Federal Register
Vol. 75, No. 243
Monday, December 20, 2010

The Regulatory Plan

OPEN GOVERNMENT AND EVIDENCE-BASED REGULATION

There is a close connection, even an inextricable relationship, between open government and evidence-based regulation. If regulatory choices are based on careful analysis of the evidence, and if opportunities are provided for public review and comment, we will be able to identify sensible and pragmatic approaches that are designed to promote entrepreneurship, innovation, job creation, and economic growth.

Since his inauguration, President Obama has placed a great deal of emphasis on open government. In requiring openness, the President has emphasized three separate points. First, he has stressed the importance of accountability. In his words, openness ''will strengthen our democracy and promote efficiency and effectiveness in Government.'' Second, the President has said that ''[k]nowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge'' and hence to ''collective expertise and wisdom.'' Third, he has emphasized the importance of providing people with information that they ''can readily find and use.'' For this reason, he has said that agencies ''should harness new technologies'' and ''solicit public feedback to identify information of greatest use to the public.''

At the same time, the Administration has been placing a great deal of emphasis on sound analysis and on ensuring a careful accounting of the anticipated consequences of regulation, including both benefits and costs. While regulation can promote vital public goods, such as protection of safety, health, and financial stability, the President has said, ''Sometimes regulation fails, and sometimes its benefits do not justify its costs.''

The word ''analysis,'' of course, includes a number of distinct but overlapping approaches, such as the cost-benefit analysis required by Executive Order 12866 and the regulatory flexibility analysis required by the Regulatory Flexibility Act. Executive Order 12866 requires agencies, to the extent permitted by law, to give careful consideration to both costs and benefits and to ensure that the benefits of regulation justify the costs. It is worth noting that, in part because of this Administration's commitment to careful analysis, the quantified benefits of final rules significantly exceeded the quantified costs for calendar year 2009-and that the net benefits of final regulations for the first year of the Obama Administration far exceeded those of the first year for the Clinton and Bush Administrations:

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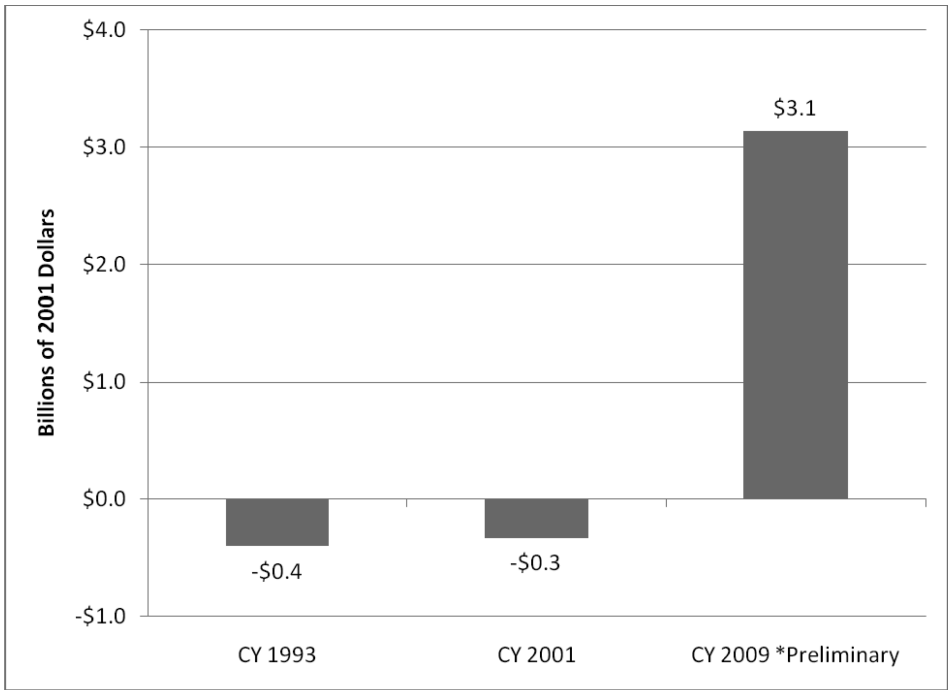
Figure 1: Annual Estimated Net Benefits of Major Rules

First Calendar Year of an Administration (1/21 to 12/31)



It is important to emphasize that the monetized benefits are high. We have issued rules and undertaken initiatives that are saving lives on the highways and in workplaces; reducing air and water pollution; increasing fuel economy, thus saving money while reducing pollution; making both trains and planes safer; helping students to obtain school loans and so to attend college; protecting consumers and investors against manipulation, fraud, and conflicts of interest; increasing energy efficiency, saving billions of dollars while increasing energy security; combating childhood obesity; and creating a ''race to the top'' in education.

A central goal for the upcoming period is to ensure that regulations do not impose unjustified burdens and that if the costs and burdens are significant, they are producing even more significant gains. Analysis of regulatory consequences is part of a broad effort to subject regulatory decisions to public scrutiny, with close reference to evidence, and thus improving them__not least by pointing the way toward reduced burdens and innovative solutions.

By promoting accountability, open government policies can help to track government's own performance. In that way, such policies make public officials accountable for what they do, including in the regulatory arena. Performance review matters; it is a hallmark of this Administration. Regulatory analysis is best seen as a form of performance review for Federal rules, typically done in advance (and sometimes done retrospectively).

Before acting, regulators should attempt to obtain a clear and concrete understanding of the likely consequences of what they propose to do. In its 2009 Report on the Benefits and Costs of Federal Regulations, OMB specifically underlined the relationship among careful analysis, evidence-based regulation, and open government. As the Report says, ''Indeed, careful regulatory analysis, if transparent in its assumptions and subject to public scru-

tiny, should be seen as part and parcel of open government. It helps to ensure that policies are not based on speculation and guesswork, but instead on a sense of the likely consequences of alternative courses of action. It helps to reduce the risk of insufficiently justified regulation, imposing serious burdens and costs for inadequate reason. It also helps to reduce the risk of insufficiently protective regulation, failing to go as far as proper analysis suggests. We believe that regulatory analysis should be developed and designed in a way that fits with the commitment to open government.''

With these points in mind, the Office of Information and Regulatory Affairs issued (in November 2010) an ''Agency Checklist'' for Regulatory Impact Analysis, designed to promote clarity and transparency with respect to the anticipated effects of regulation (see http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA__Checklist.pdf). The checklist emphasizes that agencies must assess costs and benefits (to the extent feasible), explore alternatives, and demonstrate the need for regulatory action. In these ways, we have been seeking to increase openness and improve our regulatory practices.

The second function of open government is very different: Openness promotes not merely accountability, but also access to widely dispersed information. The central idea is that officials often lack information that is held by numerous others, especially in the private sphere. When it is working well, open government can ensure that rules are properly informed by such information, which will often help to increase benefits, reduce costs, or identify new and creative alternatives.

Consider the rulemaking process itself. A large advantage of notice-and-comment rulemaking is that it allows agencies to offer proposals, and supporting analyses, that are subject to public scrutiny, and that can benefit from knowledge that is widely dispersed in society. On numerous occasions in the last 21 months, final rules have been significantly different from proposed rules, and public comments are a key reason.

In its 2010 Report on the Benefits and Costs of Federal Regulations, OMB specifically noted that ''some regulations have significant adverse effects on small business'' and that ''it is appropriate to take steps to create flexibility in the event that those adverse effects cannot be justified by commensurate benefits.'' To tap dispersed knowledge, OMB requested public suggestions about regulatory changes that might serve to promote economic growth, with particular reference to increasing employment, innovation, and competitiveness. More specifically, OMB sought suggestions for regulatory reforms that have significant net benefits, that might increase exports, and that might promote growth, innovation, and competitiveness for small business, perhaps through increasing flexibility. We continue to seek such suggestions in an effort to reduce the risk that regulation will impose unjustified costs or contain unjustified rigidity__and to square important regulatory goals with the interest in economic recovery.

Finally, in emphasizing the value of providing access to information that people ''can readily find and use,'' the President signaled a distinctive idea__that openness promotes learning by making data and evidence accessible. Anecdotes, speculation, and guesswork can be replaced with information and evidence. The point bears directly on the role of regulatory impact analysis. Such analysis is something that members of the public can ''find and use,'' not least because advance notice promotes predictability and avoids unfair surprise.

In its Memorandum of July 23, 2010, on the Regulatory Plan and Unified Agenda, the Office of Information and Regulatory Affairs noted:

''Executive Order 12866 identifies a number of principles that you should keep in mind, to the extent permitted by law, as you set priorities and prepare your submissions.

First, Executive Order 12866 directs agencies to propose or adopt a regulation 'only upon a reasoned determination that the benefits of the intended regulation justify the costs' (recognizing that some benefits are difficult to quantify but are nonetheless essential to consider, such as visibility in national parks).

Second, it requires each agency to 'tailor its regulations to impose the least burden on society . . . taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.'

Third, it requires agencies to 'identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as the public.'

Fourth, it directs agencies to design regulations 'in the most cost-effective manner to achieve the regulatory objective.'

Fifth, it asks each agency to 'avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.'

Sixth, it directs agencies to 'select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'''

OIRA asked agencies to ''comply with these requirements as you develop your submissions.'' It also asked agencies, among other things, to ''highlight rulemakings that simplify or streamline regulations and reduce or eliminate unjustified burdens'' and to identify ''regulations that are of particular concern to small businesses.'' Before they can be finalized, the regulations on the plans that follow will, of course, be subject to a rigorous process of assessment and scrutiny, with careful attention to the foregoing principles. The list of regulations is intended to provide a public account of regulations that are under consideration; agencies are under no obligation to issue these regulations (unless some independent source of law requires them to do so).

In the current economic environment, it is especially important to see that analysis and openness are mutually reinforcing. If the two are taken together, they can help to promote important social goals, to eliminate unjustified costs, and to identify approaches that will promote entrepreneurship, innovation, job growth, and competitiveness.

DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
1	Wholesale Pork Reporting Program	0581–AD07	Proposed Rule Stage
2	National Dairy Promotion and Research Program; Dairy Import Assessments, DA-08-0050	0581–AC87	Final Rule Stage
3	Animal Welfare; Regulations and Standards for Birds	0579–AC02	Proposed Rule Stage
4	Plant Pest Regulations; Update of General Provisions	0579–AC98	Proposed Rule Stage
5	Importation of Live Dogs	0579–AD23	Proposed Rule Stage
6	Animal Disease Traceability	0579–AD24	Proposed Rule Stage
7	Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis	0579–AC03	Final Rule Stage
8	Multi-Family Housing (MFH) Reinvention	0575–AC13	Final Rule Stage
9	Enforcement of the Packers and Stockyards Act	0580–AB07	Final Rule Stage
10	Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008	0584–AD87	Proposed Rule Stage
11	Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions	0584–AD88	Proposed Rule Stage
12	Fresh Fruit and Vegetable Program	0584–AD96	Proposed Rule Stage
13	Child and Adult Care Food Program: Improving Management and Program Integrity	0584–AC24	Final Rule Stage
14	Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals in the NSLP, SBP, and SMP	0584–AD60	Final Rule Stage
15	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages	0584–AD77	Final Rule Stage
16	Egg Products Inspection Regulations	0583–AC58	Proposed Rule Stage
17	New Poultry Slaughter Inspection	0583–AD32	Proposed Rule Stage
18	Mandatory Inspection of Catfish and Catfish Products	0583–AD36	Proposed Rule Stage
19	Electronic Imported Product Inspection Applications; Electronic Foreign Imported Product and Foreign Establishment Certifications; Deletion of Streamlined Inspection Procedures for Canadian Product	0583–AD39	Proposed Rule Stage
20	Electronic Export Application and Certification as a Reimbursable Service and Flexibility in the Requirements for Official Export Inspection Marks, Devices, and Certificates	0583–AD41	Proposed Rule Stage
21	Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products	0583–AC46	Final Rule Stage
22	Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products	0583–AC60	Final Rule Stage
23	Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments	0583–AD34	Final Rule Stage
24	Federal-State Interstate Shipment Cooperative Inspection Program	0583–AD37	Final Rule Stage
25	Value-Added Producer Grant Program	0570–AA79	Final Rule Stage
26	Rural Broadband Access Loans and Loan Guarantees	0572–AC06	Final Rule Stage

DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
27	Designation of Critical Habitat for the North Atlantic Right Whale	0648–AY54	Proposed Rule Stage
28	Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, and Unregulated Fishing or Bycatch of Protected Living Marine Resources	0648–AV51	Final Rule Stage

DEPARTMENT OF COMMERCE (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
29	Critical Habitat Designation for Cook Inlet Beluga Whale Under the Endangered Species Act	0648–AX50	Final Rule Stage
30	Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendments 20 and 21; Trawl Rationalization Program	0648–AY68	Final Rule Stage

DEPARTMENT OF DEFENSE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
31	Voluntary Education Programs	0790–AI50	Final Rule Stage
32	TRICARE; Reimbursement of Sole Community Hospitals	0720–AB41	Proposed Rule Stage

DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
33	Title IV of the Higher Education Act of 1965, as Amended	1840–AD05	Proposed Rule Stage
34	Program Integrity: Gainful Employment—Measures	1840–AD06	Final Rule Stage

DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
35	Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners	1904–AA89	Proposed Rule Stage
36	Energy Efficiency Standards for Residential Central Air Conditioners and Heat Pumps	1904–AB47	Proposed Rule Stage
37	Energy Efficiency Standards for Fluorescent Lamp Ballasts	1904–AB50	Proposed Rule Stage
38	Energy Efficiency Standards for Residential Furnaces	1904–AC06	Proposed Rule Stage
39	Energy Efficiency Standards for Manufactured Housing	1904–AC11	Proposed Rule Stage
40	Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	1904–AB79	Final Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
41	Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act	0991–AB57	Final Rule Stage
42	Transparency Reporting	0950–AA07	Proposed Rule Stage
43	Rate Review	0950–AA03	Final Rule Stage
44	Uniform Explanation of Benefits, Coverage Facts, and Standardized Definitions	0950–AA08	Final Rule Stage
45	Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics	0910–AC52	Proposed Rule Stage
46	Unique Device Identification	0910–AG31	Proposed Rule Stage
47	Cigarette Warning Label Statements	0910–AG41	Proposed Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
48	Food Labeling: Nutrition Labeling for Food Sold in Vending Machines	0910–AG56	Proposed Rule Stage
49	Food Labeling: Nutrition Labeling of Standard Menu Items in Chain Restaurants	0910–AG57	Proposed Rule Stage
50	Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors	0910–AF27	Final Rule Stage
51	Medical Device Reporting; Electronic Submission Requirements	0910–AF86	Final Rule Stage
52	Electronic Registration and Listing for Devices	0910–AF88	Final Rule Stage
53	Requirements for Long-Term Care Facilities: Notification of Facility Closure (CMS-3230-IFC)	0938–AQ09	Proposed Rule Stage
54	Medicare Shared Savings Program: Accountable Care Organizations (CMS-1345-P)	0938–AQ22	Proposed Rule Stage
55	Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2012 Rates and to the Long-Term Care Hospital PPS and RY 2012 Rates (CMS-1518-P)	0938–AQ24	Proposed Rule Stage
56	Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2012 (CMS-1524-P)	0938–AQ25	Proposed Rule Stage
57	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2012 (CMS-1525-P)	0938–AQ26	Proposed Rule Stage
58	Civil Money Penalties for Nursing Homes (CMS-2435-F)	0938–AQ02	Final Rule Stage
59	Designation Renewal of Head Start Grantees	0970–AC44	Proposed Rule Stage
60	Community Living Assistance Services and Supports Enrollment and Eligibility Rules Under the Affordable Care Act	0985–AA07	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
61	Secure Handling of Ammonium Nitrate Program	1601–AA52	Proposed Rule Stage
62	Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT)	1601–AA34	Final Rule Stage
63	Asylum and Withholding Definitions	1615–AA41	Proposed Rule Stage
64	Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to Numerical Limitations	1615–AB71	Proposed Rule Stage
65	Exception to the Persecution Bar for Asylum, Refugee, and Temporary Protected Status, and Withholding of Removal	1615–AB89	Proposed Rule Stage
66	New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for T Nonimmigrant Status	1615–AA59	Final Rule Stage
67	Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status	1615–AA60	Final Rule Stage
68	New Classification for Victims of Criminal Activity; Eligibility for the "U" Nonimmigrant Status	1615–AA67	Final Rule Stage
69	E-2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands With Long-Term Investor Status	1615–AB75	Final Rule Stage
70	Commonwealth of the Northern Mariana Islands Transitional Worker Classification	1615–AB76	Final Rule Stage
71	Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands	1615–AB77	Final Rule Stage
72	Outer Continental Shelf Activities	1625–AA18	Proposed Rule Stage

DEPARTMENT OF HOMELAND SECURITY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
73	Inspection of Towing Vessels	1625–AB06	Proposed Rule Stage
74	Assessment Framework and Organizational Restatement Regarding Preemption for Certain Regulations Issued by the Coast Guard	1625–AB32	Proposed Rule Stage
75	Updates to Maritime Security	1625–AB38	Proposed Rule Stage
76	Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters	1625–AA32	Final Rule Stage
77	Importer Security Filing and Additional Carrier Requirements	1651–AA70	Final Rule Stage
78	Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program	1651–AA72	Final Rule Stage
79	Establishment of Global Entry Program	1651–AA73	Final Rule Stage
80	Implementation of the Guam-CNMI Visa Waiver Program	1651–AA77	Final Rule Stage
81	Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program	1652–AA53	Proposed Rule Stage
82	Public Transportation and Passenger Railroads—Security Training of Employees	1652–AA55	Proposed Rule Stage
83	Freight Railroads—Security Training of Employees	1652–AA57	Proposed Rule Stage
84	Over-the-Road Buses—Security Training of Employees	1652–AA59	Proposed Rule Stage
85	Aircraft Repair Station Security	1652–AA38	Final Rule Stage
86	Air Cargo Screening	1652–AA64	Final Rule Stage
87	Continued Detention of Aliens Subject to Final Orders of Removal	1653–AA60	Proposed Rule Stage
88	Continued Detention of Aliens Subject to Final Orders of Removal	1653–AA13	Final Rule Stage
89	Extending Period for Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding the CAP-GAP Relief for All F-1 Students With Pending H-1B Petitions	1653–AA56	Final Rule Stage
90	Update of FEMA's Public Assistance Regulations	1660–AA51	Proposed Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
91	Title I Energy Retrofit Property Improvement Loans (FR-5445)	2502–AI93	Proposed Rule Stage
92	Housing Counseling: New Program Requirements (FR-5446)	2502–AI94	Proposed Rule Stage

DEPARTMENT OF JUSTICE

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
93	National Standards to Prevent, Detect, and Respond to Prison Rape	1105–AB34	Proposed Rule Stage

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
94	Construction Contractor Affirmative Action Requirements	1250–AA01	Proposed Rule Stage

DEPARTMENT OF LABOR (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
95	Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA	1245–AA03	Proposed Rule Stage
96	Right To Know Under the Fair Labor Standards Act	1235–AA04	Proposed Rule Stage
97	Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers)	1205–AB58	Proposed Rule Stage
98	Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations	1205–AB59	Proposed Rule Stage
99	Lifetime Income Options for Participants and Beneficiaries in Retirement Plans	1210–AB33	Prerule Stage
100	Definition of ''Fiduciary''	1210–AB32	Proposed Rule Stage
101	Respirable Crystalline Silica Standard	1219–AB36	Proposed Rule Stage
102	Lowering Miners' Exposure to Coal Mine Dust, Including Continuous Personal Dust Monitors	1219–AB64	Proposed Rule Stage
103	Safety and Health Management Programs for Mines	1219–AB71	Proposed Rule Stage
104	Pattern of Violations	1219–AB73	Proposed Rule Stage
105	Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines	1219–AB76	Proposed Rule Stage
106	Proximity Detection Systems for Underground Mines	1219–AB65	Final Rule Stage
107	Infectious Diseases	1218–AC46	Prerule Stage
108	Injury and Illness Prevention Program	1218–AC48	Prerule Stage
109	Backing Operations	1218–AC52	Prerule Stage
110	Occupational Exposure to Crystalline Silica	1218–AB70	Proposed Rule Stage
111	Occupational Injury and Illness Recording and Reporting Requirements—Modernizing OSHA's Reporting System	1218–AC49	Proposed Rule Stage
112	Hazard Communication	1218–AC20	Final Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
113	Enhancing Airline Passenger Protections—Part 2	2105–AD92	Final Rule Stage
114	Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers	2120–AJ00	Proposed Rule Stage
115	Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments	2120–AJ53	Proposed Rule Stage
116	Flight and Duty Time Limitations and Rest Requirements	2120–AJ58	Final Rule Stage
117	Carrier Safety Fitness Determination	2126–AB11	Proposed Rule Stage
118	Electronic On-Board Recorders and Hours of Service Supporting Documents	2126–AB20	Proposed Rule Stage
119	Hours of Service	2126–AB26	Proposed Rule Stage
120	Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones	2126–AB29	Proposed Rule Stage
121	National Registry of Certified Medical Examiners	2126–AA97	Final Rule Stage
122	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2017 and Beyond	2127–AK79	Prerule Stage
123	Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors	2127–AK43	Proposed Rule Stage

DEPARTMENT OF TRANSPORTATION (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
124	Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards	2127–AK74	Proposed Rule Stage
125	Ejection Mitigation	2127–AK23	Final Rule Stage
126	Hours of Service: Passenger Train Employees	2130–AC15	Proposed Rule Stage
127	Major Capital Investment Projects	2132–AB02	Proposed Rule Stage
128	Hazardous Materials: Limiting the Use of Mobile Telephones by Highway	2137–AE65	Proposed Rule Stage
129	Hazardous Materials: Limiting the Use of Electronic Devices by Highway	2137–AE63	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
130	Review of the National Ambient Air Quality Standards for Carbon Monoxide	2060–AI43	Proposed Rule Stage
131	Review of the National Ambient Air Quality Standards for Particulate Matter	2060–AO47	Proposed Rule Stage
132	Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur	2060–AO72	Proposed Rule Stage
133	National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units	2060–AP52	Proposed Rule Stage
134	Control of Greenhouse Gas Emissions From Medium and Heavy-Duty Vehicles	2060–AP61	Proposed Rule Stage
135	Review of the National Ambient Air Quality Standards for Lead	2060–AQ44	Proposed Rule Stage
136	NPDES Electronic Reporting Rule	2020–AA47	Proposed Rule Stage
137	Regulations To Facilitate Compliance With the Federal Insecticide, Fungicide, and Rodenticide Act by Producers of Plant-Incorporated Protectants (PIPs)	2070–AJ32	Proposed Rule Stage
138	Mercury; Regulation of Use in Certain Products	2070–AJ46	Proposed Rule Stage
139	Nanoscale Materials; Reporting Under TSCA Section 8(a)	2070–AJ54	Proposed Rule Stage
140	Nanoscale Materials; Significant New Use Rule (SNUR)	2070–AJ67	Proposed Rule Stage
141	Revisions to EPA's Rule on Protections for Subjects in Human Research Involving Pesticides	2070–AJ76	Proposed Rule Stage
142	Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste: Carbon Dioxide (CO2) Injectate in Geological Sequestration Activities	2050–AG60	Proposed Rule Stage
143	Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry	2050–AG61	Proposed Rule Stage
144	NPDES Permit Requirements for Municipal Sanitary and Combined Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Excess Flow Treatment Facilities	2040–AD02	Proposed Rule Stage
145	Criteria and Standards for Cooling Water Intake Structures	2040–AE95	Proposed Rule Stage
146	Stormwater Regulations Revision To Address Discharges From Developed Sites	2040–AF13	Proposed Rule Stage

