101(d), 20341.

**§ 81.51 Child Pornography Victims Reserve.**

The Child Pornography Victims Reserve ("Reserve") was established on December 7, 2018, to provide a source of defined monetary assistance for eligible victims of trafficking in child pornography, pursuant to 18 U.S.C. 2259(d). Pursuant to the authority of the Department of Justice ("the Department") to administer the Reserve, the Department will—

(a) Accept a request that the Department seek a court order for a determination of eligibility for defined monetary assistance from a claimant who chooses to proceed through the Department;

(b) Process such request and use reasonable efforts to follow up with such claimant to obtain information

sufficient for a court to determine the claimant's eligibility for defined monetary assistance;

(c) Upon confirming that the request to the Department is complete and not duplicative of a previously received request, use reasonable efforts to identify a Federal child pornography trafficking case in which an image of the identified victim appears and in which the Department may present an application for court determination of the claimant's eligibility; and

(d) Pay a claimant (or an authorized representative, if applicable) pursuant to a Federal court order determining that such claimant is eligible to receive defined monetary assistance.

**§ 81.52 Definitions.**

(a) If a term is not defined in this section, the statutory definition at 18 U.S.C. 2256, 2259, 2259A, or 2259B applies to the submission and processing of requests to the Department.

(b) *Authorized representative* means an attorney or legal guardian (for claimants under age 18, incompetent, or incapacitated) of a claimant, the personal representative of a deceased claimant's estate, any other person appointed as a representative of a claimant by a Federal court pursuant to 18 U.S.C. 2259(c)(4), or a personal representative designated by the claimant to act on the claimant's behalf.

(c) *Claimant* means the person who claims to be a victim of trafficking in child pornography and to be eligible for the defined monetary assistance at 18 U.S.C. 2259(d).

(d) *Reserve* means the Child Pornography Victims Reserve set forth in 34 U.S.C. 20101(d)(6). The Department may also refer to the Reserve as the Defined Monetary Assistance Victims Reserve.

(e) *Victim or victim of trafficking in child pornography* means a person whom a Federal court has determined, under 18 U.S.C. 2259(d)(1)(B), to be a victim of trafficking in child pornography.

**§ 81.53 Eligibility.**

(a) *Presentment of claims for payment to Federal courts.* If a claimant chooses to submit a request to the Department, the Department shall review a properly submitted request and, as necessary, ask the claimant (or the claimant's authorized representative, if applicable) for additional information to support the request. Once the Department confirms the request is complete and not duplicative of a previously received request, the Department will use reasonable efforts to find an appropriate

case in which to present the claim by means of an application for an order of payment of defined monetary assistance in a Federal court. An appropriate case may be an open or closed case. If the Department is unable to locate an appropriate case, it will notify the claimant and may decline to present the claim. If the Department presents the claimant's application to a court, the Department may include a recommendation as to whether the court should grant or deny the application.

(b) *Determination by a court.* A Federal court will make the determination, under 18 U.S.C. 2259(d)(1)(B), as to whether a claimant is entitled to defined monetary assistance from the Reserve and, if so, shall order payment in the amount specified in 18 U.S.C. 2259(d)(1)(D). This amount is \$35,000 as adjusted for inflation from December 7, 2018, based on the date of the court's order, in accordance with 18 U.S.C. 2259(d)(1)(D).

(c) *Payment.* The Department shall pay to the victim (or the victim's authorized representative, if applicable) from the Reserve the defined monetary assistance set forth in 18 U.S.C. 2259, in accordance with the applicable Federal court order and consistent with 18 U.S.C. 2259B(b).

(d) *Exclusions.* (1) A victim may obtain defined monetary assistance under 18 U.S.C. 2259(d) only once. See 18 U.S.C. 2259(d)(2)(A).

(2) In no event shall an individual who is convicted of an act described in 18 U.S.C. chapter 110, with respect to the victim, receive any defined monetary assistance from the Reserve on behalf of the victim. See 18 U.S.C. 2259(c)(4).

(3) Claimants who have collected restitution payments in excess of \$35,000 (as adjusted for inflation from December 7, 2018) pursuant to 18 U.S.C. 2259 are not eligible to receive defined monetary assistance under this program. See 18 U.S.C. 2259(d)(3).

