

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 17, 2021.
John Blevins,
Acting Regional Administrator, Region 4.
For the reasons stated in the preamble, EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401 *et seq.*
■ 2. In § 81.343, the table titled “Tennessee—2010 Sulfur Dioxide NAAQS (Primary)” is amended by revising the entry for “Sumner County, TN” to read as follows:
§ 81.343 Tennessee.
* * * * *

TENNESSEE—2010 SULFUR DIOXIDE NAAQS
[Primary]

| Designated area | Designation | |
|--------------------------------------|---------------------|----------------------------|
| | Date ¹ | Type |
| * * * * * | * * * * * | * * * * * |
| Sumner County, TN ² | June 24, 2021 | Attainment/Unclassifiable. |
| Sumner County | | |
| * * * * * | * * * * * | * * * * * |

¹ This date is April 9, 2018, unless otherwise noted.
² Excludes Indian country located in each area, if any, unless otherwise specified.

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[FR Doc. 2021–10983 Filed 5–24–21; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 112

Definitions
CFR Correction

■ In Title 40 of the Code of Federal Regulations, Protection of Environment, Parts 100 to 135, revised as of July 1, 2020, on page 26, in section 112.2, reinstate the definition of “worst case discharge,” in alphabetical order, to read as follows:

* * * * *
Worst case discharge for an on-shore non-transportation related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[FR Doc. 2021–11115 Filed 5–24–21; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR Parts 86 and 92
Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).
ACTION: Notification of interpretation and enforcement.

SUMMARY: This Notification is to inform the public that, consistent with the Supreme Court’s decision in *Bostock* and Title IX, beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce section 1557 of the Affordable Care Act prohibition on discrimination on the basis of sex to include: Discrimination on the basis of sexual orientation; and discrimination on the basis of gender identity. This interpretation will guide the Office for Civil Rights (OCR) in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

DATES: This notification of interpretation became effective May 10, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).
SUPPLEMENTARY INFORMATION: HHS is informing the public that, consistent with the Supreme Court’s decision in *Bostock* ¹ and Title IX, ² beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce Section 1557’s ³ prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity.

I. Background
The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (the Department) is responsible for enforcing Section 1557 of the Affordable Care Act (Section 1557) and regulations issued under Section 1557, protecting the civil rights of individuals who access or seek to access covered health programs or activities. Section 1557 prohibits discrimination on the bases of race, color, national origin, sex, age, and

¹ *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.
² Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* <https://www.govinfo.gov/content/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1-part86.pdf>.
³ Section 1557 of the Patient Protection and Affordable Care Act. <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf>.

disability in covered health programs or activities. 42 U.S.C. 18116(a).

On June 15, 2020, the U.S. Supreme Court held that Title VII of the Civil Rights Act of 1964 (Pub. L. 88–352) (Title VII)’s ⁴ prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender identity. *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020). The *Bostock* majority concluded that the plain meaning of “because of sex” in Title VII necessarily included discrimination because of sexual orientation and gender identity. *Id.* at 1753–54.

Since *Bostock*, two federal circuits have concluded that the plain language of Title IX of the Education Amendments of 1972’s (Title IX) prohibition on sex discrimination must be read similarly. See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020),⁵ *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed*, No. 20–1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh’g en banc pending*, No. 18–13592 (Aug. 28, 2020).⁶ In addition, on March 26, 2021, the Civil Rights Division of the U.S. Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel ⁷ concluding that the Supreme Court’s reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972. As made clear by the Affordable Care Act, Section 1557 prohibits discrimination “on the grounds prohibited under . . . Title IX.” 42 U.S.C. 18116(a).