ENVIRONMENTAL PROTECTION AGENCY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
147	National Pollutant Discharge Elimination System (NPDES) Permit Regulations for New Dischargers and the Appropriate Use of Offsets With Regard to Water Quality Permitting	2040–AF17	Proposed Rule Stage
148	Concentrated Animal Feeding Operations (CAFO) Information Collection Request Rule	2040–AF22	Proposed Rule Stage
149	National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers	2060–AM44	Final Rule Stage
150	Transport Rule (CAIR Replacement Rule)	2060–AP50	Final Rule Stage
151	Revision to Pb Ambient Air Monitoring Requirements	2060–AP77	Final Rule Stage
152	Reconsideration of the 2008 Ozone Primary and Secondary National Ambient Air Quality Standards	2060–AP98	Final Rule Stage
153	Revisions to Motor Vehicle Fuel Economy Label	2060–AQ09	Final Rule Stage
154	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters	2060–AQ25	Final Rule Stage
155	Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program	2070–AJ57	Final Rule Stage
156	Identification of Non-Hazardous Secondary Materials That Are Solid Wastes	2050–AG44	Final Rule Stage

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
157	Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act	3046–AA85	Final Rule Stage

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
158	Office of Government Information Services	3095–AB62	Proposed Rule Stage
159	Declassification of National Security Information	3095–AB64	Proposed Rule Stage

SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
160	Small Business Jobs Act: Multiple Award Contracts and Small Business Set-Asides	3245–AG20	Proposed Rule Stage
161	Small Business Size Regulations; (8)a Business Development/Small Disadvantaged Business Status Determination	3245–AF53	Final Rule Stage
162	Small Business Jobs Act: 504 Loan Program Debt Refinancing	3245–AG17	Final Rule Stage
163	Small Business Jobs Act: Small Business Intermediary Lending Pilot Program	3245–AG18	Final Rule Stage

SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
164	Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)	0960–AF58	Proposed Rule Stage
165	Revised Medical Criteria for Evaluating Hematological Disorders (974P)	0960–AF88	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
166	Revised Medical Criteria for Evaluating Endocrine System Disorders (436P)	0960–AD78	Final Rule Stage
167	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960–AF69	Final Rule Stage
168	Reestablishing Uniform National Disability Adjudication Provisions (3502F)	0960–AG80	Final Rule Stage
169	Amendments to Regulations Regarding Major Life-Changing Events Affecting Income-Related Monthly Adjustments Amounts to Medicare Part B Premiums (3574F)	0960–AH06	Final Rule Stage
170	Amendments to Regulations Regarding Withdrawals of Applications and Voluntary Suspension of Benefits (3573I)	0960–AH07	Final Rule Stage

CONSUMER PRODUCT SAFETY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
171	Testing, Certification, and Labeling of Certain Consumer Products	3041–AC71	Final Rule Stage

NATIONAL INDIAN GAMING COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
172	Tribal Background Investigation Submission Requirements and Timing	3141–AA15	Proposed Rule Stage
173	Class II and Class III Minimum Internal Control Standards	3141–AA27	Proposed Rule Stage

POSTAL REGULATORY COMMISSION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
174	Periodic Reporting Exceptions	3211–AA06	Final Rule Stage

[FR Doc. 2010–30473 Filed 12–17–10;8:45 am]
BILLING CODE 6820–27–S

DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

USDA's regulatory efforts in the coming year will be focused on achieving the Department's goals identified in the Department's Strategic Plan for 2010 to 2015. To assist the country in addressing today's challenges, USDA established the following goals:

- *Assist rural communities to create prosperity so they are self-sustaining, re-populating, and economically thriving.* USDA is the leading advocate for rural America. The Department supports rural communities and enhances quality of life for rural residents by improving their economic opportunities, community infrastructure, environmental health, and the sustainability of agricultural production. The common goal is to help create thriving rural communities where people want to live and raise families, and where children have economic opportunities and a bright future.
- *Ensure that all of America's children have access to safe, nutritious, and balanced meals.* A plentiful supply of safe and nutritious food is essential to the well-being of every family and the healthy development of every child in America. USDA provides nutrition assistance to children and low-income people who need it and works to improve the healthy eating habits of all Americans, especially children. In addition, the Department safeguards the quality and wholesomeness of meat, poultry, and egg products and addresses and prevents loss and damage from pests and disease outbreaks.
- *Ensure our national forests and private working lands are conserved, restored, and made more resilient to climate change, while enhancing our water resources.* America's prosperity is inextricably linked to the health of our lands and natural resources. Forests, farms, ranches, and grasslands offer enormous environmental benefits as a source of clean air, clean and abundant water, and wildlife habitat. These lands generate economic value by supporting the vital agriculture and forestry sectors, attracting tourism and recreation visitors, sustaining green jobs, and producing ecosystem services, food, fiber, timber and non-timber products, and energy. They are also of immense social importance, enhancing rural quality of life, sustaining scenic and culturally important landscapes, and providing opportunities to engage in outdoor activity and reconnect with the land.
- *Help America promote agricultural production and biotechnology exports as America works to increase food security.* A productive agricultural sector is critical to increasing global food security. For many crops, a substantial portion of domestic production is bound for overseas markets. USDA helps American farmers and ranchers use efficient, sustainable production, biotechnology, and other emergent technologies to enhance food security around the world and find export markets for their products.

Important regulatory activities supporting the accomplishment of these goals in 2011 will include the following:

- *Rural Development and Renewable Energy.* USDA priority regulatory actions for the Rural Development mission will be to finalize regulations for bioenergy programs, including the Biorefinery Assistance Program. While USDA utilized notices of funding availability to implement many of these programs in fiscal years 2009 and 2010, regulations are required for permanent implementation. Access to affordable broadband to all rural Americans is another priority. USDA will finalize reform of its on-going broadband access program through an interim rule. Rural Development will utilize comments received from the proposed rule, address statutory changes required by the 2008 Farm Bill, and incorporate lessons learned from implementing the American Recovery and Reinvestment Act program to develop the interim rule.

  USDA will continue to promote sustainable economic opportunities to revitalize rural communities through the purchase and use of renewable, environmentally friendly biobased products through its BioPreferred Program. USDA will continue to designate groups of biobased products to receive procurement preference from Federal agencies and contractors. In addition, USDA will finalize a rule establishing the Voluntary Labeling Program for biobased products.
- *Nutrition Assistance.* As changes are made to the nutrition assistance programs, USDA will work to foster actions that expand access to program benefits, improve program integrity, improve diets and healthy eating through nutrition education, and promote physical activity consistent with the national effort to reduce obesity. In support of these activities in 2011, the Food and Nutrition Service (FNS) will propose a rule updating nutrition standards in the school meals program, finalize a rule updating the WIC food packages, and establish permanent rules for the Fresh Fruit and Vegetable Program. FNS will continue to work to implement rules that minimize participant and vendor fraud in its nutrition assistance programs.
- *Food Safety.* In the area of food safety, USDA will continue to develop science-based regulations that improve the safety of meat, poultry, and processed egg products in the least burdensome and most cost-effective manner. Regulations will be revised to address emerging food safety challenges, streamlined to remove excessively prescriptive regulations, and updated to be made consistent with hazard analysis and critical control point principles. FSIS will propose regulations to establish new systems for poultry slaughter inspection, catfish inspection, as well as a new voluntary Federal-State cooperative inspection program. To assist small entities to comply with food safety requirements, the Food Safety and Inspection Service will continue to collaborate with other USDA agencies and State partners in the enhanced small business outreach program.
- *Farm Loans and Disaster Assistance.* USDA will work to ensure a strong U.S. agricultural system through farm income support and farm loan programs. In addition, USDA will implement a new disaster assistance program authorized by the 2008 Farm Bill, the Emergency Forest Restoration Program. Regulations are also being developed for conservation loan programs intended to help producers finance the construction of conservation measures.
- *Forestry and Conservation.* USDA has completed all rulemaking for the new and reauthorized 2008 Farm Bill conservation programs and will focus on their continued implementation in 2011. In the forestry area, the Department will focus on developing a new planning rule that improves the National forests' planning process, decisionmaking, and the legal defensibility of land management plans. In 2011, the Department plans to complete the transition from the

2000 planning rule that is now in effect to the new planning rule that will update planning procedures to reflect contemporary collaborative planning practices.

- *Marketing and Regulatory Programs.* USDA will work to support the organic sector and continue regulatory work to protect the health and value of U.S. agricultural and natural resources. USDA will also implement regulations to enhance enforcement of the Packers and Stockyards Act. In addition, USDA is working with stakeholders to develop acceptable animal disease traceability standards. Regarding plant health, USDA anticipates revising the permitting of plant pests and biological control organisms. USDA will also amend regulations for importing nursery stock to better address plant health risks associated with propagative material. For the Animal Welfare Act, USDA will propose specific standards for the humane care of birds and dogs imported for resale. USDA will also implement regulations to implement dairy promotion and research provisions of the 2008 Farm Bill.

Reducing Paperwork Burden on Customers

USDA continues to make substantial progress in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public. To meet the requirements of the E-Government Act, agencies across USDA are providing electronic alternatives to their traditionally paper-based customer transactions. As a result, producers increasingly have the option to electronically file forms and all other documentation online. To facilitate the expansion of electronic government, USDA implemented an electronic authentication capability that allows customers to ''sign-on'' once and conduct business with all USDA agencies. Supporting these efforts are ongoing analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing these initiatives is better service to our customers, enabling them to choose when and where to conduct business with USDA.

Major Regulatory Priorities

This document represents summary information on prospective significant regulations as called for in Executive Order 12866. The following USDA agencies are represented in this regulatory plan, along with a summary of their mission and key regulatory priorities in 2011:

Food and Nutrition Service

Mission: FNS increases food security and reduces hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthful diet, and nutrition education in a manner that supports American agriculture and inspires public confidence.

Priorities: In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS' 2011 regulatory plan supports USDA's goal to ensure that all of America's children have access to safe, nutritious, and balanced meals:

- Increase Access to Nutritious Food. This objective represents FNS' efforts to improve nutrition by providing access to program benefits (food consumed at home, school meals, commodities) and distributing State administrative funds to support program operations. To advance this objective, FNS plans to publish a proposed rule to codify provisions of the 2008 Farm Bill that expand access to Supplemental Nutrition Assistance Program (SNAP) benefits and address other eligibility, certification, employment, and training issues. An interim rule implementing provisions of the Child Nutrition and WIC Reauthorization Act of 2004 to establish automatic eligibility for homeless children for school meals further supports this objective.
- Promote Healthy Diet and Physical Activity Behaviors.This objective represents FNS' efforts to improve the diets of its clients through nutrition education, support the national effort to reduce obesity by promoting healthy eating and physical activity, and to ensure that program benefits meet appropriate standards to effectively improve nutrition for program participants. In support of this objective, FNS plans to propose a rule updating the nutrition standards in the school meals programs, finalize a rule updating the WIC food packages, and establish permanent rules for the Fresh Fruit and Vegetable Program, which currently operates in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

Food Safety and Inspection Service

Mission: The Food Safety and Inspection Service (FSIS) is responsible for ensuring that meat, poultry, egg, and catfish products in interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

Priorities: FSIS is committed to developing and issuing science-based regulations intended to ensure that meat, poultry, egg, and catfish products are wholesome and not adulterated or misbranded. FSIS regulatory actions support the objective to protect public health by ensuring that food is safe under USDA's goal to ensure access to safe food. To reduce the number of foodborne illnesses and increase program efficiencies, FSIS will continue to review its existing authorities and regulations to ensure that it can address emerging food safety challenges, to streamline excessively prescriptive regulations, and to revise or remove regulations that are inconsistent with the FSIS' hazard analysis and critical control point (HACCP) regulations. FSIS is also working with the Food and Drug Administration (FDA) to improve coordination and increase the effectiveness of inspection activities. FSIS' priority initiatives are as follows:

- Rulemakings that support initiatives of the President's Food Safety Working Group:
  - Poultry Slaughter Inspection. FSIS plans to amend poultry products inspection regulations to put in place a system in which the establishment sorts the carcasses for defects and FSIS verifies that the system is under control and producing safe and wholesome product. FSIS will propose to adopt performance standards designed to ensure that the establishments are carrying out slaughter, dressing, and chilling operations in a manner that ensures no significant growth of pathogens.
  - Revision of Egg Products Inspection Regulations. FSIS is planning to propose requirements for federally inspected egg product plants to develop and implement HACCP systems and sanitation standard operating procedures. FSIS will be proposing pathogen reduction performance standards for egg products and will remove prescriptive requirements for egg product plants.
- Initiatives that provide for disclosure or that enable economic growth. FSIS plans to issue two final rules to promote disclosure of information to the public or that provide flexibility for the adoption of new technologies and that promote economic growth:
  - Nutrition Labeling of Single-Ingredient Products and Ground or

Chopped Meat and Poultry Products. Regulations have been proposed to require nutrition information on the major cuts of single-ingredient, raw meat and poultry products to appear on the product label or at the point of purchase, unless an exemption applies. These regulations would also require nutrition labeling on all ground or chopped meat or poultry products unless an exemption applies.

– Permission to Use Air Inflation of Meat Carcasses and Parts. FSIS has proposed to revise the Federal meat inspection regulations to permit establishments that slaughter livestock or prepare livestock carcasses and parts to inflate carcasses and parts with air if they develop, implement, and maintain written controls to ensure that the procedure does not cause insanitary conditions or adulterate product. In addition, FSIS has proposed to amend its regulations to remove the approved methods for inflating livestock carcasses and parts by air and the requirement that establishments seek approval from FSIS for inflation procedures not listed in the regulations.

- Interstate Shipment of State-Inspected Meat and Poultry Products. As authorized by the 2008 Farm Bill, FSIS will issue final regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce.
- Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments. As authorized by the 2008 Farm Bill, FSIS will issue final regulations that will require establishments that are subject to inspection to promptly notify FSIS when an adulterated or misbranded product received by or originating from the establishment has entered into commerce. The regulations also will require the establishments to prepare and maintain current procedures for the recall of all products produced and shipped by the establishments and to document each reassessment of the establishments' process control plans.
- Catfish Inspection. FSIS is developing regulations to implement provisions of the 2008 Farm Bill provisions that make catfish an amenable species under the Federal Meat Inspection Act (FMIA).
- Public Health Information System. To support its food safety inspection activities, FSIS is developing the Public Health Information System (PHIS). PHIS, which is user-friendly and Web-based, will replace many of FSIS' current systems and automate many business processes. To facilitate the implementation of some PHIS components, FSIS is proposing to provide for electronic export and import application and certification processes as alternatives to the current paper-based systems for these certifications.
- Other planned initiatives. FSIS plans to finalize a February 2001 proposed rule to establish food safety performance standards for all processed ready-to-eat (RTE) meat and poultry products and for partially heat-treated meat and poultry products that are not ready-to-eat. Some provisions of the proposal addressed post-lethality contamination of RTE products with Listeria monocytogenes. In June 2003, FSIS published an interim final rule requiring establishments to prevent L. monocytogenes contamination of RTE products. FSIS has carefully reviewed its economic analysis of the interim final rule and is planning to affirm the interim rule as a final rule with changes.
- FSIS small business implications. The great majority of businesses regulated by FSIS are small businesses. Some of the regulations listed above substantially affect small businesses. Some rulemakings can benefit small businesses. For example, the rule on interstate shipment of State-inspected products will open interstate markets to some small State-inspected establishments that previously could only sell their products within State boundaries.

FSIS conducts a small business outreach program that provides critical training, access to food safety experts, and information resources (such as compliance guidance and questions and answers on various topics) in forms that are uniform, easily comprehended, and consistent. FSIS collaborates in this effort with other USDA agencies and cooperating State partners. For example, FSIS makes plant owners and operators aware of loan programs, available through USDA's Rural Business and Cooperative programs, to help them in upgrading their facilities. FSIS employees meet with small and very small plant operators to learn more about their specific needs and provide joint training sessions for small and very small plants and FSIS employees.

Animal and Plant Health Inspection Service

Mission: A major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect the health and value of American agricultural and natural resources. APHIS regulatory actions support USDA's goal of ensuring access to safe, plentiful, and nutritious food by minimizing major diseases and pests that have the potential for reducing agricultural productivity. In support of this goal, APHIS conducts programs to prevent the introduction of exotic pests and diseases into the United States and conducts surveillance, monitoring, control, and eradication programs for pests and diseases in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health. APHIS also conducts programs to ensure the humane handling, care, treatment, and transportation of animals under the Animal Welfare Act.

Priorities: With respect to animal health, APHIS is working with State and tribal representatives to identify a regulatory approach that will provide national traceability standards for livestock moved interstate while allowing each State and tribe the flexibility to work with their producers to develop standards that will work best for them. In the area of animal welfare, APHIS plans to propose standards for the humane handling, care, treatment, and transportation of birds covered under the Animal Welfare Act and to establish regulations to ensure the humane treatment of dogs imported into the United States for resale. Regarding plant health, APHIS anticipates publishing a proposed rule that would revise the current regulations governing the permitting of plant pests and biological control organisms. APHIS is also preparing a final rule that will conclude the first phase of its comprehensive revision to its regulations for importing nursery stock (plants for planting) to better address plant health risks associated with propagative material.

Agricultural Marketing Service

Mission: The Agricultural Marketing Service (AMS) provides marketing services to producers, manufacturers, distributors, importers, exporters, and consumers of food products. The AMS

also manages the government's food purchases, supervises food quality grading, maintains food quality standards, and supervises the Federal research and promotion programs. AMS programs contribute to the achievement of a number of objectives under the Department's goal to assist rural communities to create prosperity and the goal to ensure that all of America's children have access to safe, nutritious, and balanced meals.

Priorities:

- National Organic Program (NOP). AMS' priority items for the next year include several rulemakings that impact the organic industry. Statistics indicating rapid growth in the organic sector have highlighted issues that need to be addressed, including:
  - Origin of Livestock. On October 24, 2008, NOP published a proposed rule with request for comments on the access to pasture requirements for ruminants. This proposed rule included a change in the origin of livestock requirements for dairy animals under section 205.236 of the NOP regulations. Many of the comments received on the October 2008 proposed rule suggested that the origin of livestock issue should be pursued through a separate rulemaking from access to pasture. As a result, the proposed change to the origin of livestock requirements was not retained in the final rule on access to pasture published on February 17, 2010. AMS plans to develop a proposed rule specific to origin of livestock under the NOP during fiscal year (FY) 2011.
  - Periodic Pesticide Residue Testing. The Organic Foods Production Act (OFPA) of 1990 included language requiring certifying agents to conduct periodic residue testing of organic products produced or handled in accordance with the NOP. This requirement was meant to identify organic products that contained pesticides or other nonorganic residues in violation with the NOP or other applicable laws. In March 2010, an Office of Inspector General (OIG) audit of the NOP suggested that a legal review by the Office of General Counsel (OGC) of the current NOP regulations was needed to assess whether the existing regulations are in compliance with the residue testing requirement under OFPA. As a result of the legal opinion received by the NOP on this issue, AMS will publish a proposed rule on new periodic pesticide residue testing requirements in 2011.
  - Streamlining Enforcement Related Actions. The March 2010 Office of Inspector General (OIG) audit of the NOP raised issues related to the program's process for imposing enforcement actions. One concern was that organic producers and handlers facing revocation or suspension of their certification are able to market their products as organic during what can be a lengthy appeals process. As a result, AMS will publish a proposed rule in 2011 to streamline the NOP appeals process such that appeals are reviewed and responded to in a timely manner.
- Dairy Promotion and Research Program (Dairy Import Assessments). AMS has entered the final stage of establishing the National Dairy Promotion and Research Program. The Dairy Production Stabilization Act of 1983 (Dairy Act) authorized USDA to create a national producer program for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products. Dairy farmers fund this self-help program through a mandatory assessment on all milk produced in the contiguous 48 States and marketed commercially. Dairy farmers administer the national program through the National Dairy Promotion and Research Board (Dairy Board).

The 2008 Farm Bill extended the program to include producers in Alaska, Hawaii, and Puerto Rico, who will pay an assessment of $0.15 per hundredweight of milk production. Imported dairy products will be assessed at $0.075 per hundredweight of fluid milk equivalent. AMS published proposed regulations establishing the program in the May 19, 2009, **Federal Register**. The proposal had a 30-day comment period. The final rule is expected to be published by the end of 2010.

Grain, Inspection, Packers and Stockyards Administration

Mission: The Grain Inspection, Packers and Stockyards Administration (GIPSA) facilitates the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products and promotes fair and competitive trading practices for the overall benefit of consumers and American agriculture.GIPSA's activities contribute significantly to the Department's goal to increase prosperity in rural areas by supporting a competitive agricultural system.

Priorities: GIPSA intends to issue a final rule that will define practices or conduct that are unfair, unjustly discriminatory, or deceptive, and/or that represent the making or giving of an undue or unreasonable preference or advantage, and ensure that producers and growers can fully participate in any arbitration process that may arise relating to livestock or poultry contracts. This regulation is being finalized in accordance with the authority granted to the Secretary by the Packers and Stockyards Act of 1921 and with the requirements of sections 11005 and 11006 of the 2008 Farm Bill.

Farm Service Agency

Mission: The Farm Service Agency's (FSA) mission is to equitably serve all farmers, ranchers, and agricultural partners through the delivery of effective, efficient agricultural programs, which contributes to two USDA goals. The goal of assisting rural communities in creating prosperity so they are self-sustaining, re-populating, and economically thriving; and the goal to enhance the Nation's natural resource base by assisting owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources. It supports the first goal by stabilizing farm income, providing credit to new or existing farmers and ranchers who are temporarily unable to obtain credit from commercial sources, and helping farm operations recover from the effects of disaster. FSA supports the second goal by administering several conservation programs directed toward agricultural producers. The largest program is the Conservation Reserve Program (CRP), which protects nearly 32 million acres of environmentally sensitive land.

Priorities:

- Disaster Assistance. Regulations will be issued to establish a new disaster assistance program, the Emergency Forest Restoration Program. This program requires new regulations and minor revisions to the existing related Emergency Conservation Program regulations.
- Biomass Crop Assistance Program. Final regulations were published to complete implementation of the Biomass Crop Assistance Program. This program supports the Administration's energy initiative to accelerate the investment in and production of biofuels. The program will provide financial assistance to

agricultural and forest land owners and operators to establish and produce eligible crops, including woody biomass, for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

- Farm Loan Programs. FSA will develop and issue regulations to amend programs for farm operating loans, down payment loans, and emergency loans to include socially disadvantaged farmers, increase loan limits, loan size, funding targets, interest rates, and graduating borrowers to commercial credit. In addition, the regulations will establish a new direct and guaranteed loan program to assist farmers in implementing conservation practices.

Forest Service

Mission: The mission of the Forest Service is to sustain the health, productivity, and diversity of the Nation's forests and rangelands to meet the needs of present and future generations. This includes protecting and managing National Forest System lands, providing technical and financial assistance to States, communities, and private forest landowners, and developing and providing scientific and technical assistance and scientific exchanges in support of international forest and range conservation. Forest Service regulatory priorities support the accomplishment of the Department's goal to ensure our National forests are conserved, restored, and made more resilient to climate change, while enhancing our water resources.