(e) *Effect on restitution.* If a victim has received defined monetary assistance and, after receiving that defined monetary assistance, seeks restitution, the amount the victim received in defined monetary assistance must be deducted when determining the full amount of the victim's losses for purposes of restitution. See 18 U.S.C. 2259(d)(2)(C).

#### **§ 81.54 Submission of requests to the Department.**

(a) Requests submitted to the Department must be submitted in the form and manner, and supported by documentation, specified from time to

time by the Department. The Department's website will contain directions on how to access the claims system for defined monetary assistance.

(b) Requests may be submitted to the Department at any time. The Department may decline to present to a court any application based on a request that duplicates a previously received request. A request duplicates a previously received request if it is submitted by or in connection with the same claimant and is premised on the same conduct as the previously received request. If a claimant obtains new information relevant to a claim after submitting a request, the claimant should amend that request rather than submitting a new request. If the Department has already returned the request to the claimant, the claimant may submit a new request, so long as such request contains material, additional information supporting the claimant's eligibility for defined monetary assistance.

(c) If a claimant is represented by an authorized representative, the request to the Department and any supporting information may be submitted to the Department by that authorized representative. The authorized representative must submit a separate request on behalf of each represented claimant.

#### **§ 81.55 Supporting information.**

(a) As part of a request to the Department, the claimant should submit information as instructed by the Department. The Department's website will provide instruction about what information is required in support of a claim. Failure to submit all required information may result in delay or a decision by the Department not to present the claimant's application to a court.

(b) All information supporting the request should be updated as necessary while the request to the Department is pending, including the amounts of any restitution collected, address changes, changes to information needed to process payment to the claimant, and any other pertinent information that may be relevant to the request.

(c) To avoid a potential violation of Federal law, claimants (or authorized representatives, if applicable) shall not send images or videos of child pornography when providing supporting information.

#### **§ 81.56 Procedures for determining the personal representative of an estate.**

(a) *In general.* For any request to the Department by the estate of a deceased claimant, the personal representative of

the estate, who will be the authorized representative for purposes of defined monetary assistance from the Reserve, shall be determined as follows:

(1) First preference will be given to an individual appointed by a court of competent jurisdiction as the personal representative of the deceased claimant or as the executor or administrator of the deceased claimant's will or estate.

(2) In the event that no personal representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, the next preferred personal representative for purposes of defined monetary assistance from the Reserve will be the person named by the deceased claimant in the deceased claimant's will as the executor or administrator of the deceased claimant's estate.

(3) In the event that no will exists, the next preference for personal representative for purposes of defined monetary assistance from the Reserve will be the first person in the line of succession for inheritance established by the laws of the deceased claimant's domicile governing intestacy. In the case where State law provides for two or more persons to inherit in equal shares (e.g., parents or siblings), the defined monetary assistance payment will be split accordingly.

(4) In the event that none of the individuals described in paragraphs (a)(1) through (3) of this section are available to serve as personal representative, any other person may seek to be appointed by a court of competent jurisdiction as the personal representative for purposes of defined monetary assistance from the Reserve. Upon appointment, that person will serve as personal representative.

(b) *Notice to beneficiaries.* (1) Any purported personal representative must, before submitting a request to the Department, provide written notice of the intent to submit a request and the procedures in paragraph (c) of this section to object to such status as personal representative to the immediate family of the deceased claimant; to the executor, administrator, and beneficiaries of the deceased claimant's will; and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the deceased claimant.

(2) Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this subpart. The

purported personal representative must certify that such notice (or other notice that the Department deems appropriate) has been given.

(c) *Objections to personal representatives.* Objections to the authority of an individual to file as the personal representative of a deceased claimant may be submitted to the Department, as instructed on the Department's website for this program, by parties who assert a financial interest in the award. Any such objection must be submitted within 30 days following receipt of notice by the personal representative as defined under this section. If timely submitted, such objections shall be treated as evidence of a "dispute" under paragraph (d) of this section.

(d) *Disputes as to the identity of the personal representative.* The Department will not, and shall not be required to, arbitrate, litigate, or otherwise resolve any dispute as to the identity of the personal representative. In the event of a dispute over the appropriate personal representative, the Department may suspend or return a request to the claimant without prejudice to its later resubmission and may withhold any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree in writing to the identity of a personal representative to act on their behalf, who may seek and accept defined monetary assistance from the Reserve while the disputing parties work to settle their dispute.