Consistent with the Supreme Court’s decision in *Bostock* and Title IX, beginning today, OCR will interpret and enforce Section 1557’s prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation will guide OCR in processing complaints and

conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

In enforcing Section 1557, as stated above, OCR will comply with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*,⁸ and all other legal requirements. Additionally, OCR will comply with any applicable court orders that have been issued in litigation involving the Section 1557 regulations, including *Franciscan Alliance, Inc. v. Azar*, 414 F. Supp. 3d 928 (N.D. Tex. 2019);⁹ *Whitman-Walker Clinic, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 485 F. Supp. 3d 1 (D.D.C. 2020);¹⁰ *Asapansa-Johnson Walker v. Azar*, No. 20–CV–2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020);¹¹ and *Religious Sisters of Mercy v. Azar*, No. 3:16–CV–00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021).¹²

OCR applies the enforcement mechanisms provided for and available under Title IX when enforcing Section 1557’s prohibition on sex discrimination. 45 CFR 92.5(a). Title IX’s enforcement procedures can be found at 45 CFR 86.71 (adopting the procedures at 45 CFR 80.6 through 80.11 and 45 CFR part 81).

If you believe that a covered entity violated your civil rights, you may file a complaint at <https://www.hhs.gov/ocr/complaints>.

Dated: May 13, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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BILLING CODE 4153–01–P

⁸ Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.* <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap21B-sec2000bb-1.pdf>.

⁹ *Franciscan Alliance, Inc. v. Azar*, 414 F. Supp. 3d 928 (N.D. Tex. 2019). https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf.

¹⁰ *Whitman-Walker Clinic, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 485 F. Supp. 3d 1 (D.D.C. 2020). <http://www.ca5.uscourts.gov/opinions/unpub/20/20-10093.0.pdf>.

¹¹ *Asapansa-Johnson Walker v. Azar*, No. 20–CV–2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020). https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf.

¹² *Religious Sisters of Mercy v. Azar*, No. 3:16–CV–00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021). <https://www.hhs.gov/sites/default/files/document-124-memorandum-opinion-and-order.pdf>.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

RIN 3145–AA59

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: Pursuant to the Antarctic Conservation Act of 1978, as amended, the National Science Foundation (NSF) is amending its regulations to reflect changes to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (Protocol) agreed to by the Antarctic Treaty Consultative Parties. These changes reflect the outcomes of a legally binding Measure already adopted by the Parties at the Thirty-Second Antarctic Treaty Consultative Meeting (ATCM) in Baltimore, MD (2009).

DATES: Effective May 25, 2021.

FOR FURTHER INFORMATION CONTACT:

Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 2415 Eisenhower Avenue, W 18200, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: Measure 16 (2009) was adopted at the Thirty-Second ATCM at Baltimore, MD, on April 17, 2009 and amends Annex II to the Protocol. The revisions were composed primarily of minor clarifying, editorial and technical updates which would result in generally insignificant changes in current practice or legal requirements. For example, Antarctic terrestrial and freshwater invertebrates (generally microscopic or miniscule) are already protected by statute and regulation from “harmful interference” and related permitting requirements. These Annex II changes brought such protections in line with other Antarctic species for purposes of “takes” of such organisms. Other changes would also result in no significant change in U.S. practice, including changes to language in Annex II regarding criteria for taking zoo specimens, criteria for introduction of non-native species, and criteria for lethal takings of specially protected species, etc. Finally, one change removes an erroneous reference to “marine algae” in the current regulation and a new section is added specifically designating Antarctic native invertebrates.

The Antarctic Conservation Act of 1978, as amended (“ACA”) (16 U.S.C. 2401, *et seq.*) implements the Protocol. Section 2405 of title 16 of the ACA directs the Director of the National

⁴ Title VII of the Civil Rights Act of 1964 (Pub. L. 88–352) (41 CFR part 60–20). <https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01422.pdf>.

⁵ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). <https://www.ca4.uscourts.gov/opinions/191952.P.pdf>.

⁶ *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020). <https://media.ca11.uscourts.gov/opinions/pub/files/201813592.pdf>.

⁷ March 26, 2021, the Civil Rights Division of the U.S. Department of Justice memorandum to Federal Agency Civil Rights Directors and General Counsel re: Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972. <https://www.justice.gov/crt/page/file/1383026/download>.