Priorities:

- Land Management Planning Rule. The Forest Service is required to issue rulemaking for National Forest System land management planning under 16 U.S.C. 1604. The first planning rule was adopted in 1979 and amended in 1982. The Forest Service published a new planning rule on April 21, 2008 (73 FR 21468). On June 30, 2009, the United States District Court for the Northern District of California invalidated the Forest Service's 2008 Planning Rule published at 36 CFR 219 based on violations of NEPA and ESA in the rulemaking process. The District Court vacated the 2008 rule, enjoined the USDA from further implementing it, and remanded it to the USDA for further proceedings. USDA has determined that the 2000 planning rule is now in effect, including its transition provisions as amended in 2002 and 2003, and as clarified by interpretative rules issued in 2001 and 2004, which allows the use of the provisions of the 1982 planning rule to amend or revise plans. The Forest Service is now in the 2000 planning rule transition period. The Forest Service is proposing a new planning rule. In so doing, the Forest Service plans to correct deficiencies that have been identified over two decades of forest planning and update planning procedures to reflect contemporary collaborative planning practices.
- Community Forest and Open Space Conservation Program. The purpose of the Community Forest Program is to achieve community benefits through financial assistance grants to local governments, tribal governments, and nonprofit organizations to establish community forests by acquiring and protecting private forestlands. Community forest benefits are specified in the authorizing statute and include economic benefits from sustainable forest management, natural resource conservation, forest-based educational programs, model forest stewardship activities, and recreational opportunities.
- Closure of NFS Lands to Protect Privacy of Tribal Activities. There is currently no provision for a special closure of NFS lands to protect the privacy of tribal activities for traditional and cultural purposes. The Forest Service will amend its regulations to allow special closure of NFS land to protect the privacy of tribal activities for traditional and cultural purposes.

Rural Business-Cooperative Service

Mission: Promoting a dynamic business environment in rural America is the goal of the Rural Business-Cooperative Service (RBS). Business Programs works in partnership with the private sector and the community-based organizations to provide financial assistance and business planning, and helps fund projects that create or preserve quality jobs and/or promote a clean rural environment. The financial resources are often leveraged with those of other public and private credit source lenders to meet business and credit needs in under-served areas. Recipients of these programs may include individuals, corporations, partnerships, cooperatives, public bodies, nonprofit corporations, Indian tribes, and private companies. The mission of Cooperative Programs of RBS is to promote understanding and use of the cooperative form of business as a viable organizational option for marketing and distributing agricultural products.

Priorities: In support of the Department's goal to increase the prosperity of rural communities, RBS regulatory priorities will facilitate sustainable renewable energy development and enhance the opportunities necessary for rural families to thrive economically. RBS's priority will be to publish regulations to fully implement the 2008 Farm Bill. This includes promulgating regulations for the Biorefinery Assistance Program (sec. 9003), the Repowering Assistance Program (sec. 9004), the Bioenergy Program for Advanced Biofuels (sec. 9005), and the Rural Microentrepreneur Assistance Program (RMAP). RBS has been administering sections 9003, 9004, and 9005 through the use of Notices of Funds Availability and Notices of Contract Proposals. Revisions to the Rural Energy for America Program (sec. 9007) will be made to incorporate Energy Audits and Renewable Energy Development Assistance and Feasibility Studies for Rural Energy Systems as eligible grant purposes, as well as other Farm Bill initiatives and various technical changes throughout the rule. In addition, revisions to the Business and Industry Guaranteed Loan Program will be made to implement 2008 Farm Bill provisions and other program initiatives. These rules will minimize program complexity and burden on the public while enhancing program delivery and RBS oversight.

Rural Utilities Service

Mission: The mission of the Rural Utilities Service is to improve the quality of life in rural America by providing investment capital for the deployment of critical rural utilities telecommunications, electric, and water and waste disposal infrastructure. Financial assistance is provided to rural utilities, municipalities, commercial corporations, limited liability companies, public utility districts, Indian tribes, and cooperative, nonprofit, limited-dividend, or mutual associations. The public-private partnership, which is forged between the Rural Utilities Service (RUS) and these industries, results in billions of dollars in rural infrastructure development and creates thousands of jobs for the American economy.

Priorities: RUS' regulatory priorities will be to achieve the President's goal to bring affordable broadband to all rural Americans. To accomplish this, RUS will continue to improve the Broadband Program established by the 2002 Farm

Bill. The 2002 Farm Bill authorized RUS to approve loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. The 2008 Farm Bill is significantly changing the statutory requirements of the Broadband Loan Program. As such, RUS will be issuing an interim rule to implement the statutory changes and will request comments on the section of the rule that was not part of the proposed rule that was published in May 2007. In addition, the regulations will be issued to implement provisions of the American Recovery and Reinvestment Act that expanded RUS's authority to make loans and provided new authority to make grants to facilitate broadband deployment in rural areas.

Departmental Management

Mission: Departmental Management's mission is to provide management leadership to ensure that USDA administrative programs, policies, advice, and counsel meet the needs of USDA program organizations, consistent with laws and mandates, and provide safe and efficient facilities and services to customers.

Priorities: In support of the Department's goal to increase rural prosperity, USDA's Departmental Management will finalize regulations establishing a program allowing manufacturers and vendors of eligible products made from biobased feedstocks to display the label on their packaging and marketing materials. Once completed, this regulation will implement a section of the 2008 Farm Bill and will promote alternative uses of agriculture and forest materials.

Aggregate Costs and Benefits

USDA will ensure that its regulations provide benefits that exceed costs, but is unable to provide an estimate of the aggregated impacts of its regulations. Problems with aggregation arise due to differing baselines, data gaps, and inconsistencies in methodology and the type of regulatory costs and benefits considered. In addition, aggregation omits benefits and costs that cannot be reliably quantified, such as improved health resulting from increased access to more nutritious foods, higher levels of food safety, and increased quality of life derived from investments in rural infrastructure. Some benefits and costs associated with rules listed in the regulatory plan cannot currently be quantified as the rules are still being formulated. For 2011, the Department's focus will be to implement the changes to programs in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants.

USDA—Agricultural Marketing Service (AMS)

PROPOSED RULE STAGE

1. ● WHOLESALE PORK REPORTING PROGRAM

Priority:

Other Significant

Legal Authority:

7 USC 1635 to 1636

CFR Citation:

7 CFR 59

Legal Deadline:

Final, Statutory, March 28, 2012.

With the passage of S. 3656, the Mandatory Price Reporting Act of 2010, the Secretary of Agriculture is required to amend chapter 3 of subtitle B of the Agricultural Marketing Act of 1946 by adding a new section for mandatory reporting of wholesale pork cuts. To make these amendments, the Secretary was directed to promulgate a final rule no later than one and a half years after the date of the enactment of the Act. Accordingly, a final rule will be promulgated by March 28, 2012.

Abstract:

On September 15, 2010, Congress passed the Mandatory Price Reporting Act of 2010 reauthorizing Livestock Mandatory Reporting for 5 years and adding a provision for mandatory reporting of wholesale pork cuts. The Act was signed by the President on September 28, 2010. Congress directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting. Further, Congress required that the negotiated rulemaking committee include representatives from (i) organizations representing swine producers; (ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork; (iii) the Department of Agriculture; and (iv) among interested parties that participate in swine or pork production.

Statement of Need:

Implementation of mandatory pork reporting is required by Congress. Congress delegated responsibility to the Secretary for determining what information is necessary and appropriate. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234) directed the Secretary to conduct a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The report from this study generally concluded that voluntary wholesale pork price reporting is thin and becoming thinner, and some degree of support for moving to mandatory price reporting exists at every segment of the industry interviewed. The report was delivered to Congress on March 25, 2010.

Summary of Legal Basis:

Livestock Mandatory Reporting is authorized under the Agricultural Marketing Act (7 U.S.C. 1635 to 1636). The Livestock and Seed Program of USDA's Agricultural Marketing Service has day-to-day responsibility for collecting and disseminating LMR data.

Alternatives:

There are no alternatives, as this rulemaking is a matter of law based on the Mandatory Price Reporting Act of 2010.

Anticipated Cost and Benefits:

Estimation of costs will follow the previous methodology used in earlier Livestock Mandatory Reporting rulemaking. The focus of the cost estimation is the burden placed on reporting companies in providing pork marketing data to the Livestock and Seed Program. Previous rulemaking cost estimates of boxed beef reporting of similar data found the burden to be an annual total of 65 hours in additional reporting requirements per firm. Because no official USDA grade standards are used in the marketing of pork, and fewer cutting styles, the burden for pork reporting firms in comparison with beef reporting firms could be lower. However, the impact is not truly known at this stage.

Timetable:

Action	Date	FR Cite
Notice	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—AMS

FINAL RULE STAGE

2. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM; DAIRY IMPORT ASSESSMENTS, DA–08–0050

Priority:

Other Significant

Legal Authority:

7 USC 4501 to 4514; 7 USC 7401

CFR Citation:

7 CFR 1150

Legal Deadline:

Final, Statutory, September 19, 2008, Assessments on imported dairy products must be implemented by deadline.

With the passage of section 1507 in the 2008 Farm Bill, the Dairy Act was amended to apply certain assessments to Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico. The 2008 Farm Bill authorized the Secretary to issue regulations to implement the mandatory dairy import assessment without providing a notice and comment period. However, due to the interest of affected parties, a notice and comment period was provided.

Abstract:

The Dairy Act authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products. Amendments to the Order are pursuant to the 2002 and 2008 Farm Bills. The 2002 Farm Bill mandates that the Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5-cent per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. Additionally, in accordance with the 2008 Farm Bill, the term ''United States'' is the Dairy Act is amended to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

Statement of Need:

In response to the May 19, 2009 (74 FR 23359), proposed rule (National Dairy Promotion and Research Program; Proposed Rule on Amendments to the Order), AMS received 189 timely comments from consumers, dairy producers, foreign governments, importers, exporters, manufacturers, members of Congress, trade associations, and other interested parties.

The comments covered a wide range of topics, including 39 in opposition to the proposal and 150 in support of the proposal. Opponents of the proposal expressed concern over the lack of a referendum requirement among those affected; default assessment rates; lack of ability to no longer promote State-branded dairy products; lack of importer organizations eligible to become a Qualified Program; disputed the cost-benefit analysis for importers and producers; and cited unreasonable importer paperwork and record keeping burdens.

Proponents of the proposal expressed support for an expedited implementation of the dairy import assessment; cited the enhanced benefits both domestic producers and importers will receive as a result of implementation; recommended new Harmonized Tariff Schedule codes; use of a default assessment rate; recommended regular reporting of the products and assessments on imports; and all thresholds for compliance with U.S. trade obligations have been met.

AMS plans to issue a final rule implementing the dairy import assessment in the near future. In response to the comments received and after consultation with USTR, AMS is addressing, in the final rule, referenda, alternative assessment rates, and compliance and enforcement activity. All remaining changes are miscellaneous and minor in nature in order to clarify regulatory text.

Summary of Legal Basis:

The National Dairy Promotion and Research Program (National Program) is authorized under the authorized under the provisions of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 to 4514), and the Dairy Promotion and Research Order (7 CFR part 1150). The Dairy Programs unit of USDA's Agricultural Marketing Service has day—to—day oversight responsibilities for the National Program.

Alternatives:

There are no alternatives, as this rulemaking is a matter of law based on the 2002 and 2008 Farm Bills.

Anticipated Cost and Benefits:

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of $0.15 per hundredweight of milk marketed in 2007, it is estimated that $1.1 million would have been paid. This is about 0.6 percent of the $192 million total value of milk produced and marketed in these areas.

Benefits to producers in these areas are assumed to be similar to those benefits received by producers of other U.S. geographical regions. Cornell University has conducted an independent economic analysis of the Program that is included in the annual report to Congress. Cornell determined that from 1998 through 2007, each dollar invested in generic dairy marketing by dairy farmers during the period would return between $5.52 and $5.94, on average, in net revenue to farmers.

Assessments collected from importers under the National Program will be relatively small compared to the value of dairy imports. If importers had been assessed $0.075 per hundredweight, or equivalent thereof, for imported dairy products in 2007 as specified in this rule, it is estimated that less than $6.1 million would have been paid. This is about 0.3 percent of the $2.4 billion value of the dairy products imported in 2007.

Risks:

If the amendments are not implemented, USDA would be in violation of the 2002 and 2008 Farm Bills.

Timetable:

Action	Date	FR Cite
NPRM	05/19/09	74 FR 23359

Action	Date	FR Cite
NPRM Comment Period End	06/18/09	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

3. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS

Priority:

Other Significant

Legal Authority:

7 USC 2131 to 2159

CFR Citation:

9 CFR 1 to 3

Legal Deadline:

None

Abstract:

APHIS intends to establish standards for the humane handling, care, treatment, and transportation of birds other than birds bred for use in research.

Statement of Need:

The Farm Security and Rural Investment Act of 2002 amended the definition of animal in the Animal Welfare Act (AWA) by specifically excluding birds, rats of the genus Rattus, and mice of the genus Mus, bred for use in research. While the definition of animal in the regulations contained in 9 CFR part 1 has excluded rats of the genus Rattus and mice of the genus Mus bred for use in research, that definition has also excluded all birds (i.e., not just those birds bred for use in research). In line with this change to the definition of animal in the AWA, APHIS intends to establish standards in 9 CFR part 3 for the humane handling, care, treatment, and transportation of birds other than those birds bred for use in research and to revise the regulations in 9 CFR parts 1 and 2 to make them applicable to birds.

Summary of Legal Basis:

The Animal Welfare Act (AWA) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and immediate handlers. Animals covered by the AWA include birds that are not bred for use in research.

Alternatives:

To be identified.

Anticipated Cost and Benefits:

To be determined.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	08/00/11	
NPRM Comment Period End	11/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—APHIS

4. PLANT PEST REGULATIONS; UPDATE OF GENERAL PROVISIONS

Priority:

Other Significant

Legal Authority:

7 USC 450; 7 USC 2260; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8817; 19 USC 136; 21 USC 111; 21 USC 114a; 21 USC 136 and 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation:

7 CFR 318 to 319; 7 CFR 330; 7 CFR 352

Legal Deadline:

None

Abstract:

We are proposing to revise our regulations regarding the movement of plant pests. We are proposing to regulate the movement of not only plant pests, but also biological control organisms and associated articles. We are proposing risk-based criteria regarding the movement of biological control organisms, and are proposing to exempt certain types of plant pests from permitting requirements for their interstate movement and movement for environmental release. We are also proposing to revise our regulations regarding the movement of soil, and to establish regulations governing the biocontainment facilities in which plant pests, biological control organisms, and associated articles are held. This proposed rule replaces a previously published proposed rule, which we are withdrawing as part of this document. This proposal would clarify the factors that would be considered when assessing the risks associated with the movement of certain organisms, facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture, and address gaps in the current regulations.

Statement of Need:

APHIS is preparing a proposed rule to revise its regulations regarding the movement of plant pests. The revised regulations would address the importation and interstate movement of plant pests, biological control organisms, and associated articles and the release into the environment of biological control organisms. The revision would also address the movement of soil and establish regulations governing the biocontainment facilities in which

plant pests, biological control organisms, and associated articles are held. This proposal would clarify the factors that would be considered when assessing the risks associated with the movement of certain organisms, facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture, and address gaps in the current regulations.

Summary of Legal Basis:

Under section 411(a) of the Plant Protection Act (PPA), no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under a general or specific permit and in accordance with such regulations as the Secretary of Agriculture may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

Under section 412 of the PPA, the Secretary may restrict the importation or movement in interstate commerce of biological control organisms by requiring the organisms to be accompanied by a permit authorizing such movement and by subjecting the organisms to quarantine conditions or other remedial measures deemed necessary to prevent the spread of plant pests or noxious weeds. That same section of the PPA also gives the Secretary explicit authority to regulate the movement of associated articles.

Alternatives:

The alternatives we considered were taking no action at this time or implementing a comprehensive risk reduction plan. This latter alternative would be characterized as a broad risk mitigation strategy that could involve various options such as increased inspection, regulations specific to a certain organism or group of related organisms, or extensive biocontainment requirements.

We decided against the first alternative because leaving the regulations unchanged would not address the needs identified immediately above. We decided against the latter alternative, because available scientific information, personnel, and resources suggest that it would be impracticable at this time.

Anticipated Cost and Benefits:

Undetermined at this time.

Risks:

Unless we issue such a proposal, the regulations will not provide a clear protocol for obtaining permits that authorize the movement and environmental release of biological control organisms. This, in turn, could impede research to explore biological control options for various plant pests and noxious weeds known to exist within the United States, and could indirectly lead to the further dissemination of such pests and weeds.

Moreover, unless we revise the soil regulations, certain provisions in the regulations will not adequately address the risk to plants, plant parts, and plant products within the United States that such soil might present.

Timetable:

Action	Date	FR Cite
Notice of Intent to Prepare an Environmental Impact Statement	10/20/09	74 FR 53673
Notice Comment Period End	11/19/09	
NPRM	01/00/11	
NPRM Comment Period End	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Local, State, Tribal

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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RIN: 0579–AC98

USDA—APHIS

5. • IMPORTATION OF LIVE DOGS

Priority:

Other Significant

Legal Authority:

7 USC 2148

CFR Citation:

9 CFR 1 and 2

Legal Deadline:

None

Abstract:

This rulemaking would amend the Animal Welfare Act (AWA) regulations to regulate dogs imported for resale as required by a recent amendment to the AWA. Importation of dogs for resale would be prohibited unless the dogs are in good health, have all necessary vaccinations, and are 6 months of age or older. This proposal will also reflect the exemptions provided in the amendment to the AWA for dogs imported for research purposes or veterinary treatment and for dogs legally imported into the State of Hawaii from the British Isles, Australia, Guam, or New Zealand.

Statement of Need:

The Food, Conservation, and Energy Act of 2008 mandates that the Secretary of Agriculture promulgate regulations to implement and enforce new provisions of the Animal Welfare Act (AWA) regarding the importation of dogs for resale. In line with the changes to the AWA, APHIS intends to amend the regulations in 9 CFR parts 1 and 2 to regulate the importation of dogs for resale.

Summary of Legal Basis:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, signed into law on June 18, 2008) added a new section to the Animal Welfare Act (7 U.S.C. 2147) to restrict the importation of live dogs for resale. As amended, the AWA now prohibits the importation of dogs into the United States for resale unless the Secretary of Agriculture determines that the dogs are in good health, have received all necessary vaccinations, and are at least 6 months of age. Exceptions are provided for dogs imported for research purposes or veterinary treatment. An exception to the 6-month age requirement is also provided for dogs that are lawfully imported into Hawaii for resale purposes from the British Isles, Australia, Guam, or New Zealand in compliance with the applicable regulations of Hawaii, provided the dogs are vaccinated, are in good health, and are not transported out of Hawaii for resale purposes at less than 6 months of age.

Alternatives:

To be identified.

Anticipated Cost and Benefits:

To be determined.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	
NPRM Comment Period End	02/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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USDA—APHIS

6. • ANIMAL DISEASE TRACEABILITY

Priority:

Other Significant

Legal Authority:

7 USC 8305

CFR Citation:

9 CFR 90

Legal Deadline:

None

Abstract:

This rulemaking would establish a new part in the Code of Federal Regulations containing general identification and documentation requirements for livestock moving interstate. The purpose of the new regulations is to improve our ability to trace livestock in the event that disease is found. The regulations will provide national traceability standards for livestock moved interstate and allow each State and tribe the flexibility to develop ways of meeting the standards that will work best for them.

Statement of Need:

Preventing and controlling animal disease is the cornerstone of protecting American animal agriculture. While ranchers and farmers work hard to protect their animals and their livelihoods, there is never a guarantee that their animals will be spared from disease. To support their efforts, USDA has enacted regulations to prevent, control, and eradicate disease, and to increase foreign and domestic confidence in the safety of animals and animal products. Traceability helps give that reassurance. Traceability does not prevent disease, but knowing where diseased and at-risk animals are, where they have been, and when, is indispensable in emergency response and in ongoing disease programs. The primary objectives of these proposed regulations are to improve our ability to trace livestock in the event that disease is found and to provide national standards to ensure the smooth flow of livestock in interstate commerce, while also allowing States and tribes the flexibility to develop systems for tracing animals within their State and tribal lands that work best for them.

Summary of Legal Basis:

Under the Animal Health Protection Act (7 U.S.C. 8301 et seq.), the Secretary of Agriculture may prohibit or restrict the interstate movement of any animal to prevent the introduction or dissemination of any pest or disease of livestock, and may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock. The Secretary may promulgate such regulations as may be necessary to carry out the Act.

Alternatives:

As part of its ongoing efforts to safeguard animal health, APHIS initiated implementation of the National Animal Identification System (NAIS) in 2004. More recently, the Agency launched an effort to assess the level of acceptance of NAIS through meetings with the Secretary, listening sessions in 14 cities, and public comments. Although there was some support for NAIS, the vast majority of participants were highly critical of the program and of USDA's implementation efforts. The feedback revealed that NAIS has become a barrier to achieving meaningful animal disease traceability in the United States in partnership with America's producers.

The option we are proposing pertains strictly to interstate movement and gives States and tribes the flexibility to identify and implement the traceability approaches that work best for them.

Anticipated Cost and Benefits:

A workable and effective animal traceability system would enhance animal health programs, leading to more secure market access and other societal gains. Traceability can reduce the cost of disease outbreaks, minimizing losses to producers and industries by enabling current and previous locations of potentially exposed animals to be readily identified. Trade benefits can include increased competitiveness in global markets generally, and when outbreaks do occur, the mitigation of export market losses through regionalization. Markets benefit through more efficient and timely epidemiological investigation of animal health issues. Other societal benefits include improved animal welfare during natural disasters.

Costs of an animal traceability system would include those for tags and tagging and would vary, depending on the method of identification chosen (e.g., metal tags vs. microchip implants). Costs are expected to vary by both type of operation and whether traceability would be by individual animal or by lot or group. Per head costs of traceability programs for the principal farm animals are estimated to be highest for cattle operations, followed by sheep, swine, and poultry operations. Larger operations would likely reap economies of scale, that is, incur lower costs per head than smaller operations. However, there will be exemptions for small producers who raise animals to feed themselves, their families, and their immediate neighbors. In addition, only operations moving livestock interstate would be required to comply with the regulations.

Risks:

This rulemaking is being undertaken to address the animal health risks posed by gaps in the existing regulations concerning identification of livestock being moved interstate. The current lack of a comprehensive animal traceability program is impairing our ability to trace animals that may be affected with disease.

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	
NPRM Comment Period End	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Tribal

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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RIN: 0579–AD24

USDA—APHIS

FINAL RULE STAGE

7. IMPORTATION OF PLANTS FOR PLANTING; ESTABLISHING A NEW CATEGORY OF PLANTS FOR PLANTING NOT AUTHORIZED FOR IMPORTATION PENDING PEST RISK ANALYSIS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

CFR Citation:

7 CFR 319

Legal Deadline:

None

Abstract:

This rulemaking will amend the regulations to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category will list taxa of plants for planting whose importation is not authorized pending pest risk analysis. If scientific evidence indicates that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, we will publish a notice that will announce our determination that the taxon is a quarantine pest or a host of a quarantine pest, cite the scientific evidence we considered in making this determination, and give the public an opportunity to comment on our determination. If we receive no comments that change our determination, the taxon will subsequently be added to the new category. We will allow any person to petition for a pest risk analysis to be conducted for a taxon that has been added to the new category. After the pest risk analysis is completed, we will remove the taxon from the category and allow its importation subject to general requirements, allow its importation subject to specific restrictions, or prohibit its importation. We will consider applications for permits to import small quantities of germplasm from taxa whose importation is not authorized pending pest risk analysis, for experimental or scientific purposes under controlled conditions. This new category will allow us to take prompt action on evidence that the importation of a taxon of plants for planting poses a risk while continuing to allow for public participation in the process.