#### **§ 81.57 Request and order processing.**

(a) Upon receipt of a request to the Department, the Department will review it and may follow up with the claimant (or authorized representative, if applicable) to resolve any gaps in the request's supporting information.

(b) The Department will then use reasonable efforts to identify an open or closed Federal criminal case involving the claimant to present the claimant's application (with supporting information, as appropriate) for a court to determine the claimant's eligibility to receive defined monetary assistance. If the Department is unable to locate such a case, it will notify the claimant (or the claimant's authorized representative, if applicable). If the Department presents the claimant's application to a court, in its sole discretion, the Department may or may not present the claim with an accompanying recommendation that the court order payment or not. If the Department determines that it will recommend against the court ordering

payment, the Department will make reasonable efforts to inform the claimant (or the claimant's authorized representative, if applicable) of such recommendation prior to any presentation of the application to the court.

(c) If a court issues an order requiring payment to any claimant, the Department will process payment of defined monetary assistance to the claimant or, where appropriate, to the claimant's authorized representative, in accordance with the order in the amount specified therein, upon receipt of the order and the requisite information from the claimant following instructions on the Department's website for this program. Failure to submit all required information to the Department may result in delay of payment.

(d) If the court issues an order denying eligibility based on an application submitted by the Department, the Department will notify the claimant (or the claimant's authorized representative, if applicable). The Department may decide to seek appellate review of a ruling by a district court regarding a claimant's eligibility for defined monetary assistance. The Department will make reasonable efforts to consult with the claimant (or the claimant's authorized representative, if applicable) on the issue of appellate review.

#### **§ 81.58 Signatures and certifications.**

A request to the Department will be deemed submitted when it is submitted online at the Department's website for this program; or, as provided in accordance with § 81.54, consistent with the instructions on the claim form. By submitting the request, the claimant (or, if submitted by an authorized representative, the authorized representative) acknowledges and certifies as to each of the following:

(a) *Veracity of request.* The claimant certifies, under oath, subject to penalty of perjury or in a manner that meets the requirements of 28 U.S.C. 1746, that the information provided in the request and any documents submitted in support of the request are true and accurate to the best of the claimant's knowledge, and the claimant agrees that any defined monetary assistance paid from the Reserve is expressly conditioned upon the truthfulness and accuracy of the information and documentation submitted in support of the request. Where a claimant is represented by an authorized representative, that representative must have authority to certify the request on behalf of the claimant.

(b) *Potential criminal penalties.* The claimant understands that false statements or claims made in connection with the request may result in fines, imprisonment, and any other remedy available by law to the Federal Government, including fines and imprisonment as provided in 18 U.S.C. 1001 and treble damages and civil penalties under the False Claims Act, 31 U.S.C. 3729, *et seq.* Requests that appear to be potentially fraudulent or to contain false information may be forwarded to Federal, State, and local law enforcement authorities for possible investigation and prosecution.

(c) *Limitation on attorney fees.* If a claimant is represented by counsel, no attorney shall charge, receive, or collect any payment of fees and costs that in the aggregate exceeds 15 percent of any defined monetary assistance paid on such application. An attorney who violates this provision is subject to fine, imprisonment of up to one year, or both.

#### **§ 81.59 Privacy.**

The Department will not disclose to the public the names of the claimants (or their authorized representatives, if applicable) who have requested defined monetary assistance from the Reserve under this program, or their other personally identifiable information, except as necessary to process a request or application or pursuant to law or court order.

Dated: November 8, 2024.

**Merrick B. Garland,**  
*Attorney General.*

[FR Doc. 2024-26679 Filed 11-22-24; 8:45 am]

BILLING CODE 4410-14-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket Number USCG-2024-0393]

RIN 1625-AA11

#### **Regulated Navigation Area; Cuyahoga River, Cleveland, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Coast Guard is issuing an Interim Final Rule establishing a Regulated Navigation Area (RNA) for certain waters of the Cuyahoga River in Cleveland, Ohio. This action is necessary to provide for the safety of life on these navigable waters near the "Irishtown Bend" in Cleveland, Ohio,