Statement of Need:

APHIS typically relies on inspection at a Federal plant inspection station or port of entry to mitigate the risks of pest introduction associated with the importation of plants for planting. Importation of plants for planting is further restricted or prohibited only if there is specific evidence that such importation could introduce a quarantine pest into the United States. Most of the taxa of plants for planting currently being imported have not been thoroughly studied to determine whether their importation presents a risk of introducing a quarantine pest into the United States. The volume and the number of types of plants for planting have increased dramatically in recent years, and there are several problems associated with gathering data on what plants for planting are being imported and on the risks such importation presents. In addition, quarantine pests that enter the United States via the importation of plants for planting pose a particularly high risk of becoming established within the United States. The current regulations need to be amended to better address these risks.

Summary of Legal Basis:

The Secretary of Agriculture may prohibit or restrict the importation or entry of any plant if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States of a plant pest or noxious weed (7 U.S.C. 7712).

Alternatives:

APHIS has identified one alternative to the approach we are considering. We could prohibit the importation of all nursery stock pending risk evaluation, approval, and notice-and-comment rulemaking, similar to APHIS' approach to regulating imported fruits and vegetables. This approach would lead to a major interruption in international trade and would have significant economic effects on both U.S. importers and U.S. consumers of plants for planting.

Anticipated Cost and Benefits:

Undetermined.

Risks:

In the absence of some action to revise the nursery stock regulations to allow us to better address pest risks, increased introductions of plant pests via imported nursery stock are likely, causing extensive damage to both agricultural and natural plant resources.

Timetable:

Action	Date	FR Cite
NPRM	07/23/09	74 FR 36403
NPRM Comment Period End	10/21/09	
Final Rule	12/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

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RIN: 0579–AC03

USDA—Rural Housing Service (RHS)

FINAL RULE STAGE

8. MULTI–FAMILY HOUSING (MFH) REINVENTION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 42 USC 1490a; 7 USC 1989; 42 USC 1475; 42 USC 1479; 42 USC 1480; 42 USC 1481; 42 USC 1484; 42 USC 1485; 42 USC 1486

CFR Citation:

7 CFR 1806; 7 CFR 1822; 7 CFR 1902; 7 CFR 1925; 7 CFR 1930; 7 CFR 1940; 7 CFR 1942; 7 CFR 1944; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956; 7 CFR 1965; 7 CFR 3560; 7 CFR 3565

Legal Deadline:

None

Abstract:

The Rural Housing Service has consolidated and streamlined the regulations pertaining to section 515 Rural Rental Housing, section 514 Farm Labor Housing Loans, section 516 Farm Labor Housing Grants, and section 521 Rental Assistance Payments. Fourteen published regulations have been reduced to one regulation and handbooks for program administration. This will simplify loan origination and portfolio management for applicants, borrowers, and housing operators, as well as Rural Development field staff. This also provides flexibility for program modifications to reflect current and foreseeable changes. The consolidated regulations save time and simplify costs. Finally, the regulation is more customer friendly and responsive to the needs of the public.

Statement of Need:

The new regulation for the program known as the Multi-Family Housing Loan and Grant Programs will be more user-friendly for lenders, borrowers, and Agency staff. These changes are essential to allow for improved service to the public and for an expanded program with increased impact on rural housing opportunities without a corresponding expansion in Agency staff. The regulations will be shorter, better organized, and more simple and clear. Many documentation requirements will be eliminated or consolidated into more convenient formats.

Summary of Legal Basis:

The existing statutory authority for the MFH programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make housing loans to farmers. As a result of this Act, the Agency established single-family and multi-family housing programs. Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited profit entities, the establishment of a rental assistance program, and the imposition of a number of restrictive use provisions and prepayment restrictions.

Alternatives:

To not publish the rule would substantially restrict RHS' ability to effectively administer the programs and cost the Agency significant credibility with the public and oversight organizations.

Anticipated Cost and Benefits:

Based on analysis of the proposed rule, the following impacts may occur, some of which could be considered significant:

There would be cost savings due to reduced paperwork, estimated to be about $1.8 million annually for the public and about $10.1 million for the Government.

Risks:

Without the streamlining, there will be a decrease in the ability of the Agency to provide safe, decent, and sanitary housing to program beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	06/02/03	68 FR 32872
NPRM Comment Period End	08/01/03	
Interim Final Rule	11/26/04	69 FR 69032
Interim Final Rule Comment Period End	12/27/04	
Interim Final Rule Effective	02/22/05	70 FR 8503
Final Action	10/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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Related RIN: Merged with 0575–AC24

RIN: 0575–AC13

USDA—Grain Inspection, Packers and Stockyards Administration (GIPSA)

FINAL RULE STAGE

9. ENFORCEMENT OF THE PACKERS AND STOCKYARDS ACT

Priority:

Other Significant

Legal Authority:

7 USC 181

CFR Citation:

9 CFR 201

Legal Deadline:

Final, Statutory, June 18, 2010.

Abstract:

GIPSA is proposing regulations under the Packers and Stockyards Act, 1921, that clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria GIPSA will consider in determining whether a live poultry

dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. The Farm Bill also instructed the Secretary to promulgate regulations to ensure that producers and growers are afforded the opportunity to fully participate in the arbitration process if they so choose.

Statement of Need:

In enacting title XI of the Food, Conservation, and Energy Act of 2008 (Farm Bill) (Pub. L. 110-246), Congress recognized the nature of problems encountered in the livestock and poultry industries and amended the Packers and Stockyards Act (P&S Act). These amendments established new requirements for participants in the livestock and poultry industries and required the Secretary of Agriculture (Secretary) to establish criteria to consider when determining that certain other conduct is in violation of the P&S Act.

The Grain Inspection, Packers and Stockyards Administration's (GIPSA) attempts to enforce the broad prohibitions of the P&S Act have been frustrated, in part because it has not previously defined what conduct constitutes an unfair practice or the giving of an undue preference or advantage. The new regulations that GIPSA is proposing describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA. They will clarify conditions for industry compliance with the P&S Act and provide for a fairer market place.

In accordance with the Farm Bill, GIPSA is proposing regulations under the P&S Act that would clarify when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. These proposed regulations also establish criteria that GIPSA will consider in determining whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract.

The Farm Bill also instructed the Secretary to promulgate regulations to ensure that poultry growers, swine production contract growers and livestock producers are afforded the opportunity to fully participate in the arbitration process, if they so choose. We are proposing a required format for providing poultry growers, swine production contract growers, and livestock producers the opportunity to decline the use of arbitration in contracts requiring arbitration. We are also proposing criteria that we will consider in finding that poultry growers, swine production contract growers, and livestock producers have a meaningful opportunity to participate fully in the arbitration process if they voluntarily agree to do so. We will use these criteria to assess the overall fairness of the arbitration process.

In addition to proposing regulations in accordance with the Farm Bill, GIPSA is proposing regulations that would prohibit certain conduct because it is unfair, unjustly discriminatory or deceptive, in violation of the P&S Act. These additional proposed regulations are promulgated under the authority of section 407 of the P&S Act and complement those required by the Farm Bill to help ensure fair trade and competition in the livestock and poultry industries.

These regulations are intended to address the increased use of contracting in the marketing and production of livestock and poultry by entities under the jurisdiction of the P&S Act, and practices that result from the use of market power and alterations in private property rights, which violate the spirit and letter of the P&S Act. The effect increased contracting has had, and continues to have, on individual agricultural producers has significantly changed the industry and the rural economy as a whole, making these proposed regulations necessary.

Summary of Legal Basis:

Section 407 of the P&S Act (7 U.S.C. 228) provides that the Secretary ''may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act.'' Sections 11005 and 11006 of the Farm Bill became effective June 18, 2008, and instruct the Secretary to promulgate additional regulations as described in this notice of proposed rulemaking.

Alternatives:

The Farm Bill explicitly directs the Secretary to promulgate certain regulations. GIPSA determined that additional regulations are necessary to provide notice to all regulated entities of types of practices and conduct that GIPSA considers ''unfair'' so that regulated entities are fully informed of actions or practices that are considered ''unfair'' and, therefore, prohibited. Within both the mandatory and discretionary regulatory provisions, we considered alternative options.

For example, GIPSA considered shorter notice periods in situations when a live poultry dealer suspends delivery of birds to a poultry grower. These alternatives would not have provided adequate trust and integrity in the livestock and poultry markets. Other alternatives may have been more restrictive. We considered prohibiting the use of arbitration to resolve disputes; however, that option goes against a popular method of dispute resolution in other industries and is not in line with the spirit of the 2008 Farm Bill. GIPSA believes that this proposed rule represents the best option to level the playing field between packers, swine contractors, live poultry dealers, and the Nation's poultry growers, swine production contract growers, or livestock producers for the benefit of more efficient marketing and public good.

Anticipated Cost and Benefits:

Costs:

Costs are aggregated into three major types: 1) Administrative costs, which include items such as office work, postage, filing, and copying; 2) costs of analysis, such as a business conducting a profit-loss analysis; and 3) adjustment costs, such as costs related to changing business behavior to achieve compliance with the proposed regulation.

Benefits:

Benefits are also aggregated into three major groups: 1) Increased pricing

efficiency; 2) allocation efficiency; and 3) competitive efficiency.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	06/22/10	75 FR 35338
NPRM Comment Period End	08/23/10	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Food and Nutrition Service (FNS)

PROPOSED RULE STAGE

10. ELIGIBILITY, CERTIFICATION, AND EMPLOYMENT AND TRAINING PROVISIONS OF THE FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–246; PL 104–121

CFR Citation:

7 CFR 273

Legal Deadline:

None

Abstract:

This proposed rule would amend the regulations governing the Supplemental Nutrition Assistance Program (SNAP) to implement provisions from the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (FCEA) concerning the eligibility and certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. Food and Nutrition Service (FNS) is also proposing two discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens (08-006).

Statement of Need:

This proposed rule would amend the regulations governing SNAP to implement provisions from the FCEA concerning the eligibility and certification of SNAP applicants and participants and SNAP employment and training. In addition, this proposed rule would revise the SNAP regulations throughout 7 CFR part 273 to change the program name from the Food Stamp Program to SNAP and to make other nomenclature changes as mandated by the FCEA. The statutory effective date of these provisions was October 1, 2008. FNS is also proposing 2 discretionary revisions to SNAP regulations to provide State agencies options that are currently available only through waivers. These provisions would allow State agencies to average student work hours and to provide telephone interviews in lieu of face-to-face interviews. FNS anticipates that this rule would impact the associated paperwork burdens.

Summary of Legal Basis:

Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).

Alternatives:

Because this proposed rule is under development, alternatives are not yet articulated. The rule would implement statutory requirements set forth by the Food, Conservation, and Energy Act of 2008 concerning SNAP eligibility and certification rules.

Anticipated Cost and Benefits:

FNS is currently developing estimates of the anticipated costs and benefits of this rule. Anticipated principle effects would be on paperwork burdens.

Risks:

The statutory changes and discretionary ones under consideration would streamline program operations. The changes are expected to reduce the risk of inefficient operations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

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RIN: 0584–AD87

USDA—FNS

11. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: FARM BILL OF 2008 RETAILER SANCTIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–246

CFR Citation:

7 CFR 276

Legal Deadline:

None

Abstract:

This proposed rule would implement provisions under section 4132 of the Food, Conservation, and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food

store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section 4132 also eliminates the minimum disqualification period which was previously set at 6 months.

In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation.

Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card.

The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation (08-007).

Statement of Need:

This proposed rule would implement provisions under section 4132 of the Food, Conservation, and Energy Act of 2008, also referred to as the Farm Bill of 2008. Under section 4132, the Department of Agriculture's Food and Nutrition Service (FNS) is provided with greater authority and flexibility when sanctioning retail or wholesale food stores that violate Supplemental Nutrition Assistance Program (SNAP) rules. Specifically, the Department is authorized to assess a civil penalty and to disqualify a retail or wholesale food store authorized to participate in SNAP. Previously, the Department could assess a civil penalty or disqualification, but not both. Section 4132 also eliminates the minimum disqualification period which was previously set at six months. In addition to implementing statutory provisions, this rule proposes to provide a clear administrative penalty when an authorized retailer or wholesale food store redeems a SNAP participant's Program benefits without the knowledge of the participant. All Program benefits are issued through the Electronic Benefits Transfer (EBT) system. The EBT system establishes data that may be used to identify fraud committed by retail food stores. While stealing Program benefits could be prosecuted under current statute, Program regulations do not provide a clear penalty for these thefts. The proposed rule would establish an administrative penalty for such thefts equivalent to the penalty for trafficking in Program benefits, which is the permanent disqualification of a retailer or wholesale food store from SNAP participation. Finally, the Department proposes to identify additional administrative retail violations and the associated sanction that would be imposed against the retail food store for committing the violation. For instance, to maintain integrity, FNS requires retail and wholesale food stores to key enter EBT card data in the presence of the actual EBT card. The proposed rule would codify this requirement and identify the specific sanction that would be imposed if retail food stores are found to be in violation.

Summary of Legal Basis:

Section 4132, Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).

Alternatives:

Because this proposed rule is under development alternatives are not yet articulated.

Anticipated Cost and Benefits:

Because this proposed rule is under development anticipated costs and benefits have not yet been articulated.

Risks:

The risk that retail or wholesale food stores will violate SNAP rules, or continue to violate SNAP rules, is expected to be reduced by refining program sanctions for participating retailers and wholesalers.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

Note: This RIN replaces the previously issued RIN 0584-AD78.

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RIN: 0584–AD88

USDA—FNS

12. FRESH FRUIT AND VEGETABLE PROGRAM

Priority:

Other Significant

Legal Authority:

Food, Conservation, and Energy Act of 2008; National School Lunch Act (NSLA); 42 USC 1769(a)

CFR Citation:

7 CFR 211

Legal Deadline:

None

Abstract:

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding.

This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

In addition, the proposed rule would establish oversight activity and reporting and recordkeeping requirements that are not included in FFVP statutory requirements. Implementation of this rule is not expected to result in expenses for program operators because they receive funding to cover food purchases and administrative costs (09-007).

Statement of Need:

The Food, Conservation, and Energy Act of 2008 amended the National School Lunch Act (NSLA) to add section 19, the Fresh Fruit and Vegetable Program (FFVP). Section 19 establishes the FFVP as a permanent national program in a select number of schools in each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Schools in all States must apply annually for FFVP funding. This proposed rule would implement statutory requirements currently established through program policy and guidance for operators at the State and local level. The proposed rule would set forth requirements detailed in the statute for school selection and participation, State agency outreach to needy schools, the yearly application process, and the funding and allocation processes for schools and States. The proposed rule would also include the statutory per student funding range and the requirement for a program evaluation.

Summary of Legal Basis:

Section 19, Food, Conservation, and Energy Act of 2008. National School Lunch Act (NSLA). 42 U.S.C. 1769(a).

Alternatives:

Because this proposed rule is under development, alternatives are not yet articulated. The rule would implement statutory requirements set forth by the Food, Conservation, and Energy Act of 2008 by adding section 19, the Fresh Fruit and Vegetable Program (FFVP), to the National School Lunch Act. Alternatives to this process are not known or being pursued at this time.

Anticipated Cost and Benefits:

Implementation of this rule is not expected to result in expenses for program operators because they receive funding to cover food purchases and administrative costs.

Risks:

No risks by implementing this proposed rule have been identified at this time.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	
NPRM Comment Period End	04/00/11	
Final Action	08/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

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RIN: 0584–AD96

USDA—FNS

FINAL RULE STAGE

13. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Priority:

Other Significant

Legal Authority:

42 USC 1766; PL 103–448; PL 104–193; PL 105–336

CFR Citation:

7 CFR 226

Legal Deadline:

None

Abstract:

This rule amends the Child and Adult Care Food Program (CACFP) regulations. The changes in this rule result from the findings of State and Federal program reviews and from audits and investigations conducted by the Office of Inspector General. This rule revises: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

The changes are designed to improve program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify program requirements for State agencies and institutions (95-024).

Statement of Need:

In recent years, State and Federal program reviews have found numerous cases of mismanagement, abuse, and, in some instances, fraud by child care institutions and facilities in the CACFP. These reviews revealed weaknesses in management controls over program operations and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of program funds for non-program expenditures; and improper meal reimbursements due to incorrect meal counts or to mis-characterized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP. Based on its findings, the OIG recommended changes to CACFP review requirements and management controls.

Summary of Legal Basis:

Some of the changes proposed in the rule are discretionary changes being made in response to deficiencies found in program reviews and OIG audits. Other changes codify statutory changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

Alternatives:

This proposed interim final rule is under development and alternatives are not yet articulated. FNS is working with State agencies to identify reasonable alternatives to implement the changes mandated by law. FNS will be developing extensive guidance materials in conjunction with agency

cooperators to meet the objectives of the statute.

Anticipated Cost and Benefits:

This rule contains changes designed to improve management and financial integrity in the CACFP. When implemented, these changes would affect all entities in CACFP, from USDA to participating children and children's households. These changes will primarily affect the procedures used by State agencies in reviewing applications submitted by, and monitoring the performance of, institutions which are participating or wish to participate in the CACFP. Those changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

Data on CACFP integrity is limited, despite numerous OIG reports on individual institutions and facilities that have been deficient in CACFP management. While program reviews and OIG reports clearly illustrate that there are weaknesses in parts of the program regulations and that there have been weaknesses in oversight, neither program reviews, OIG reports, nor any other data sources illustrate the prevalence and magnitude of CACFP fraud and abuse. This lack of information precludes USDA from estimating the amount of money lost due to fraud and abuse or the reduction in fraud and abuse the changes in this rule will realize.

Risks:

With the interim final rule in place and operational, risk of integrity problems is reduced. The final rule will use comments from stakeholders to further improve the rule.

Timetable:

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule	06/27/02	67 FR 43448
Interim Final Rule Effective	07/29/02	
Interim Final Rule Comment Period End	12/24/02	
Interim Final Rule	09/01/04	69 FR 53502
Interim Final Rule Effective	10/01/04	
Interim Final Rule Comment Period End	09/01/05	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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Related RIN: Merged with 0584–AC94

RIN: 0584–AC24

USDA—FNS

14. DIRECT CERTIFICATION OF CHILDREN IN FOOD STAMP HOUSEHOLDS AND CERTIFICATION OF HOMELESS, MIGRANT, AND RUNAWAY CHILDREN FOR FREE MEALS IN THE NSLP, SBP, AND SMP

Priority:

Other Significant

Legal Authority:

PL 108–265, sec 104

CFR Citation:

7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 245

Legal Deadline:

None

Abstract:

In response to Public Law 108-265, which amended the Richard B. Russell National School Lunch Act, 7 CFR 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, will be amended to establish categorical (automatic) eligibility for free meals and free milk upon documentation that a child is (1) homeless as defined by the McKinney-Vento Homeless Assistance Act; (2) a runaway served by grant programs under the Runaway and Homeless Youth Act; or (3) migratory as defined in section 1309(2) of the Elementary and Secondary Education Act. The rule also requires phase-in of mandatory direct certification for children who are members of households receiving food stamps and continues discretionary direct certification for other categorically eligible children (04-018).

Statement of Need:

The changes made to the Richard B. Russell National School Lunch Act concerning direct certification are intended to improve program access, reduce paperwork, and improve the accuracy of the delivery of free meal benefits. This regulation will implement the statutory changes and provide State agencies and local educational agencies with the policies and procedures to conduct mandatory and discretionary direct certification.

Summary of Legal Basis:

These changes are being made in response to provisions in Public Law 108-265.

Anticipated Cost and Benefits:

This regulation will reduce paperwork, target benefits more precisely, and will improve program access of eligible school children.

Risks:

This regulation may require adjustments to existing computer systems to more readily share information between schools, food stamp offices, and other agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/11	
Interim Final Rule Comment Period End	05/00/11	
Final Action	10/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

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Related RIN: Merged with 0584–AD62

RIN: 0584–AD60

USDA—FNS

15. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

Final, Statutory, November 2006.

CN and WIC Reauthorization Act of 2004 (Pub. L. 108-265) requires issuance of a final rule within 18 months of release of IOM Report.

Abstract:

This final rule will affirm and address comments from stakeholders on the interim final rule that went into effect October 1, 2009, and for which the comment period ended February 1, 2010. Significant changes to the rule are not anticipated. The rule amended regulations governing the WIC food packages to align them more closely with updated nutrition science and the infant feeding practice guidelines of the American Academy of Pediatrics, promote and support more effectively the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, and provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences. The final rule considers public comments submitted on the impacts of the changes and how they might be refined to assist State agencies and recipients.

Statement of Need:

As the population served by WIC has grown and become more diverse over the past 20 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. A rule is needed to implement recommended changes to the WIC food packages based on the current nutritional needs of WIC participants and advances in nutrition science.

Summary of Legal Basis:

The Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004, requires the Department to issue a final rule within 18 months of receiving the Institute of Medicine's report on revisions to the WIC food packages. This report was published and released to the public on April 27, 2005.

Alternatives:

FNS developed a regulatory impact analysis that addressed a variety of alternatives that were considered in the interim final rulemaking. The regulatory impact analysis was published as an appendix to the interim rule. FNS developed a regulatory impact analysis that addressed a variety of alternatives that were considered in the interim final rulemaking. That regulatory impact analysis was published as an appendix to the interim rule.

Anticipated Cost and Benefits:

The regulatory impact analysis for this rule provided a reasonable estimate of the anticipated effects of the rule. This analysis estimated that the provisions of the rule would have a minimal impact on the costs of overall operations of the WIC Program over 5 years. The regulatory impact analysis was published as an appendix to the interim rule.

Risks:

This rule applies to WIC State agencies with respect to their selection of foods to be included on their food lists. As a result, vendors will be indirectly affected and the food industry will realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally. The rule may have an indirect economic affect on certain small businesses because they may have to carry a larger variety of certain foods to be eligible for authorization as a WIC vendor. With the high degree of State flexibility allowable under this final rule, small vendors will be impacted differently in each State depending upon how that State chooses to meet the new requirements. It is, therefore, not feasible to accurately estimate the rule's impact on small vendors. Since neither FNS nor the State agencies regulate food producers under the WIC Program, it is not known how many small entities within that industry may be indirectly affected by the rule. FNS has, however, modified the new food provision in an effort to mitigate the impact on small entities. This rule adds new food items, such as fruits and vegetables and whole grain breads, which may require some WIC vendors, particularly smaller stores, to expand the types and quantities of food items stocked in order to maintain their WIC authorization. In addition, vendors also have to make available more than one food type from each WIC food category, except for the categories of peanut butter and eggs, which may be a change for some vendors. To mitigate the impact of the fruit and vegetable requirement, the rule allows canned, frozen, and dried fruits and vegetables to be substituted for fresh produce. Opportunities for training on and discussion of the revised WIC food packages will be offered to State agencies and other entities as necessary.

Timetable:

Action	Date	FR Cite
NPRM	08/07/06	71 FR 44784
NPRM Comment Period End	11/06/06	
Interim Final Rule	12/06/07	72 FR 68966
Interim Final Rule Effective	02/04/08	
Interim Final Rule Comment Period End	02/01/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State, Tribal

URL For More Information:

www.fns.usda.gov/wic

URL For Public Comments:

www.fns.usda.gov/wic

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RIN: 0584–AD77

USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

16. EGG PRODUCTS INSPECTION REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 1031 to 1056

CFR Citation:

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; . . .

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require egg products plants and establishments that pasteurize shell eggs to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to egg products and pasteurized shell eggs. FSIS is proposing to amend the Federal egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products. This proposal will not encompass shell egg packers. In the near future, FSIS will initiate non-regulatory outreach efforts for shell egg packers that will provide information intended to help them safely process shell eggs intended for human consumption or further processing.

Statement of Need:

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' shell egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS also is taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

This proposal is directly related to FSIS' PR/HACCP initiative.

Summary of Legal Basis:

This proposed rule is authorized under the Egg Products Inspection Act (21 U.S.C. 1031 to 1056). It is not the result of any specific mandate by the Congress or a Federal court.

Alternatives:

A team of FSIS economists and food technologists is conducting a cost-benefit analysis to evaluate the potential economic impacts of several alternatives on the public, egg products industry, and FSIS. These alternatives include: (1) Taking no regulatory action; (2) requiring all inspected egg products plants to develop, adopt, and implement written sanitation SOPs and HACCP plans; and (3) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The team will consider the effects of a uniform, across-the-board standard for all egg products; a performance standard based on the relative risk of different classes of egg products; and a performance standard based on the relative risks to public health of different production processes.

Anticipated Cost and Benefits:

FSIS is analyzing the potential costs of this proposed rulemaking to industry, FSIS, and other Federal agencies, State and local governments, small entities, and foreign countries. The expected costs to industry will depend on a number of factors. These costs include the required lethality, or level of pathogen reduction, and the cost of HACCP plan and sanitation SOP development, implementation, and associated employee training. The pathogen reduction costs will depend on the amount of reduction sought and on the classes of product, product formulations, or processes.

Relative enforcement costs to FSIS and Food and Drug Administration may change because the two agencies share responsibility for inspection and oversight of the egg industry and a common farm-to-table approach for shell egg and egg products food safety. Other Federal agencies and local governments are not likely to be affected.

Egg product inspection systems of foreign countries wishing to export egg products to the U.S. must be equivalent to the U.S. system. FSIS will consult with these countries, as needed, if and when this proposal becomes effective.

This proposal is not likely to have a significant impact on small entities. The entities that would be directly affected by this proposal would be the approximately 80 federally inspected egg products plants, most of which are small businesses, according to Small Business Administration criteria. If necessary, FSIS will develop compliance guides to assist these small firms in implementing the proposed requirements.

Potential benefits associated with this rulemaking include: Improvements in human health due to pathogen reduction; improved utilization of FSIS inspection program resources; and cost savings resulting from the flexibility of egg products plants in achieving a lethality-based pathogen reduction performance standard. Once specific alternatives are identified, economic analysis will identify the quantitative and qualitative benefits associated with each alternative.

Human health benefits from this rulemaking are likely to be small because of the low level of (chiefly post-processing) contamination of pasteurized egg products. In light of recent scientific studies that raise questions about the efficacy of current regulations, however, it is likely that measurable reductions will be achieved in the risk of foodborne illness.

The preliminary anticipated annualized costs of the proposed action are approximately $7 million. The preliminary anticipated benefits of the proposed action are approximately $90 million per year.

Risks:

FSIS believes that this regulatory action may result in a further reduction in the risks associated with egg products. The development of a lethality-based pathogen reduction performance standard for egg products, replacing command-and-control regulations, will remove unnecessary regulatory obstacles to, and provide incentives for, innovation to improve the safety of egg products.

To assess the potential risk-reduction impacts of this rulemaking on the

public, an intra-Agency group of scientific and technical experts is conducting a risk management analysis. The group has been charged with identifying the lethality requirement sufficient to ensure the safety of egg products and the alternative methods for implementing the requirement. FSIS has developed new risk assessments for Salmonella Enteritidis in eggs and for Salmonella spp. in liquid egg products to evaluate the risk associated with the regulatory alternatives.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

None

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USDA—FSIS

17. NEW POULTRY SLAUGHTER INSPECTION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 451 et seq

CFR Citation:

9 CFR 381.66; 9 CFR 381.67; 9 CFR 381.76; 9 CFR 381.83; 9 CFR 381.91; 9 CFR 381.94

Legal Deadline:

None

Abstract:

FSIS is proposing a new inspection system for young poultry slaughter establishments that would facilitate public health-based inspection. This new system would be available initially only to young chicken slaughter establishments. Establishments that slaughter broilers, fryers, roasters, and Cornish game hens (as defined in 9 CFR 381.170) would be considered as ''young chicken establishments.'' FSIS is also proposing to revoke the provisions that allow young chicken slaughter establishments to operate under the current Streamlined Inspection System (SIS) or the New Line Speed (NELS) Inspection System. The proposed rule would establish new performance standards to reduce pathogens. FSIS anticipates that this proposed rule would provide the framework for action to provide public health-based inspection in all establishments that slaughter amenable poultry species.

Under the proposed new system, young chicken slaughter establishments would be required to sort chicken carcasses and to conduct other activities to ensure that carcasses are not adulterated before they enter the chilling tank.

Statement of Need:

Because of the risk to the public health associated with pathogens on young chicken carcasses, FSIS is proposing a new inspection system that would allow for more effective inspection of young chicken carcasses, would allow the Agency to more effectively allocate its resources, would encourage industry to more readily use new technology, and would include new performance standards to reduce pathogens.

This proposed rule is an example of regulatory reform because it would facilitate technological innovation in young chicken slaughter establishments. It would likely result in more cost-effective dressing of young chickens that are ready to cook or ready for further processing. Similarly, it would likely result in more efficient and effective use of Agency resources.

Summary of Legal Basis:

The Secretary of Agriculture is charged by the Poultry Products Inspection Act (PPIA—21 U.S.C. 451 et seq.) with carrying out a mandatory poultry products inspection program. The Act requires post-mortem inspection of all carcasses of slaughtered poultry subject to the Act and such reinspection as deemed necessary (21 U.S.C. 455(b)). The Secretary is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of the Act (21 U.S.C. 463(b)). The Agency has tentatively determined that this rule would facilitate FSIS post-mortem inspection of young chicken carcasses. The proposed new system would likely result in more efficient and effective use of Agency resources and in industry innovations.

Alternatives:

FSIS considered the following options in developing this proposal:

1) No action.

2) Propose to implement HACCP-Based Inspection Models Pilot in regulations.

3) Propose to establish a mandatory, rather than a voluntary, new inspection system for young chicken slaughter establishments.

4) Propose standards of identity regulations for young chickens that include trim and processing defect criteria and that take into account the intended use of the product.

5) Propose a voluntary new inspection system for young chicken slaughter establishments and propose standards of identity for whole chickens, regardless of the products' intended use.

Anticipated Cost and Benefits:

The proposed performance standards and the implementation of public health-based inspection would likely improve the public health. FSIS is conducting a risk assessment for this proposed rule to assess the likely public health benefits that the implementation of this rule may achieve.

Establishments that volunteer for this proposed new inspection system alternative would likely need to make capital investments in facilities and equipment. They may also need to add labor (trained employees). However, one of the beneficial effects of these investments would likely be the lowering of the average cost per pound to dress poultry properly. Cost savings would likely result because of increased line speeds, increased productivity, and increased flexibility to industry. The expected lower average unit cost for dressing poultry would likely give a marketing advantage to establishments under the new system. Consumers would likely benefit from lower retail prices for high quality poultry products. The rule would also likely provide opportunities for the industry to innovate because of the increased flexibility it would allow poultry slaughter establishments. In addition, in the public sector, benefits would accrue to FSIS from the more effective deployment of FSIS inspection program personnel to verify process

control based on risk factors at each establishment.

Risks:

Salmonella and other pathogens are present on a substantial portion of poultry carcasses inspected by FSIS. Foodborne Salmonella cause a large number of human illnesses that at times lead to hospitalization and even death. There is an apparent relationship between human illness and prevalence levels for salmonella in young chicken carcasses. FSIS believes that through better allocation of inspection resources and the use of performance standards, it would be able to reduce the prevalence of salmonella and other pathogens in young chickens.

Timetable:

Action	Date	FR Cite
NPRM	10/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0583–AD32

USDA—FSIS

18. MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 601 et seq; PL 110–249, sec 11016

CFR Citation:

9 CFR ch III, subchapter F (new)

Legal Deadline:

Final, Statutory, December 2009, Final regulations NLT 18 months after enactment of PL 110–246.

Abstract:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. Amenable species must be inspected, so this rule will define inspection requirements for catfish. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process farm-raised species of catfish and to catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.

Statement of Need:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. The Farm Bill directs the Department to issue final regulations implementing the FMIA amendments not later than 18 months after the enactment date (June 18, 2008) of the legislation.

Summary of Legal Basis:

21 U.S.C. 601 to 695 and Public Law 110-246, section 11016

Alternatives:

The option of no rulemaking is unavailable. The Agency has considered alternative methods of implementation and levels of stringency, and the effects on foreign and domestic commerce and on small business associated with the alternatives.

Anticipated Cost and Benefits:

FSIS anticipates benefits from uniform standards and the more extensive and intensive inspection service that FSIS provides (compared with current voluntary inspection programs). FSIS would apply requirements for imported catfish that would be equivalent to those applying to catfish raised and processed in the United States.

Risks:

In preparing regulations on catfish and catfish products, the Agency will consider any risks to public health or other pertinent risks associated with the production, processing, and distribution of the products. FSIS will determine, through scientific risk assessment procedures, the magnitude of the risks associated with catfish and how they compare with those associated with other foods in FSIS's jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

19. ELECTRONIC IMPORTED PRODUCT INSPECTION APPLICATIONS; ELECTRONIC FOREIGN IMPORTED PRODUCT AND FOREIGN ESTABLISHMENT CERTIFICATIONS; DELETION OF STREAMLINED INSPECTION PROCEDURES FOR CANADIAN PRODUCT

Priority:

Other Significant

Legal Authority:

Federal Meat Inspection Act (FMIA) (21 USC 601 to 695), the Poultry Products Inspection Act (PPIA) (21 USC 451 to 470); Egg Products Inspection Act (EPIA) (21 USC 1031 to 1056)

CFR Citation:

9 CFR 304.3; 9 CFR 327.2 and 327.4; 9 CFR 381.196 to 381.198; 9 CFR 590.915 and 590.920

Legal Deadline:

None

Abstract:

FSIS is proposing to amend the meat, poultry, and egg products import inspection regulations to provide for an electronic application, and electronic imported product and foreign establishment certification system. FSIS

is also proposing to delete the ''streamlined'' import inspection procedures for Canadian product. In addition, the Agency is proposing that official import inspection establishment must develop, implement, and maintain written Sanitation SOPs, as provided in 9 CFR 416.11 through 416.17.

Statement of Need:

FSIS is proposing these regulations to provide for the electronic import system, which will be available through the Agency's Public Health Information System (PHIS), a computerized, Web-based inspection information system. The import system will enable applicants to electronically submit and track import inspection applications that are required for all commercial entries of FSIS regulated products imported in to the U.S. FSIS inspection program personnel will be able to access the PHIS system to assign appropriate imported product inspection activities. The electronic import system will also facilitate the foreign imported product and annual foreign establishment certifications by providing immediate and direct electronic government-to-government exchange of information. The Agency is proposing to delete the Canadian streamlined import inspection procedures because they have not been in use since 1990 and are obsolete. Sanitation SOPs are written procedures establishments develop, implement, and maintain to prevent direct contamination or adulteration of meat or poultry products. To ensure that imported meat and poultry products do not become contaminated while undergoing reinspection prior to entering the U.S., FSIS is proposing to clarify that official import inspection establishments must develop written Sanitation SOPs.

Summary of Legal Basis:

The authorities for this proposed rule are: the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 to 695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 to 470), Egg Products Inspection Act (EPIA)(21 U.S.C. 1031 to 1056) and the regulations that implement these Acts.

Alternatives:

The use of the electronic import system is voluntary. The Agency will continue to accept and process paper import inspection applications, and foreign establishment and foreign imported product certificates. The Canadian streamlined import inspection procedures are not currently in use. Proposing Sanitation SOPs in official import inspection establishments will prevent direct contamination or adulteration of product. Therefore, no alternatives were considered.

Anticipated Cost and Benefits:

Under this proposed rule, the industry will have the option of filing inspection applications electronically and submitting electronic foreign product and establishment certificates through the PHIS. Since the electronic option is voluntary; applicants and the foreign countries that choose to file electronically will do so only if the benefits outweigh the cost. Sanitation (SOPs) are a condition of approval for official import inspection establishments, and as a requirement for official import inspection establishments to continue to operate under Federal inspection. The proposed rule will clarify that official import inspection establishments must have developed written Sanitation SOPs before being granted approval and that existing official import inspection establishments must meet Sanitation SOP requirements. Since, in practice, FSIS has always expected official import inspection establishments to maintain Sanitation SOPs during the reinspection of imported products, the proposed amendment for these sanitation requirements will have little, if any, cost impact on the industry.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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USDA—FSIS

20. ELECTRONIC EXPORT APPLICATION AND CERTIFICATION AS A REIMBURSABLE SERVICE AND FLEXIBILITY IN THE REQUIREMENTS FOR OFFICIAL EXPORT INSPECTION MARKS, DEVICES, AND CERTIFICATES

Priority:

Other Significant

Legal Authority:

Federal Meat Inspection Act (FMIA) (21 USC 601 to 695); Poultry Products Inspection Act (PPIA) (21 USC 451 to 470); Egg Products Inspection Act (EPIA) (21 USC 1031 to 1056)

CFR Citation:

9 CFR 312.8; 9 CFR 322.1 and 322.2; 9 CFR 350.7; 9 CFR 362.5; 9 CFR 381.104 to 381.106; 9 CFR 590.407; 9 CFR 592.20 and 592.500

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to amend the meat, poultry, and egg product inspection regulations to provide an electronic export application and certification process. FSIS is proposing to charge users for the use of the proposed system. FSIS is also proposing to provide establishments that export meat, poultry, and egg products with flexibility in the official export inspection marks, devices, and certificates. In addition, FSIS is proposing egg product export regulations that parallel the meat and poultry export regulations.

Statement of Need:

FSIS is proposing these regulations to facilitate the electronic processing of export applications and certificates through the Public Health Information System (PHIS), a computerized, Web-based inspection information system. The current export application and

certification regulations provide only for a paper-based process. This proposed rule will provide this electronic export system as a reimbursable certification service charged to the exporter.

Summary of Legal Basis:

The authorities for this proposed rule are: The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 to 695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 to 470), the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 to 1056), and the regulations that implement these Acts. FSIS is proposing to charge for the electronic export application and certification system under the Agricultural Marketing Act (7 U.S.C. 1622(h)) that provides the Secretary of Agriculture with the authority to: ''Inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire.''

Alternatives:

The electronic export applications and certification system is being proposed as a voluntary service, therefore, exporters have the option of continuing to use the current paper-based system. Therefore, no alternatives were considered.

Anticipated Cost and Benefits:

FSIS is proposing to charge exporters that choose to utilize the system $90.00 per application submitted. Automating the export application and certification process will facilitate the exportation of U.S. meat, poultry, and egg products by streamlining and automating the processes that are in use while ensuring that foreign regulatory requirements are met. The direct cost to exporters would be approximately $22.5 million to $31.5 million per year, if they choose to file electronically. However, the total cost to an exporter would depend on the number of electronic applications processed. An exporter that processes only a few applications per year would not be likely to experience a significant economic impact. Under this proposal, inspection personnel workload is reduced through the elimination of the physical handling and processing of applications and certificates. When an electronic government-to-government system interface or data exchange is used, fraudulent transactions, such as false alterations and reproductions, will be significantly reduced, if not eliminated. The electronic export system is designed to ensure authenticity, integrity, and confidentiality. Exporters will be provided a more efficient and effective application and certification process. The proposed egg product export regulations provide the same export requirements across all products regulated by FSIS and consistency in the export application and certification process.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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USDA—FSIS

FINAL RULE STAGE

21. PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS; CONTROL OF LISTERIA MONOCYTOGENES IN READY–TO–EAT MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 301; 9 CFR 303; 9 CFR 317; 9 CFR 318; 9 CFR 319; 9 CFR 320; 9 CFR 325; 9 CFR 331; 9 CFR 381; 9 CFR 417; 9 CFR 430; 9 CFR 431

Legal Deadline:

None

Abstract:

FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat (RTE) and partially heat-treated meat and poultry products, and measures, including testing, to control Listeria monocytogenes in RTE products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products, but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. With HACCP, food safety performance standards give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with standards already in place for certain ready-to-eat meat and poultry products.

Statement of Need:

Although FSIS routinely samples and tests some ready-to-eat products for the presence of pathogens prior to distribution, there are no specific regulatory pathogen reduction requirements for most of these products. The proposed performance standards are necessary to help ensure

the safety of these products; give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls; and provide objective, measurable standards that can be verified by Agency oversight.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Product Inspection Act (21 U.S.C. 451 to 470), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and poultry products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to all of the proposed requirements, FSIS considered taking no action. As alternatives to the proposed performance standard requirements, FSIS considered end-product testing and requiring ''use-by'' date labeling on ready-to-eat products.

Anticipated Cost and Benefits:

Benefits are expected to result from fewer contaminated products entering commercial food distribution channels as a result of improved sanitation and process controls and in-plant verification. FSIS believes that the benefits of the rule would exceed the total costs of implementing its provisions. FSIS currently estimates net benefits from the 2003 interim final rule at $470 to $575 million, with annual recurring costs at $150.4 million, if FSIS discounts the capital cost at 7 percent. FSIS is continuing to analyze the potential impact of the other provisions of the proposal.

The other main provisions of the proposed rule are: Lethality performance standards for Salmonella and E. coli O157:H7 and stabilization performance standards for C. perfringens that firms must meet when producing RTE meat and poultry products. Most of the costs of these requirements would be associated with one-time process performance validation in the first year of implementation of the rule and with revision of HACCP plans. Benefits are expected to result from the entry into commercial food distribution channels of product with lower levels of contamination resulting from improved in-plant process verification and sanitation. Consequently, there will be fewer cases of foodborne illness.

Risks:

Before FSIS published the proposed rule, FDA and FSIS had estimated that each year L. monocytogenes caused 2,540 cases of foodborne illness, including 500 fatalities. The Agencies estimated that about 65.3 percent of these cases, or 1660 cases and 322 deaths per year, were attributable to RTE meat and poultry products. The analysis of the interim final rule on control of L. monocytogenes conservatively estimated that implementation of the rule would lead to an annual reduction of 27.3 deaths and 136.7 illnesses at the median. FSIS is continuing to analyze data on production volume and Listeria controls in the RTE meat and poultry products industry and is using the FSIS risk assessment model for L. monocytogenes to determine the likely risk reduction effects of the rule. Preliminary results indicate that the risk reductions being achieved are substantially greater than those estimated in the analysis of the interim rule.

FSIS is also analyzing the potential risk reductions that might be achieved by implementing the lethality and stabilization performance standards for products that would be subject to the proposed rule. The risk reductions to be achieved by the proposed rule and that are being achieved by the interim rule are intended to contribute to the Agency's public health protection effort.

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590
NPRM Comment Period End	05/29/01	
NPRM Comment Period Extended	07/03/01	66 FR 35112
NPRM Comment Period End	09/10/01	
Interim Final Rule	06/06/03	68 FR 34208
Interim Final Rule Effective	10/06/03	
Interim Final Rule Comment Period End	01/31/05	
NPRM Comment Period Reopened	03/24/05	70 FR 15017
NPRM Comment Period End	05/09/05	
Affirmation of Interim Final Rule	03/00/11	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

22. NUTRITION LABELING OF SINGLE–INGREDIENT PRODUCTS AND GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS has proposed to amend the Federal meat and poultry products inspection regulations to require nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase, unless an exemption applies. FSIS also proposed to require nutrition information on the label of ground or chopped meat and poultry products, unless an exemption applies. The requirements for ground or chopped products will be consistent with those for multi-ingredient products.

FSIS also proposed to amend the nutrition labeling regulations to provide that when a ground or chopped product does not meet the regulatory criteria to be labeled ''low fat,'' a lean percentage claim may be included on the label or in labeling, as long as a statement of the fat percentage also is displayed on the label or in labeling.

Statement of Need:

The Agency will require that nutrition information be provided for the major

cuts of single-ingredient, raw meat and poultry products, either on their label or at their point of purchase, because during the most recent surveys of retailer, the Agency did not find significant participation in the voluntary nutrition labeling program for single-ingredient, raw meat and poultry products. Ground or chopped products are similar to multi-ingredient products. This rule is necessary so that consumers can have the information they need to construct healthy diets.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Products Inspection Act (21 U.S.C. 451 to 470).

Alternatives:

No action; nutrition labels required on all single-ingredient, raw products (major cuts and non-major cuts) and all ground or chopped products; nutrition labels required on all major cuts of single-ingredient, raw products (but not non-major cuts) and all ground or chopped products; nutrition information at the point of purchase required for all single-ingredient, raw products (major and non-major cuts) and for all ground or chopped products.

Anticipated Cost and Benefits:

Cost will include the equipment for making labels, labor, and materials used for labels for ground or chopped products. The cost of providing nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products should not be significant, because retail establishments would have the option of providing nutrition information through point-of-purchase materials.

Benefits of the nutrition labeling rule would result consumers modify their diets in response to new nutrition information concerning ground or chopped products and the major cuts of single-ingredient, raw products. Reductions in consumption of fat and cholesterol are associated with reduced incidence of cancer and coronary heart disease.

FSIS has concluded that the quantitative benefits will exceed the quantitative costs of the supplemental proposed rule. FSIS estimates that the annualized benefits of the proposed rule will range from approximately $185.6 to $230.8 million, using a 7 percent discount rate over 20 years. FSIS estimates that the annualized costs will range from approximately $26.7 to $44.8 million, using a 7 percent discount rate over 20 years.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4970
NPRM Comment Period End	04/18/01	
Extension of Comment Period	04/20/01	66 FR 20213
NPRM Comment Period End	07/17/01	
Supplemental Proposed Rule	12/18/09	74 FR 67736
Supplemental Proposed Rule Comment Period End	02/16/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

23. NOTIFICATION, DOCUMENTATION, AND RECORDKEEPING REQUIREMENTS FOR INSPECTED ESTABLISHMENTS

Priority:

Other Significant

Legal Authority:

21 USC 612 to 613; 21 USC 459

CFR Citation:

9 CFR 417.4; 9 CFR 418

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) has proposed to require establishments subject to inspection under the Federal Meat Inspection Act and the Poultry Products Inspection Act to promptly notify the Secretary of Agriculture that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. FSIS has also proposed to require these establishments to: (1) Prepare and maintain current procedures for the recall of all products produced and shipped by the establishment and (2) document each reassessment of the process control plans of the establishment.

Statement of Need:

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11017), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to require establishments subject to inspection under these Acts to promptly notify the Secretary that an adulterated or misbranded product received by or originating from the establishment has entered into commerce, if the establishment believes or has reason to believe that this has happened. Section 11017 also requires establishments subject to inspection under the FMIA and PPIA to: (1) Prepare and maintain current procedures for the recall of all products produced and shipped by the establishment; and (2) document each reassessment of the process control plans of the establishment.

Summary of Legal Basis:

21 U.S.C. 612 and 613; 21 U.S.C. 459, and Public Law 110-246, sec. 11017.

Alternatives:

The option of no rulemaking is unavailable.

Anticipated Cost and Benefits:

Approximate costs: $5.0 million for labor and costs; $5.2 million for first year costs; $0.7 million average costs adjusted with a 3.0 percent inflation rate for following years. Total approximate costs: $10.2 million. The average cost of this final rule to small entities is expected to be less than one tenth of one cent of meat and poultry food products per annum. Therefore, FSIS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Approximate benefits: Benefits have not been monetized because quantified data

on benefits attributable to this final rule are not available. Non-monetary benefits include improved protection of the public health, improved HACCP plans, and improved recall effectiveness.

Risks:

In preparing regulations on the shipment of adulterated meat and poultry products by meat and poultry establishments, the preparation and maintenance of procedures for recalled products produced and shipped by establishments, and the documentation of each reassessment of the process control plans by the establishment, the Agency considered any risks to public health or other pertinent risks associated with these actions.

Timetable:

Action	Date	FR Cite
NPRM	03/25/10	75 FR 14361
NPRM Comment Period End	05/24/10	
Final Action	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

24. FEDERAL–STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

Priority:

Other Significant

Legal Authority:

PL 110–246, sec 11015

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, December 18, 2009.

Abstract:

FSIS has proposed regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State-inspection personnel would bear a Federal mark of inspection. FSIS is proposing these regulations in response to the Food, Conservation, and Energy Act, enacted on June 18, 2008 (the 2008 Farm Bill). Section 11015 of 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry product from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment.

Statement of Need:

This action is needed to implement a new Federal-State cooperative program that will permit certain State-inspected establishments to ship meat and poultry products in interstate commerce. Inspection services for establishments selected to participate in the program will be provided by State inspection personnel that have been trained and certified in the administration and enforcement of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) Meat and poultry products produced by establishments selected to participate in the program will bear a Federal mark of inspection.

Summary of Legal Basis:

This action is authorized under section 11015 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110-246). Section 11015 amends the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) to establish an optional Federal-State cooperative program under which State-inspected establishments would be permitted to ship meat and poultry products in interstate commerce. The law requires that FSIS promulgate implementing regulations no later than 18 months after the date of enactment.

Alternatives:

1. No action: FSIS did not consider the alternative of no action because section 11015 of the 2008 Farm Bill requires that it promulgate regulations to implement the new Federal-State cooperative program. The Agency did consider alternatives on how to implement the new program.

2. Limit participation in the program to State-inspected establishments with 25 or fewer employees on average: Under the law, State-inspected establishments that have 25 or fewer employees on average are permitted to participate in the program. The law also provides that FSIS may select establishments that employ more than 25 but fewer than 35 employees on average as of June 18, 2008 (the date of enactment), to participate in the program. Under the law, if these establishments employ more than 25 employees on average 3 years after FSIS promulgates implementing regulations, they are required to transition to a Federal establishment. FSIS rejected the option of limiting the program to establishment that employ 25 or fewer employees on average to give additional small establishments the opportunity to participate in the program and ship their meat and poultry products in interstate commerce.

3. Permit establishments with 25 to 35 employees on average as of June 18, 2008, to participate in the program. FSIS chose the option of permitting these establishments to be selected to participate in the program to give additional small establishments the opportunity to ship their meat and poultry products in interstate commerce. Under this option, FSIS will develop a procedure to transition any establishment that employs more than 25 people on average to a Federal establishment. Establishments that employee 24 to 35 employees on average as of June 18, 2008, would be subject to the transition procedure beginning on the date 3 years after the Agency promulgates implementing regulations.

Anticipated Cost and Benefits:

FSIS is analyzing the costs of this proposed rule to industry, FSIS, State and local governments, small entities, and foreign countries. Participation in

the new Federal-State cooperative program will be optional. Thus, the costs and benefits associated with the proposed rule will depend on the number of States and establishments that choose to participate. Very small and certain small establishments State-inspected establishments that are selected to participate in the program are likely to benefit from the program because they will be permitted sell their products to consumers in other States and foreign countries.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/16/09	74 FR 47648
NPRM Comment Period End	12/16/09	
Final Action	05/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 0583–AD37

USDA—Rural Business-Cooperative Service (RBS)

FINAL RULE STAGE

25. ● VALUE–ADDED PRODUCER GRANT PROGRAM

Priority:

Other Significant

Legal Authority:

PL 110–246

CFR Citation:

7 CFR 1951, subpart E; 7 CFR 4284, subpart J

Legal Deadline:

None

Abstract:

The Agency proposes to modify 7 CFR part 4284, subpart J, to include the definitions for mid-tier value chain and value-added agricultural product to include an agricultural commodity or product that is aggregated and marketed as a locally produced agricultural food product. Additionally, the proposed rule will expand the grant term not to exceed 3 years; implement a simplified application process for project proposals less than $50,000; provide for priority to projects that increase opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium sized farms and ranches that are structured as a family farm; and implement a reservation of funds for projects to benefit beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and mid-tier value chains.

The Agency is also proposing to amend 7 CFR part 1951, subpart E, to allow the delegation of the servicing of the program to USDA State Office personnel.

Statement of Need:

The modifications to the Value Added Producer Grant program will streamline program regulations resulting in better quality applications. It is expected that all of the changes will result in time and resource savings to the applicant and the Agency. Publication of the final rule is crucial to program implementation. The program will directly create new businesses, assist with the expansion of existing businesses, create jobs, increase the flow of tax dollars to rural communities, and add lasting value in terms of rural community impact.

Summary of Legal Basis:

The program was authorized by the Agriculture Risk Protection Act of 2000, section 231 (Pub. L. 106-224). The purpose of the Value Added Producer Grant (VAPG) program is to help eligible independent producers of agricultural commodities, agricultural producer groups, farmer and rancher cooperatives, and majority-owned, producer-based business ventures develop business plans for viable marketing opportunities and develop strategies to create marketing opportunities.

Alternatives:

An alternative is to continue under the interim rule. The interim rule is scheduled to be published and remain in effect until a final rule is adopted. A notice announcing FY 2010 funding will be published after the interim rule. FY 2010 funding will be expendable in FY 2011.

Anticipated Cost and Benefits:

Costs:

The anticipated costs associated with this process are contract services. An exact dollar amount cannot be determined at this time, but it will not have an annual effect on the economy of $100 million or more.

No change in FTE needs is anticipated.

Minimal automation changes are anticipated.

Benefits:

The intended action is to fine tune the program regulations, making them easier to use for the public and Agency staff, while incorporate changes designed to reduce the cost to the Government and the subsidy rate.

Risks:

Program risks include risk of loss in the loans guaranteed under this program. We anticipate mitigating these risks with improved regulatory and administrative guidance and appropriate training.

Timetable:

Action	Date	FR Cite
NPRM	05/28/10	75 FR 29920
NPRM Comment Period End	06/28/10	
Interim Final Rule	12/00/10	
Interim Final Rule Effective	01/00/11	
Interim Final Rule Comment Period End	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0570–AA79

USDA—Rural Utilities Service (RUS)

FINAL RULE STAGE

26. RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Priority:

Other Significant

Legal Authority:

PL 107–171; 7 USC 901 et seq

CFR Citation:

7 CFR 1738

Legal Deadline:

None

Abstract:

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The essential goal of the Recovery Act is to provide a ''direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth.'' The Recovery Act expanded Rural Utilities Service's (RUS') existing authority to make loans and provides new authority to make grants to facilitate broadband deployment in rural areas. RUS has been tasked with the time-sensitive priority of developing the regulation for this new authority. The Agency will, however, also continue to develop a final rule for the Broadband Program as authorized by The Farm Security and Rural Investment Act of 2002, Public Law 107-171 (2002 Farm Bill).

There has been more than $1.7 billion in loans for broadband deployment with more than 1,900 rural communities that will receive broadband services. Even with this level of success, the program needs to be adjusted to better serve unserved or underserved communities. In response, the RUS, an agency of the United States Department of Agriculture, revised the broadband rule to address this and other critical issues, and further facilitate the deployment of broadband service in rural America as directed by Congress by: (1) Clearly defining served and underserved markets based on service availability and existing competitors and target unserved in underserved areas; (2) providing potential applicants with a clear definition of which communities are eligible for funding; (3) establishing a minimum data transmission rate that the facilities financed must be able to deliver to the consumer; (4) establishing equity requirements that mitigate risks; (5) modifying market survey requirements based on service territories and existing availability of service; and (6) imposing new time limits for build-out and deployment to ensure prudent use of loan funds and timely delivery services to rural customers. A proposed rule was published in May 2007 seeking comments from interested parties. Subsequently, the rulemaking process was suspended in light of new statutory requirements provided in the 2008 Farm Bill, thus requiring further rulemaking activities.

Statement of Need:

Since the Broadband Loan Program's inception, the Agency has faced and continues to face significant challenges in administering the program, including the fierce competitive nature of the broadband market, the fact that many companies proposing to offer broadband service are start-up organizations with limited resources, continually evolving technology, and economic factors such as the higher cost of serving rural communities. Because of these challenges, the Agency has been reviewing the characteristics of the Broadband Loan Program and has determined that modifications are required to accelerate the deployment of broadband service to the rural areas of the country.

The Broadband Loan Program is important to the revitalization of our rural communities and their economies. A lack of private capital has been cited as a reason for slow broadband deployment. However, an adequate supply of investment capital alone may not be sufficient to universally deploy broadband facilities in rural America—primarily due to the high cost of deployment outside of more densely populated areas. Due to market uncertainties and risks associated with startup ventures, non-Federal sources of funding are restricting and raising the cost of capital, particularly in costly rural markets. Better access to low-cost capital is a primary initiative of this program in facilitating an increase in the rate of rural broadband deployment.

Summary of Legal Basis:

On May 13, 2002, the Farm Security and Rural Investment Act of 2002, Public Law 107-171 (''2002 Farm Bill''), was signed into law. Title VI of the Farm Bill authorized the Agency to approve loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. On June 18, 2008, the Food, Conservation, and Energy Act of 2008 (''2008 Farm Bill'') became law, significantly changing the statutory requirements of the Broadband Loan Program. As such, the Agency will be issuing a Interim Rule that implements the statutory changes and requests comment on sections of the rule that were not part of the Proposed Rule published in May 2007.

Anticipated Cost and Benefits:

The program costs associated with lending activity are relatively low. The average subsidy rate since the program's inception is 2.4 percent, or $24,000 in appropriated budget authority for every $1 million in loans. The residents and businesses of rural communities are the beneficiaries. Rural Development is responsible for helping rural America transition from an agricultural base economy to a platform for new business and economic opportunity. Rural Development seeks to leverage its financial resources with private investment to facilitate the development of the changing rural economy. The Broadband Loan Program provides rural America with the platform on which to achieve these goals. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America. The Agency is committed to ensuring that rural America will have access to affordable, reliable, broadband

services, and to provide a healthy, safe and prosperous place to live and work.

Risks:

Building broadband infrastructure in sparsely populated rural communities is very capital intensive. The Broadband Loan Program continues to face risk factors that pose challenges in ensuring that proposed projects can and do deliver robust, affordable broadband services to rural consumers. These factors include the competitive nature of the broadband market, the fact that many companies proposing to offer broadband service are start-up organizations with limited resources, rapidly evolving technology, and economic factors such as the higher cost of serving rural communities. While many of the smallest rural communities understand the importance of broadband infrastructure to their economic development, they often have difficulty attracting service providers to their communities.

Timetable:

Action	Date	FR Cite
NPRM	05/11/07	72 FR 26742
NPRM Comment Period End	07/10/07	
Interim Final Rule	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 3410–90–S

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

The President's fiscal year (FY) 2010 Budget details how this Administration plans to lift our economy out of recession and lay a new foundation for long-term growth and prosperity. The Department of Commerce (the ''Department'' or ''Commerce'') is aligning itself to contribute to both of these goals.

Established in 1903, the Department of Commerce is one of the oldest Cabinet-level agencies in the Federal Government. The Department's mission is to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which are responsible for managing a diverse portfolio of programs and services, ranging from trade promotion and economic development assistance to broadband and the National Weather Service. The Department currently employs approximately 53,000 people around the world, although this workforce doubled temporarily in 2010, due to the decennial census.

The Department touches Americans daily, in many ways—making possible the daily weather reports and survey research; facilitating technology that all of us use in the workplace and in the home each day; supporting the development, gathering, and transmission of information essential to competitive business; enabling the diversity of companies and goods found in America's and the world's marketplace; and supporting environmental and economic health for the communities in which Americans live.

Commerce has a clear and compelling vision for itself, for its role in the Federal Government, and for its roles supporting the American people, now and in the future. To achieve this vision, the Department works in partnership with businesses, universities, communities, and workers to:

- *Innovate* by creating new ideas through cutting-edge science and technology from advances in nanotechnology, to ocean exploration, to broadband deployment, and by protecting American innovations through the patent and trademark system;
- Support *entrepreneurship and commercialization* by enabling community development and strengthening minority businesses and small manufacturers;
- Maintain U.S. economic *competitiveness* in the global marketplace by promoting exports, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our Nation's economic and security interests;
- Provide effective management and *stewardship* of our Nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the economy by providing *accurate economic and demographic data*.

The Department is a vital resource base, a tireless advocate, and Cabinet-level voice for job creation.

The Regulatory Plan tracks the most important regulations that implement these policy and program priorities, several of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only the National Oceanic and Atmospheric Administration (NOAA) will be planning actions that are considered the ''most important'' significant preregulatory or regulatory actions for FY 2010. During the next year, NOAA plans to publish four rulemaking actions that are designated as Regulatory Plan actions. Further information on these actions is provided below.

The Department has a long-standing policy to prohibit the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

National Oceanic and Atmospheric Administration

NOAA establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental and climate services vital to public safety and to the Nation's economy, such as weather forecasts, drought forecasts, and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the departmental goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, the Department, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on ''sustainable fisheries'' is designed to boost long-term economic growth in a vital sector of the U.S. economy while conserving the resources in the public trust and minimizing any economic dislocation necessary to ensure long-term economic growth. The Department is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a ''win-win'' situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects threatened and endangered marine and anadromous species and marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate commercial land-remote sensing satellite systems.

The Department, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary Federal responsibility for providing sound scientific observations,

assessments, and forecasts of environmental phenomena on which resource management, adaptation, and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: Rebuilding and maintaining strong U.S. fisheries by using market-based tools and ecosystem approaches to management; increasing the populations of depleted, threatened, or endangered species and marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: Understanding climate change science and impacts, and communicating that understanding to government and private sector stakeholders enabling them to adapt; continually improving the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in fiscal year 2010, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

FMPs address a variety of issues including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by market-based systems such as catch shares, which permit shareholders to harvest a quantity of fish and which can be traded on the open market. Harvest limits based on the best available scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds and establishing seasonal and area closures to protect fishery stocks.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson-Stevens Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson-Stevens Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides the authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the take of marine mammals. Exceptions allow for permitting the collection of wild animals for scientific research or public display or to enhance the survival of a species or stock. NMFS initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. The Act also established the Marine Mammal Commission, which makes recommendations to the Secretaries of the Departments of Commerce and the Interior and other Federal officials on protecting and conserving marine mammals. The Act underwent significant changes in 1994 to allow for takings incidental to commercial fishing operations, to provide certain exemptions for subsistence and scientific uses, and to require the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be ''endangered'' or ''threatened,'' and the conservation of the ecosystems on which these species depend. The ESA authorizes both NMFS and the Fish and Wildlife Service (FWS) to jointly administer the provisions of the Act. NMFS manages marine and ''anadromous'' species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. Of the 1,310 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over approximately 60 species. NMFS' rulemaking actions are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing, and revising critical habitat for any listed species. In addition, under the ESA's procedural framework, Federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect one of the listed species or designated critical habitat, or is likely to jeopardize proposed species or adversely modify proposed critical habitat that is under NMFS' jurisdiction.

NOAA's Regulatory Plan Actions

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in the Department's regulatory plan, NMFS is undertaking four actions that rise to the level of ''most important'' of the Department's significant regulatory actions and thus are included in this year's regulatory plan. The four actions implement provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as reauthorized in 2006. The first action may be of

particular interest to international trading partners as it concerns the Certification of Nations Whose Fishing Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources. A description of the four regulatory plan actions is provided below.

1. Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources (0648-AV51). NOAA's NMFS is establishing a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing would be identified in a biennial report to Congress, as required under section 403 of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels.
2. Pacific Coast Groundfish Trawl Rationalization Program—Program Components Rulemaking (0648-AY68): Due to the complexity of the fishery management measures, NMFS is implementing the Pacific Coast Groundfish Trawl Rationalization Program through multiple rulemakings. A previous rulemaking (i.e., the Initial Issuance rule) creates and issues quota shares to qualified participants and establishes an appeals process. The program components rulemaking would implement the second phase of the trawl rationalization program. In particular, this rulemaking includes requirements for observers and compliance monitors, retention requirements, coop permits and agreements, first receiver site licenses, vessel accounts and mandatory economic data collection.
3. Designation of Critical Habitat for Cook Inlet Beluga Whale (0648-AX50): This rule would designate critical habitat in two areas of Cook Inlet totaling 3,016 square miles. Critical habitat would include intertidal and subtidal waters near high and medium flow anadromous fish streams. The deadline for publication is October 20, 2010.
4. Critical Habitat for North Atlantic Right Whales **(**0648-AY54**):** Northern right whales have been listed as endangered since 1973. In 2008, NOAA removed Northern right whales from the list of endangered species and replaced it with two separate species (North Pacific and North Atlantic right whales). NOAA had designated critical habitat for Northern right whales but has not yet designated critical habitat for the new North Atlantic right whale species. Several environmental groups threaten litigation over the failure to designate critical habitat for the species listed in 2008. NOAA is discussing a possible schedule for critical habitat designation that would avoid litigation.

At this time, NOAA is unable to determine the aggregate cost of the identified Regulatory Plan actions as several of these actions are currently under development.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening an adaptable, efficient, and effective export control and treaty compliance systems. BIS also administers programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

In August 2009, the President directed a broad-based interagency review of the U.S. export control system with the goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on the current threats and adapting to the changing economic and technological landscape. In August 2010, the President outlined an approach under which agencies that administer export controls will apply new criteria for determining what items need to be controlled and a common set of policies for determining when an export license is required. The control list criteria are to be based on transparent rules, which will reduce the uncertainty faced by our Allies, U.S. industry, and its foreign partners, and will allow the government to erect higher walls around the most sensitive items in order to enhance national security.

Under the President's approach, agencies will apply the criteria and revise the lists of munitions and dual use items that are controlled for export so that they:

- Are ''tiered'' to distinguish the types of items that should be subject to stricter or more permissive levels of control for different destinations, end-uses, and end-users;
- Create a ''bright line'' between the two current control lists to clarify jurisdictional determinations and reduce government and industry uncertainty about whether particular items are subject to the control of the State Department or the Commerce Department; and
- Are structurally aligned so that they potentially can be combined into a single list of controlled items.

BIS' current regulatory plan action is designed to implement the initial phase of the President's directive.

Major Programs and Activities

BIS administers four sets of regulations. The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR also regulate participation of U.S. persons in certain boycotts administered by foreign governments. The National Defense Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign government imposed offsets in defense sales, and address the effect of imports on the defense industrial base. The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under Chemical Weapons Convention treaty. The Additional Protocol Regulations implement similar requirements with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with eight field offices in the United States. BIS export control officers are stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and to promote effective export controls through cooperation with other governments.

BIS' Regulatory Plan Actions

As the agency responsible for leading administration and enforcement of the

U.S. dual-use export control system, BIS is playing a central role in the Administration's efforts to fundamentally reform the export control system. Changing what we control, how we control it and how we enforce and manage our controls will help strengthen our national security by focusing our efforts on controlling the most critical products and technologies and by enhancing the competitiveness of key U.S. manufacturing and technology sectors. In accordance with the President's directive to develop a system that is tiered to distinguish the types of items that should be subject to stricter or more permissive levels of control for different destinations, end-uses, and end-users, BIS is developing a rule to implement an Export Control Tier Based License Exception. This rule would allow certain dual-use items to be exported and reexported with conditions to specific countries without a license that would otherwise be required.

BIS will also be developing other rules to implement additional aspects of the export control reform as those aspects are identified and decided.

International Trade Administration

The International Trade Administration (ITA) assists in the development of U.S. trade policy in the global economy; creates jobs and economic growth by promoting U.S. companies; strengthens American competitiveness across all industries; addresses market access and compliance issues; administers U.S. trade laws; and undertakes a range of trade promotion and trade advocacy efforts.

Import Administration

The Import Administration (IA) is the ITA's lead unit on enforcing trade laws and agreements to prevent unfairly traded imports and to safeguard jobs and the competitive strength of American industry. From working to resolve disputes to implementing measures when violations are found, we are there to protect U.S. companies from unfair trade practices.

The primary role of IA is to enforce effectively the U.S. unfair trade laws (i.e., the antidumping duty (AD) and countervailing duty (CVD) laws) and to develop and implement other policies and programs aimed at countering foreign unfair trade practices. IA also administers the Foreign Trade Zones program, the Statutory Import Program and certain sector-specific agreements and programs, such as the Textiles and Apparel Program and the Steel Import Monitoring and Analysis licensing system.

AD proceedings focus on whether foreign producers/exporters are selling their merchandise in the United States at less than fair value. CVD proceedings focus on whether foreign producers/exporters are benefitting from subsidies provided by their governments. Parties who participate in AD/CVD proceedings include U.S. manufacturers, U.S. importers, and foreign exporters and manufacturers, some of whom are affiliated with U.S. companies.

ITA's Regulatory Plan Actions

IA is developing a rule entitled, ''Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures'' to implement an electronic filing and records management system called IA's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). The Department's regulations currently require parties to submit multiple copies of a public document, and additional copies if the document contains business proprietary information. Alternatively, under the current regulations, if a document contains business proprietary information, a party must submit one hard copy original and five hard copies of a business proprietary document and three copies of a public version. The proposed rule will require interested parties to use IA ACCESS to file submissions electronically, unless an exception for manual, hard copy filing is applicable. If a document must be filed manually, the proposed rule also reduces the required number of copies for manual submissions such that only one paper copy of the submission will need to be filed with the Department.

In addition to electronic filing, the goal of the IA ACCESS system is to expand the public's access to information in AD/CVD proceedings by making all publicly filed documents available on the internet. It will also allow interested parties to file all submissions (both public and business proprietary) with the Department using an internet connection. The Department envisions that such a system will create efficiencies in both the process and costs associated with filing and maintaining the documents. The ease of document submission will increase accessibility of submission to the Department by interested parties located within and outside the Washington, DC area.

Foreign-Trade Zones Board

The Foreign-Trade Zones (FTZ) Board is an interagency board composed of the Secretary of Commerce and the Secretary of the Treasury. The Secretary of Commerce is the chairman of the Board. The FTZ Board administers the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. section 81a et seq.) (FTZ Act).

Major Program and Activities

The FTZ Board administers the FTZ program of the United States, pursuant to the FTZ Act and the FTZ regulations, codified at 15 CFR part 400. FTZs are restricted-access sites in or near U.S. Customs and Border Protection (CBP) ports of entry licensed by the FTZ Board and operated under the supervision of CBP. FTZs are locations into which foreign and domestic merchandise may be moved for operations involving storage, exhibition, assembly, manufacture, or other processing not prohibited by law. FTZs are considered outside of U.S. customs territory, which means that the usual customs entry procedures and payment of duties are not required on foreign merchandise admitted into an FTZ unless and until that merchandise enters U.S. customs territory for domestic consumption.

The fact that FTZs are considered outside of U.S. customs territory makes them a valuable resource for many businesses. An FTZ user can avoid payment of U.S. customs duties on foreign merchandise admitted into an FTZ and then re-exported after further processing or manufacturing. Further, in some circumstances an FTZ user can admit foreign merchandise into an FTZ for use in manufacturing, and then, upon entry of the manufactured product into the U.S. customs territory, pay customs duties at the rate for the manufactured product. This can result in significant duty savings. Therefore, the FTZ program encourages retention of employment in the United States and promotion of export activity.

The FTZ Board reviews and approves applications for authority to establish FTZs and to conduct certain activity within FTZs. It has the authority to restrict or prohibit activity in FTZs. Under the FTZ Act, FTZs must be operated under public utility principles and provide uniform treatment to all that apply to use the FTZ. The FTZ Board ensures that FTZs are operated in the public interest.

The FTZ Board's Regulatory Plan Actions

The FTZ Board is in the process of revising its regulations, which have been in effect since 1990, in a proposed rule entitled, ''Foreign-Trade Zones in the United States.'' The new proposed rule was sent to OMB for review on August 31, 2010 (RIN 0625-AA81). The proposed rule will streamline application procedures and improve access to FTZs. For example, the FTZ Board is proposing to eliminate the need for advance Board approval of many types of manufacturing operations. This will allow businesses, including small businesses, to take advantage of manufacturing opportunities in FTZs more quickly and more in keeping with the pace of modern business, because they will not need to wait through the sometimes lengthy application process. Further, the proposed rule will provide guidance on the FTZ Act's requirements that FTZs be operated as public utilities with uniform access to all users. This aspect of the proposed rule will improve access to the job-retention and export-promotion benefits of FTZs. The proposed rule also will provide greater clarity on various other aspects of the FTZ program, such as the FTZ Board's statutory fining authority.

DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

27. DESIGNATION OF CRITICAL HABITAT FOR THE NORTH ATLANTIC RIGHT WHALE

Priority:

Other Significant

Legal Authority:

16 USC 1361 et seq; 16 USC 1531 to 1543

CFR Citation:

50 CFR 226; 50 CFR 229

Legal Deadline:

None

Abstract:

In June 1970, the Northern right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the Endangered Species Act (ESA)(35 FR 8495; codified at 50 CFR 17.11). Subsequently, right whales were listed as endangered under the ESA in 1973, and as depleted under the Marine Mammal Protection Act (MMPA) the same year. In 1994, NMFS designated critical habitat for the Northern right whale, a single species thought at the time to include right whales in both the North Atlantic and the North Pacific.

In 2006, NMFS published a comprehensive right whale status review that concluded that recent genetic data provided unequivocal support to distinguish three right whale lineages (including the southern right whale) as separate phylogenetic species (Rosenbaum et al. 2000). Rosenbaum et al. (2000) concluded that the right whale should be regarded as the following three separate species: (1) The North Atlantic right whale (Eubalaena glacialis) ranging in the North Atlantic Ocean; (2) the North Pacific right whale (Eubalaena japonica), ranging in the North Pacific Ocean; and (3) the southern right whale (Eubalaena australis), historically ranging throughout the southern hemisphere's oceans.

Based on these findings, NMFS published a proposed and final determination listing right whales in the North Atlantic and North Pacific as separate endangered species under the ESA (71 FR 77704, December 27, 2006; 73 FR 12024, March 6, 2008). Based on the new listing determination, NMFS is required by the ESA to designate critical habitat separately for both the North Atlantic right whale and the North Pacific right whale.

In April 2008, a final critical habitat determination was published for the North Pacific right whale (73 FR 19000; April 8, 2008). At this time, NMFS is preparing a proposal to designate critical habitat for the North Atlantic right whale.

Statement of Need:

In June 1970, the Northern right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the Endangered Species Act (ESA)(35 FR 8495; codified at 50 CFR 17.11). Subsequently, right whales were listed as endangered under the ESA in 1973 and as depleted under the Marine Mammal Protection Act (MMPA) the same year. In 1994, NMFS designated critical habitat for the Northern right whale, a single species thought at the time to include right whales in both the North Atlantic and the North Pacific.

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In April 2008, a final critical habitat determination was published for the North Pacific right whale (73 FR 19000; April 8, 2008). At this time, NMFS is preparing a proposal to designate critical habitat for the North Atlantic right whale.

Summary of Legal Basis:

Endangered Species Act

Alternatives:

Because this rule is presently in the beginning stages of development, no alternatives have been formulated or analyzed at this time.

Anticipated Cost and Benefits:

Because this rule is presently in the beginning stages of development, no analysis has been completed at this time to assess costs and benefits.

Risks:

Loss of critical habitat for a species listed as protected under the ESA and MMPA, as well as potential loss of right whales due to habitat loss.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0648–AY54

DOC—NOAA

FINAL RULE STAGE

28. CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN ILLEGAL, UNREPORTED, AND UNREGULATED FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq; 16 USC 1826(d) to 1826(k)

CFR Citation:

50 CFR 300

Legal Deadline:

Final, Statutory, January 12, 2011, Report due to Congress 16 USC 1826h.

Report on countries identified as having vessels engaged in IUU fishing.

Abstract:

The National Marine Fisheries Service (NMFS) is establishing a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing or bycatch of protected living marine resources would be identified in a biennial report to Congress, as required under section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels, as required under section 403 of MSRA.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) proposes regulations to set forth identification and certification procedures for nations whose vessels engage in illegal, unregulated, and unreported (IUU) fishing activities or bycatch of protected living marine resources pursuant to the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act). Specifically, the Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of protected living marine resources. The Moratorium Protection Act also requires the establishment of procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of protected living marine resources by fishing vessels of that nation. Based upon the outcome of the certification procedures developed in this rulemaking, nations could be subject to import prohibitions on certain fisheries products and other measures under the authority provided in the High Seas Driftnet Fisheries Enforcement Act if they are not positively certified by the Secretary of Commerce.

Summary of Legal Basis:

NOAA is proposing these regulations pursuant to its rulemaking authority under sections 609 and 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j and k), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

Alternatives:

NMFS developed alternatives for the Secretary of Commerce to make a positive certification that a nation, once identified as having vessels engaged in illegal, unregulated, and unreported (IUU) fishing, has taken sufficient corrective action against those vessels or is a member of a regional fishery management organization that has adopted effective measures to address the IUU activities. NMFS also developed alternatives for the Secretary of Commerce to make a positive certification that a nation, once identified as having vessels engaged in bycatch of protected living marine resources (PLMR), has adopted a regulatory program to conserve those PLMR that is comparable in effectiveness to the United States and which collects data to support international assessment and conservation efforts.

Anticipated Cost and Benefits:

Because this rule is under development, NMFS does not currently have estimates of the amount of product that is imported into the United States from other nations whose vessels are engaged in illegal, unreported, and unregulated (IUU) fishing or bycatch of protected living marine resources. Therefore, quantification of the economic impacts of this rulemaking is not possible at this time. This rulemaking has not been determined to be economically significant under E.O. 12866; however, it is considered significant because it raises novel or legal or policy issues arising out of legal mandates, the President's Priorities, and the principles set forth in the Executive order.

Risks:

The risks associated with not pursuing the proposed rulemaking include allowing IUU fishing activities and/or bycatch of protected living marine resources by foreign vessels to continue without an effective tool to aid in combating such activities.

Timetable:

Action	Date	FR Cite
ANPRM	06/11/07	72 FR 33436
ANPRM Comment Period End	07/05/07	
NPRM	01/14/09	74 FR 2019
NPRM Comment Period End	05/14/09	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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Related RIN: Related to 0648–AV23

RIN: 0648–AV51

DOC—NOAA

29. CRITICAL HABITAT DESIGNATION FOR COOK INLET BELUGA WHALE UNDER THE ENDANGERED SPECIES ACT

Priority:

Other Significant

Legal Authority:

16 USC 1531 et seq

CFR Citation:

50 CFR 226

Legal Deadline:

None

Abstract:

The National Marine Fisheries Service (NMFS) listed the Cook Inlet beluga whale Distinct Population Segment as endangered under the Endangered Species Act on October 17, 2009. NMFS is required to designate critical habitat no later than one year after the publication of a listing. NMFS intends to publish a proposed rule by October 17, 2009.

Statement of Need:

The National Marine Fisheries Service (NMFS) listed the Cook Inlet beluga whale Distinct Population Segment as endangered under the Endangered Species Act on October 17, 2009. NMFS is required to designate critical habitat no later than one year after the publication of a listing. NMFS intends to publish a proposed rule by October 17, 2009.

Summary of Legal Basis:

Endangered Species Act

Alternatives:

Alternative 1. No action (status quo): NMFS would not designate critical habitat (CH) in Cook Inlet, Alaska, for the Cook Inlet beluga whale. Conservation and recovery of the listed species would depend exclusively upon the protections provided under the ''jeopardy'' provisions of Section 7 of the ESA.

Alternative 2. Designate Area 1 and Area 2, which encompass all of upper-Cook Inlet, north of a line at 60° 25' north latitude, and portions of mid- and lower-Cook Inlet, extending south along the west side of the Cook Inlet, following the tidal flats into Kamishak Bay to Douglas Reef, between MHHW and waters within two nautical miles of shore. It further includes all waters of Kachemak Bay, eastward of 151° 30' west longitude and seaward of MHHW.

Anticipated Cost and Benefits:

The post-designation incremental costs are estimated to range from $187,000 to $571,000, in present value terms, at a 3 percent discount rate, and from $157,000 to $472,000 at a 7 percent discount rate.

Approximately six Federal action agencies for section 7 consultations are anticipated to bear 70 percent ($398,000) of these costs, while 26 percent ($148,000) are expected to accrue to NMFS, as the consulting agency. The remaining four percent ($25,000) of these costs may be borne by third parties, during the consultations. Of the total costs to Federal action agencies, the DOD is anticipated to bear approximately 76 percent ($302,000). This is followed by USACE (9 percent; $37,000), NMFS (7 percent; $28,000), FERC (7 percent; $28,000), EPA (1 percent; $3,000), and FHWA (less than 1 percent; less than $1,000).

Benefits are qualitative: Area more attractive to workers in various industrial sectors; anticipated conservation and recovery species; and the general stability in associated environs should provide increases in welfare to tourists, recreationists, wildlife watchers, Cook Inlet Ferry passengers, and future cruise ship passengers. This should result in higher revenues for relevant businesses. Other wildlife and fish species will benefit, resulting in overall improvements in commercial, recreational, personal use, and subsistence uses. The increase in Cook Inlet beluga whale populations, in the longer term, will provide more frequent subsistence harvest opportunities to the Alaska Natives and allow future generations to practice their traditional ways. It will enhance passive-use benefits among those who value this species and the myriad elements and aspects of the natural habitat that sustains it. Finally, as the ESA is carried out, there are expected to be scientific and educational benefits to the Nation.

Risks:

Loss of critical habitat for the Cook Inlet beluga whale Distinct Population Segment and connected loss of Cook Inlet beluga whale members.

Timetable:

Action	Date	FR Cite
ANPRM	04/14/09	74 FR 17131
ANPRM Comment Period End	05/14/09	
NPRM	12/02/09	74 FR 63080
NPRM Comment Period Extended	01/12/10	75 FR 1582
NPRM Comment Period End	02/01/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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RIN: 0648–AX50

DOC—NOAA

30. FISHERIES OFF WEST COAST STATES; PACIFIC COAST GROUNDFISH FISHERY; AMENDMENTS 20 AND 21; TRAWL RATIONALIZATION PROGRAM

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 660

Legal Deadline:

None

Abstract:

The trawl rationalization program creates an individual fishing quota

(IFQ) program for the shore-based trawl fleet; and cooperative (coop) programs for the at-sea trawl fleet in the Pacific Coast Groundfish Fishery. This rulemaking includes regulations to implement Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 creates the structure and management details of the trawl rationalization program, which would be a limited access privilege program (LAPP) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as reauthorized in 2007. Amendment 21, intersector allocation, allocates the groundfish stocks between trawl and non-trawl fisheries.

Statement of Need:

The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. This rule would establish the key components that would be necessary to implement the trawl rationalization program at the start of the 2011 fishery.

Summary of Legal Basis:

Section 303A of the Magnuson-Stevens Act.

Alternatives:

The Pacific Fishery Management Council (the Council) prepared two environmental impact statement (EIS) documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. These EISs covered a range of alternatives. The Regulatory Impact Review and Initial Regulatory Flexibility Analysis (RIR/IRFA) for this rule focuses on the two key alternatives—the No-Action Alternative and the Preferred Alternative. By focusing on the two key alternatives (no action and preferred) in the RIR/IRFA, it encompasses parts of the other alternatives and informs the reader of these proposed regulations. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. The analysis of the preferred alternative describes what is likely to occur as a result of the proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery would be managed under a system of sector-specific harvesting cooperatives (coops).

Anticipated Cost and Benefits:

The RIR/IRFA reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations. The major conclusions of the economic model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component), which consisted of 117 vessels in 2004, will be reduced by roughly 50 percent to 66 percent, or 40 to 60 vessels under an IFQ program. The reduction in fleet size implies cost savings of $18 to $22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to approximately half of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The costs of at-sea observers may reduce profits by about $2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

Risks:

Under the no action alternative, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance.

There will likely be a lower motivation to ''race for fish'' due to coop harvest privileges. This is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase ex-vessel prices), and enhanced flexibility and ability for business planning.

Timetable:

Action	Date	FR Cite
Notice of Availability	05/12/10	75 FR 26702
First Proposed Rule	06/10/10	75 FR 32994
First Proposed Rule Correction	06/30/10	75 FR 37744
First Proposed Rule Comment Period End	07/12/10	
Second Proposed Rule	08/31/10	75 FR 53379
Second Proposed Rule Comment Period End	09/30/10	
First Final Rule	10/01/10	75 FR 60868
Second Final Rule	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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Related RIN: Related to 0648–AX98

RIN: 0648–AY68

BILLING CODE 3510–12–S

DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department consisting of 3 Military departments (Army, Navy, and Air Force), 10 Unified Combatant Commands, 14 Defense agencies, and 10 DoD Field Activities. It has 1,434,761 military personnel and 770,569 civilians assigned as of June 30, 2010, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of DoD, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 ''Regulatory Planning and Review'' of September 30, 1993.

Because of its diversified nature, DoD is affected by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, Transportation, Treasury, Commerce, and State, and the Office of Personnel Management, General Services Administration, and Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order 12866, there must be coordination of proposed regulations among the regulatory agencies and the affected DoD components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is straightforward, yet a formidable undertaking.

DoD is not a regulatory agency, but occasionally it issues regulations that have an effect on the public. These regulations, while small in number compared to the regulating agencies, can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may affect the regulatory agencies. DoD, as an integral part of its program, not only receives coordinating actions from the regulating agencies, but coordinates with the agencies that are affected by its regulations as well.

Overall Priorities

The Department needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done in DoD while reacting to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866.

The Department also participates with GSA, NASA, and OFPP to form the Federal Acquisition Regulatory Council. The FAR Council assists in the direction and coordination of Government wide procurement policy and Government wide procurement regulator activities in the Federal Government (41 U.S.C. 421). Together, DOD, GSA, and NASA jointly issue and maintain the Federal Acquisition Regulation.

Administration Priorities:

1. Rulemakings that promote open Government and that use disclosure as a regulatory tool.

The Department plans to:

- Revise the Federal Acquisition Regulation (FAR) to inform contractors of this statutory requirement to make Federal Awardee Performance and Integrity Information System information, excluding past performance reviews, available to the public;
- Finalize the FAR rule that implements the requirement for reporting first-tier subcontracting data for new contracts using Recovery Act funds; and
- Finalize the FAR rule that implements the Federal Funding Accountability and Transparency Act of 2006, which requires the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule requires contractors to report executive compensation and first-tier subcontractor awards on unclassified contracts expected to be $25,000 or more, except contracts with individuals.

2. Rulemakings that simplify or streamline regulations and reduce or eliminate unjustified burdens.

The Department plans to:

- Revise the FAR to delete part 2 of the SF 330, which collects general qualifications data not related to a particular planned contract action. The Online Representations and Certifications Application (ORCA) now collects this data centrally from interested Architect-Engineer vendors at the time they complete the other representations and certifications in ORCA;
- Revise the FAR to incorporate changes from a final Department of Labor rule that removes the requirement to submit complete social security numbers and home addresses of individual workers in weekly payroll submissions. Removal of this personal information from payroll records avoids unnecessary disclosure issues;
- Finalize the revision of DFARS requirements for reporting the loss, theft, damage, or destruction of Government property;
- Review of the DFARS requirements for reporting Government Furnished Equipment and Government Furnished Material in the DoD Item Unique Identification (IUID) registry;
- Remove the DFARS requirement to use DD Forms 2626 and 2631 to report past performance information for construction and architect/engineer services instead of the standard FAR procedures;
- Revise the DFARS to permit offerors to provide alternative line-item structure from that shown in the solicitation to reflect the offeror's business practices for selling and billing commercial items and initial provisioning spares for weapon systems;
- Delete redundant DFARS text that limits placement of orders against contracts with contractors that have been debarred suspended or proposed for debarment. This requirement is now incorporated into the FAR;
- Propose changes to simplify and clarify the DFARS coverage of patents, data, and copyrights, dramatically reducing the amount of regulatory text and the number of required clauses;
- Simplify and clarify the DFARS coverage of multiyear acquisitions;
- Establish a method in the DFARS for electronic issuance of orders; and
- Improve the contract closeout process.

3. Regulations of Particular Interest to Small Business

Of interest to small businesses are regulations to:

- Implement in the FAR changes to the requirement for small disadvantaged businesses certification;
- Revise the FAR to implement changes in the HUBZone Program, in accordance with Small Business Administration regulations;

- Consider revisions to the FAR to address the findings of the Rothe case that Federal contracting programs for minority-owned and other small businesses that implement 10 U.S.C. 2323 are ''facially'' unconstitutional;
- Establish a DoD program to enhance participation of Historically Black Colleges and Universities and Minority-Serving Institutions in defense research programs;
- Conform the DFARS to the FAR with respect to the use of the Electronic Subcontracting Reporting System; and
- Require public disclosure of justification and approval documents for noncompetitive 8(a) contracts over $20 million.

4. Regulations with international effects or interest

Of international effect or interest are regulations to:

- Implement in the FAR statutory certification requirement that each offeror does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. Also implements a procurement prohibition relating to contracts with persons that export sensitive technology to Iran;
- Establish in the FAR processes and criteria for waiver of the prohibition on contracting with entities that conduct restricted business operations in Sudan;
- Implement in the DFARS the determinations regarding participation of South Caucasus/Central and South Asian states in acquisitions in support of operations in Afghanistan;
- Finalize the FAR rule that prohibits Government contracts with any foreign incorporated entity that is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 or any subsidiary of such entity;
- Implement in the FAR and DFARS the annual consolidated appropriation act exemption from the Buy American Act/Balance of Payments Program restrictions on the acquisition of foreign commercial information technology items as construction material; and
- Finalize in the FAR and DFARS the rules that increase trade agreements thresholds, as specified by the United States Trade Representative.

Specific DoD Priorities:

For this Regulatory Plan, there are seven specific DoD priorities, all of which reflect the established regulatory principles. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulations that incorporate the provisions of the President's priorities and objectives under the Executive order.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning acquisition, security, homeowners, education, and health affairs.

1. Regulatory Program of the U.S. Army Corps of Engineers

In 1988, the Army Corps of Engineers published as appendix B of 33 CFR part 325, a rule that governs compliance with the National Environmental Policy Act (NEPA) for the Army's Regulatory Program. On April 2, 2010, the Assistant Secretary of the Army for Civil Works announced that the Army Corps of Engineers would conduct rulemaking to modify appendix B to reflect a limited change in policy addressing permit applications for surface coal mining activities in Appalachia. The modification of appendix B will focus on the NEPA scope of review for considering the effects of surface coal mining in Appalachia on the aquatic environment, to enhance protection of aquatic resources.

2. Defense Procurement and Acquisition Policy

The Department of Defense continuously reviews the DFARS and continues to lead Government efforts to:

- Revise the DFARS to implement the Weapons System Acquisition Reform Act of 2009 – including acquisition strategies to ensure competition throughout life-cycle of major defense acquisition programs and address organizational conflicts of interest in major defense acquisition programs;
- Revise DFARS to ensure continuation of contractor services in support of mission essential functions during an emergency, such as an influenza pandemic;
- Clarify DoD policy in the DFARS regarding the definition and administration of contractor business systems to improve the effectiveness of DCMA/DCAA oversight of contractor business systems;
- Implement in the DFARS statutory requirement to inspect military facilities, infrastructure, and equipment for safety and habitability prior to use;
- Revise the FAR to implement the Executive orders relating to allowability of labor relations costs, non-displacement of qualified workers, notification of employee rights under Federal labor laws, and Federal leadership in environmental, energy, and economic performance;
- Revise the FAR to adopt biobased procurement preferences and collect contractor information on use of biobased products;
- Revise the FAR to address service contractor employee personal conflicts of interest and organizational conflicts of interest and limit contractor access to information; and
- Provide enhanced competition for task- and delivery-order contracts and additional market research before awarding a task or delivery order in excess of the simplified acquisition threshold.

3. Logistics and Materiel Readiness, Department of Defense

The Department of Defense published or plans to publish rules on contractors supporting the military in contingency operations:

- Final Rule: Private Security Contractors (PSCs) Operating in Contingency Operations. In order to meet the mandate of section 862 of the 2008 National Defense Authorization Act, this rule establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel. DoD published an interim final rule on July 17, 2009 (74 FR 34690 to 34694) with an effective date of July 17, 2009. The comment period ended August 31, 2009. DoD, in coordination with the Department of State and the United States Agency

for International Development, have prepared a final rule, which includes the responses to the public comments, and incorporates changes to the interim final rule, where appropriate. The final rule is expected to be published the first or second quarter of FY 2011.

- Interim Final Rule: Operational Contract Support for Contingency Operations. This rule will incorporate the latest changes and lessons learned into policy and procedures for program management for the preparation and execution of contracted support and the integration of DoD contractor personnel into military contingency operations outside the United States. DoD anticipates publishing the interim final rule in the first or second quarter of FY 2011.

4. Installations and Environment, Department of Defense

The Department of Defense published a rule to assist eligible military and civilian Federal employee homeowners:

- Final Rule: This rule authorizes the Homeowners Assistance Program (HAP) under section 3374 of title 42, United States Code, to assist eligible military and civilian Federal employee homeowners when the real estate market is adversely affected by closure or reduction-in-scope of operations. In accordance with DoD Directive 5101.1, ''DoD Executive Agent,'' designates the Secretary of the Army as the DoD Executive Agent for administering, managing, and executing the HAP. Additionally, this rule allows the Department of Defense to temporarily expand the existing HAP in compliance with section 1001 of the American Recovery and Reinvestment Act of 2009. This temporary expansion covers certain persons affected by BRAC 2005, certain persons on permanent change of station orders, and certain wounded persons and surviving spouses. This rule updates policy, delegates authority, and assigns responsibilities for managing Expanded HAP. This is an economically significant rule. DoD published an interim final rule on September 30, 2009 (74 FR 50109-50115), with an effective date of September 30, 2009. The comment period ended October 30, 2009. The final rule published November 16, 2010 (75 FR 69871) with an effective date of January 18, 2011.

5. Military Personnel Policy, Department of Defense

The Department of Defense published or plans to publish a rule implementing the Post-9/11 Veterans Educational Assistance Act of 2008, title V, Public Law 110-252 (the ''Post-9/11 GI Bill''):

- Interim Final Rule: This rule establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post-9/11 GI Bill. It establishes policy for the use of supplemental educational assistance ''kickers,'' for members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits; and for the DoD Education Benefits Fund Board of Actuaries. DoD published an interim final rule on June 25, 2009 (74 FR 30212 to 30220) with an effective date of June 25, 2009. The comment period ended July 27, 2009. DoD anticipates finalizing this rule in the spring of 2011.

6. Military Community and Family Policy, Department of Defense

The Department of Defense published or plans to publish a rule to implement policy, assign responsibilities, and prescribe procedures for the operation of voluntary education programs within DoD.

- Proposed Rule: This rule implements policy, assigns responsibilities, and prescribes procedures for the operation of voluntary education programs within DoD. Included are: Procedures for Service members participating in education programs; guidelines for establishing, maintaining, and operating voluntary education programs; procedures for obtaining on-base voluntary education programs and services; minimum criteria for selecting institutions to deliver higher education programs and services on military installations; and the Memorandum of Understanding between educational institutions and DoD prior to the disbursement of tuition assistance funds. This is an economically significant rule. The proposed rule published August 6, 2010 (75 FR 47504-47515). The comment period ends October 5, 2010. DoD anticipates finalizing this rule in the spring or fall of FY 2011.

7. Health Affairs, Department of Defense

The Department of Defense is able to meet its dual mission of wartime readiness and peacetime health care by operating an extensive network of medical treatment facilities. This network includes DoD's own military treatment facilities supplemented by civilian health care providers, facilities, and services under contract to DoD through the TRICARE program. TRICARE is a major health care program designed to improve the management and integration of DoD's health care delivery system. The program's goal is to increase access to health care services, improve health care quality, and control health care costs.

The TRICARE Management Activity has published or plans to publish the following rules:

- Final rule on CHAMPUS/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals. This rule provided an additional opportunity for comment on the final rule of March 17, 2009, implementing provisions of section 703 of the National Defense Authorization Act for Fiscal Year 2008. This statute extended pharmaceutical Federal Ceiling Prices to TRICARE Retail Pharmacy Program prescriptions. The Department of Defense (DoD) issued a final rule on March 17, 2009, implementing the law. On November 30, 2009, the U.S. District Court for the District of Columbia ''ordered that the final rule is remanded without vacatur for the Defense Department to consider in its discretion whether to readopt the current iteration of the rule or adopt another approach to implement 10 U.S.C. 1074g(f).'' As part of DoD's reconsideration, DoD solicited public comments on the implementation of the statute, DoD's resulting regulations, and the matters addressed for DoD's consideration in the Court's Memorandum Opinion. The proposed rule was published February 9, 2010 (75 FR 6335-6336). The comment period ended on March 11, 2010. DoD anticipates publishing a second final rule in the first quarter of FY 2011.
- Final rule on TRICARE: Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage. This rule implements section 1097c of title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account. The proposed rule was published March 28, 2008

(73 FR 16612). The comment period ended May 27, 2008. The final rule published April 9, 2010 (75 FR 18051 to 18055) with an effective date of June 18, 2010.

- Proposed rule on TRICARE: Sole Community Hospital Payment Reform. This rule implements the statutory provision in section 1079(j)(2) of title 10, United States Code that TRICARE payment methods for institutional care shall be determined to the extent practicable in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This proposed rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by sole community hospitals. DoD anticipates publishing a proposed rule in the first or second quarter of FY 2011.
- Proposed rule on TRICARE: Long Term Care Hospital Prospective Payment System. This rule adopts a reimbursement methodology for Long Term Care Hospitals similar to Medicare's Long Term Care Hospital Prospective Payment System. DoD anticipates publishing a proposed rule in the spring of FY 2011.

8. Networks and Information Integration, Department of Defense

The Department of Defense will publish a rule regarding Defense Industrial Base Voluntary Cyber Security and Information Assurance Information Sharing:

- Interim Final Rule: This rule establishes cyber threat information sharing, reporting, and analysis mechanisms between DoD and cleared Defense Industrial Base (DIB) contractors to enhance cyber threat situational awareness and threat response. The rule establishes a voluntary information sharing environment with DIB partners to address the unacceptable risk and imminent threat to national and economic security stemming from the unauthorized access by U.S. adversaries or business competitors to critical DoD unclassified information resident on, or transiting, DIB unclassified networks. The rule describes the collaborative DoD and DIB corporate-level partnership to enhance security of DIB networks; increase USG and industry knowledge of advanced cyber threats; provide near-real time cyber threat information sharing and understand the impact of data compromise on DoD operational activities. Participation in the DIB Cyber Security/Information Assurance program is voluntary and open to all qualified cleared contractors. DoD anticipates publishing an interim final rule in the second quarter of FY 2011.

DOD—Office of the Secretary (OS)

FINAL RULE STAGE

31. VOLUNTARY EDUCATION PROGRAMS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

10 USC 2005; 10 USC 2007

CFR Citation:

32 CFR 68

Legal Deadline:

None

Abstract:

This rule implements policy, assigns responsibilities, and prescribes procedures for the operation of voluntary education programs within DoD. Included are: Procedures for Service members participating in education programs; guidelines for establishing, maintaining, and operating voluntary education programs, including but not limited to, instructor-led courses offered on-installation and off-installation, as well as via distance learning; procedures for obtaining on-base voluntary education programs and services; minimum criteria for selecting institutions to deliver higher education programs and services on military installations; the establishment of a DoD Voluntary Education Partnership Memorandum of Understanding between DoD and educational institutions receiving tuition assistance payments; and procedures for other education programs for Service members and their adult family members.

Statement of Need:

This rule implements policy, assigns responsibilities, and prescribes procedures for the operation of voluntary education programs within DoD. Included are: Procedures for Service members participating in education programs; guidelines for establishing, maintaining, and operating voluntary education programs, including but not limited to, instructor-led courses offered on-installation and off-installation, as well as via distance learning; procedures for obtaining on-base voluntary education programs and services; minimum criteria for selecting institutions to deliver higher education programs and services on military installations; the establishment of a DoD Voluntary Education Partnership Memorandum of Understanding between DoD and educational institutions receiving tuition assistance payments; and procedures for other education programs for Service members and their adult family members.

Summary of Legal Basis:

sections 2005 and 2007 of title 10, United States Code

Alternatives:

None.

Anticipated Cost and Benefits:

Voluntary Education Programs include: High School Completion /Diploma; Military Tuition Assistance (TA); Postsecondary Degree Programs; Independent Study and Distance Learning Programs; College Credit Examination Program; Academic Skills Program; and Certification/Licensure Programs. Funding for Voluntary Education Programs during 2009 was $800 million, which included tuition assistance and operational costs. This funding provided more than 650,000 individuals (Service members and their adult family members) the opportunity to participate in Voluntary Education Programs around the world.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/06/10	75 FR 47504
NPRM Comment Period End	10/05/10	
Final Action	04/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOD—Office of Assistant Secretary for Health Affairs (DODOASHA)

PROPOSED RULE STAGE

32. ● TRICARE; REIMBURSEMENT OF SOLE COMMUNITY HOSPITALS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 10 USC ch 55

CFR Citation:

32 CFR 199

Legal Deadline:

None

Abstract:

This proposed rule is to implement the statutory provision at 10 U.S.C. 1079(j)(2) that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This proposed rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for inpatient services provided by Sole Community Hospitals (SCHs). It will be phased in over a several-year period.

Statement of Need:

This rule is being published to implement the statutory provision in 10 U.S.C. 1079(j)(2), that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. This proposed rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for inpatient services provided by Sole Community Hospitals.

Summary of Legal Basis:

There is a statutory basis for this proposed rule: 10 U.S.C. 1079(j)(2).

Alternatives:

Alternatives were considered for phasing in the needed reform and an alternative was selected for a gradual, smooth transition.

Anticipated Cost and Benefits:

We estimate the total reduction (from the proposed changes in this rule) in hospital revenues under the SCH reform for its first year of implementation (assumed for purposes of this RIA to be FY 2011), compared to expenditures in that same period without the proposed SCH changes, to be approximately $190 million. The estimated impact for FYs 2012 through 2015 (in $ millions) is $208, $229, $252, and $278 respectively.

Risks:

Failure to publish this proposed rule would result in noncompliance with a statutory provision.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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BILLING CODE 5001–06–S

DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory Priorities

I. Introduction

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and others in improving education nationwide and in helping to ensure that all Americans receive a quality education. We provide leadership and financial assistance for education at all levels to a wide range of stakeholders and individuals, including State educational agencies, local school districts, early learning programs, elementary and secondary schools, institutions of higher education, vocational schools, not-for-profit organizations, members of the public, and many others. These efforts are helping to ensure that all students will be ready for college and careers, and that all students have the opportunity to attend postsecondary education.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational programs and activities that receive Federal financial assistance, and support innovation and research, evaluation, technical assistance, and dissemination of research findings to improve the quality of education.

Overall, the programs we administer will affect nearly every American during his or her life. Indeed, in the 2010 to 2011 school year, more than 1.5 million children, ages birth through 5 years, will participate in early learning programs under the Individuals with Disabilities Education Act (IDEA) and title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); about 50 million students will attend an estimated 99,000 elementary and secondary schools in approximately 13,800 public school districts; and about 20 million students will enroll in degree-granting postsecondary schools. All of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, and approaches to compliance related to our programs, we are committed to working closely with affected persons and groups. Specifically, we work with a broad range of interested parties and the general public, including parents, students, and educators; other Federal agencies and State, local, and tribal governments; and neighborhood groups, schools, colleges, rehabilitation service providers, professional associations, advocacy organizations, community-based organizations, businesses, and labor organizations.

We also continue to seek greater and more useful public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. If we determine that it is necessary to develop regulations, we seek public participation at the key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the Internet or by regular mail.

To facilitate the public's involvement, we participate in the Federal Docketing Management System (FDMS), an electronic single Governmentwide access point (www.regulations.gov) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public the opportunity to submit a comment electronically on any notice of proposed rulemaking or interim final regulations open for comment, as well as read and print any supporting regulatory documents.

We are continuing to streamline information collections, reduce the burden on information providers involved in our programs, and make information easily accessible to the public.

II. Regulatory Priorities

A. American Recovery and Reinvestment Act of 2009

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA lays the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for children and youth, long-term gains in school and school system capacity, and increased productivity and effectiveness.

The ARRA provided funding for several key discretionary grant programs, including the Race to the Top Fund and the Investing in Innovation Fund. The Department issued regulations for these programs in 2009 and 2010. To the extent Congress reauthorizes and appropriates funds for these programs in FY 2011, we may need to amend the regulations for these programs.

B. Elementary and Secondary Education Act of 1965, as Amended

On March 13, 2010, the Obama administration released the Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act, the President's plan for revising the ESEA. The blueprint can be found at the following Web site: http://www2.ed.gov/policy/elsec/leg/blueprint/index.html.

We look forward to congressional reauthorization of the ESEA that will build on many of the reforms States and LEAs will be implementing under the ARRA grant programs described in this statement of regulatory priorities. As necessary, we intend to amend current regulations to reflect the reauthorization of this statute. In the interim, we may propose other amendments to the current regulations.

C. Higher Education Act of 1965, as Amended

In early 2011, the Department plans to issue final regulations to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in a recognized occupation. These regulations also address the conditions under which these educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

On March 30, 2010, the President signed into law the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, title II of which is the SAFRA Act. SAFRA made a number of changes to the Federal student financial aid programs under title IV of the HEA. One of the most significant changes made by SAFRA is to end new loans under the Federal Family Education Loan (FFEL) Program authorized by title IV, part B, of the HEA as of July 1, 2010.

During the coming year, we plan to amend our regulations to address issues related to the termination of the FFEL Program and the Department's origination of all new loans under the William D. Ford Direct Loan Program, as well as other statutory provisions enacted under SAFRA. Unless subject to an exemption, regulations to reflect changes to the student financial aid programs under title IV of the HEA must

generally go through the negotiated rulemaking process.

D. Individuals with Disabilities Education Act

We plan to issue final regulations implementing changes to the part C program—the early intervention program for infants and toddlers with disabilities—under the IDEA.

E. Family Educational Rights and Privacy Act

Given the President's emphasis on improving the collection and use of data as a key element of educational reform, we intend to issue a notice of proposed rulemaking to amend our current regulations for the Family Educational Rights and Privacy Act of 1974 (FERPA) to ensure that States are able to effectively establish and expand robust statewide longitudinal data systems while protecting student privacy.

F. Other Potential Regulatory Activities

Congress may legislate to reauthorize the Adult Education and Family Literacy Act (AEFLA) (title II of the Workforce Investment Act of 1998) and the Rehabilitation Act of 1973, as amended. The Administration is working with Congress to ensure that any changes to these laws (1) improve the State grant and other programs providing assistance for adult basic education under the AEFLA and for vocational rehabilitation and independent living services for persons with disabilities under the Rehabilitation Act of 1973 and (2) provide greater accountability in the administration of programs under both statutes. Changes to our regulations may be necessary as a result of the reauthorization of these two statutes.

III. Principles for Regulating

Over the next year, other regulations may be needed because of new legislation or programmatic changes. In developing and promulgating regulations, we follow our Principles for Regulating, which determine when and how we will regulate. Through consistent application of the following principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are so diverse that a uniform approach through regulation does more harm than good.
- Whether regulations are needed to protect the Federal interest; that is, to ensure that Federal funds are used for their intended purpose and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary.
- Minimize burden to the extent possible and promote multiple approaches to meeting statutory requirements if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulation.
- To the extent possible, establish performance objectives rather than specify compliance behavior.
- Encourage flexibility, to the extent possible, so institutional forces and incentives achieve desired results.

ED—Office of Postsecondary Education (OPE)

PROPOSED RULE STAGE

33. • TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

20 USC title IV; PL 111–152

CFR Citation:

34 CFR ch VI

Legal Deadline:

None

Abstract:

The Secretary proposes to amend its title IV, HEA student assistance regulations, to (1) reflect the termination of the Federal Family Education Loan Program pursuant to title II of the Health Care and Education Reconciliation Act of 2010, which is the SAFRA Act, and (2) reflect other statutory changes resulting from the SAFRA Act.

Statement of Need:

These regulations are needed to reflect the provisions of the SAFRA Act (title II of the Health Care and Education Reconciliation Act of 2010), which terminated the Federal Family Education Loan (FFEL) program, and to reflect other amendments to the HEA resulting from the SAFRA Act.

Summary of Legal Basis:

Health Care and Education Reconciliation Act of 2010, Public Law 111-152.

Alternatives:

The Department is still developing these proposed regulations; our discussion of alternatives will be included in the notice of proposed rulemaking.

Anticipated Cost and Benefits:

Estimates of the costs and benefits are currently under development and will be published in the proposed regulations.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	05/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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ED—OPE

FINAL RULE STAGE

34. • PROGRAM INTEGRITY: GAINFUL EMPLOYMENT—MEASURES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

20 USC 1001 to 1003; 20 USC 1070g; 20 USC 1085; 20 USC 1088; 20 USC 1091 to 1092; 20 USC 1094; 20 USC 1099c; 20 USC 1099c–1; . . .

CFR Citation:

34 CFR 668

Legal Deadline:

None

Abstract:

The Secretary amends the Student Assistance General Provisions to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which those educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended.

Statement of Need:

These regulations are needed to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in a recognized occupation.

Summary of Legal Basis:

Title IV of the Higher Education Act of 1965, as amended.

Alternatives:

A discussion of alternatives was outlined in the Notice of Proposed Rulemaking published on July 26, 2010.

Anticipated Cost and Benefits:

Estimates of anticipated costs and benefits are set forth in the Notice of Proposed Rulemaking published on July 26, 2010.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	07/26/10	75 FR 43616
NPRM Comment Period End	09/09/10	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 1840–AD04

RIN: 1840–AD06

BILLING CODE 4000–01–S

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory and Deregulatory Priorities

The Department of Energy (Department or DOE) makes vital contributions to the Nation's welfare through its activities focused on improving national security, energy supply, energy efficiency, environmental remediation, and energy research. The Department's mission is to:

- Promote dependable, affordable, and environmentally sound production and distribution of energy;
- Advance energy efficiency and conservation;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Provide a responsible resolution to the environmental legacy of nuclear weapons production;
- Strengthen U.S. scientific discovery, economic competitiveness, and improving quality of life through innovations in science and technology.

The Department's regulatory activities are essential to achieving its critical mission and to implementing major initiatives of the President's National Energy Policy. Among other things, The Regulatory Plan and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Energy Policy and Conservation Act (EPCA) requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. The standards already published in 2010 have a net benefit to the Nation of between $7.7 billion (7 percent discount rate) and 23.5 billion (3 percent discount rate) over 30 years. By 2045, these standards will have saved enough energy to operate all U.S. homes for 4 months.

The Department continues to follow its schedule for setting new appliance efficiency standards. These rulemakings are expected to save American consumers billions of dollars in energy costs. The 5-year plan to implement the schedule outlines how DOE will address the appliance standards rulemaking backlog and meet the statutory requirements established in EPCA and the Energy Policy Act of 2005 (EPACT 2005). The 5-year plan, which was developed considering the public comments received on the appliance standards program, provides for the issuance of one rulemaking for each of the 22 products in the backlog. The plan also provides for setting appliance standards for products required under EPACT 2005.

The overall plan for implementing the schedule is contained in the Report to Congress under section 141 of EPACT 2005 that was released on January 31, 2006. This plan was last updated in the August 2010 report to Congress and now includes the requirements of the Energy Independence and Security Act of 2007 (EISA 2007). The reports to Congress are posted at:

http://www.eere.energy.gov/appliance__standards/schedule__setting.html.

The August 2010 report identifies all products for which DOE has missed the deadlines established in EPCA (42 U.S.C. sec. 6291 *et seq.*). It also describes the reasons for such delays and the Department's plan for expeditiously prescribing new or amended standards. Information and timetables concerning these actions can also be found in the Department's regulatory agenda, which is posted online at: www.reginfo.gov.

Estimate of Combined Aggregate Costs and Benefits

The regulatory actions included in this regulatory plan for residential refrigerators and freezers, fluorescent lamp ballasts, residential central air conditioners and heat pumps, residential furnaces, manufactured housing, and clothes dryers and room air conditioners provide significant benefits to the Nation. DOE believes that the benefits to the Nation of the proposed energy standards for residential refrigerators and freezers (energy savings, consumer average life-cycle cost savings, national net present value increase, and emissions reductions) outweigh the costs (loss of industry net present value and life-cycle cost increases for some consumers). DOE estimates that these refrigerator and freezer regulations will produce an energy savings of 4.5 quads over 30 years. The benefit to the Nation will be between $2.44 billion (7 percent discount rate) and $18.57 billion (3 percent discount rate). DOE believes that the proposed energy standards for fluorescent lamp ballasts, central air conditioners and heat pumps, residential furnaces, manufactured housing, and clothes dryers and room air conditioners will also be beneficial to the Nation. Because DOE has not yet proposed candidate standard levels for this equipment, however, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that will provide the maximum energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notices of proposed rulemaking for this equipment.

DOE—Energy Efficiency and Renewable Energy (EE)

PROPOSED RULE STAGE

35. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND ROOM AIR CONDITIONERS

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6295(c) and (g)

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Judicial, June 30, 2011.

Abstract:

The Energy Policy and Conservation Act, as amended, establishes initial energy efficiency standard levels for many types of major residential appliances and generally requires DOE to undertake two subsequent rulemakings, at specified times, to determine whether the existing standard for a covered product should be amended. This is the second review of the standards for clothes dryers and room air conditioners.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances from the market.

Summary of Legal Basis:

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of title III (42 U.S.C. 6291 to 6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles. EPCA covers consumer products and certain commercial equipment, including clothes dryers and room are conditioners that are the subject of the rulemaking (42 U.S.C. 6292(a)(2)-(8)). EPCA prescribes energy conservation standards for room air conditioners (42 U.S.C. 6295(c)) and directs DOE to conduct two cycles of rulemaking to determine whether to adopt amended standards (42 U.S.C. 6295(c)(3)(A)). For clothes dryers, EPCA sets a prescriptive requirement (42 U.S.C. 6294(g)(3)) and directs DOE to conduct a cycle of rulemaking to determine whether to adopt amended standards (42 U.S.C. 6294(g)(4)). This rulemaking represents the second and first round of amendments to the standards for room air conditioners and dryers respectively.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is a technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

Because DOE has not yet proposed candidate standard levels for these products, DOE cannot provide an estimate of combine aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum energy savings that are technologically feasibly and economically justified. Estimates of energy savings will be provided when DOE issues the notices of proposed rulemaking for this equipment.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	10/09/07	72 FR 57254
Notice: Public Meeting, Data Availability	02/23/10	75 FR 7987
Comment Period End	04/26/10	
NPRM	03/00/11	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State

Federalism:

Undetermined

Additional Information:

This rulemaking is the second of two rulemakings required for this equipment. Comments pertaining to this rule may be submitted electronically to aham2-2008-TP-0010@hq.doe.gov.

URL For More Information:

www1.eere.energy.gov/buildings__standards/residential/clothes__dryers.html

URL For Public Comments:

www.regulations.gov

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Related RIN: Merged with 1904–AB51, Related to 1904–AB76, Related to 1904–AC02

RIN: 1904–AA89

DOE—EE

36. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL CENTRAL AIR CONDITIONERS AND HEAT PUMPS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6295(d)

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Judicial, June 30, 2011.

Abstract:

DOE is reviewing and updating energy efficiency standards, as required by the Energy Policy and Conservation Act, to reflect technological advances. All amended standards must be technologically feasible and economically justified. This is the second review of the statutory standards for residential central air conditioners and air conditioning heat pumps.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of title III (42 U.S.C. 6291 to 6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles. Amendments expanded title III of EPCA to include certain commercial and industrial equipment. (42 U.S.C. 6292(3)) The National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100—12, established energy conservation standards for central air conditioners and heat pumps as well as requirements for determining whether these standards should be amended. NAECA also required that DOE conduct two cycles of rulemakings to determine if more stringent standards are economically justified and technologically feasible. (42 U.S.C. 6295(d)(3)) On January 22, 2001, DOE published a final rule in the Federal Register, which completed the first rulemaking cycle to amend energy conservation standards for residential central air conditioners and heat pumps. 66 FR 7170. This rulemaking encompasses DOE's second cycle of review to determine whether the standards in effect for residential central air conditioners and heat pumps should be amended.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

Because DOE has not yet proposed candidate standard levels for this equipment, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notices of proposed rulemaking for this equipment.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	06/06/08	73 FR 32243
Notice: Public Meetings, Data Availability	03/25/10	75 FR 14368
NPRM	12/00/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

Undetermined

Additional Information:

This rulemaking is the second of two rulemakings required for this equipment. Comments pertaining to this rule may be submitted electronically to Res__Central__AC__HP@ee.doe.gov.

URL For More Information:

www1.eere.energy.gov/buildings/appliance__standards/residential/central__ac__hp.html

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1904–AB94

RIN: 1904–AB47

DOE—EE

37. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT LAMP BALLASTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6295(g)

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Judicial, June 30, 2011.

Abstract:

DOE is reviewing and updating energy efficiency standards, as required by the Energy Policy and Conservation Act, to reflect technological advances. All amended energy efficiency standards must be technologically feasible and economically justified. This is the second review of the statutory standards for fluorescent lamp ballasts.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

The Energy Policy and Conservation Act (EPCA) of 1975 (42 U.S.C. 6291 to 6309) established an energy conservation program for major household appliances. Amendments to EPCA in the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988) established energy conservation standards for fluorescent lamp ballasts. These amendments also required that DOE (1) conduct two rulemaking cycles to determine whether these standards should be amended and (2), for each rulemaking cycle, determine whether the standards in effect for fluorescent lamp ballasts should be amended to apply to additional fluorescent lamp ballasts. (42 U.S.C. 6295(g)(7)(A)—(B)). On September 19, 2000, DOE published a final rule in the Federal Register, which completed the first rulemaking cycle to amend energy conservation standards for fluorescent lamp ballasts. 65 FR 56740. This rulemaking encompasses DOE's second cycle of review to determine whether the standards in effect for fluorescent lamp ballasts should be amended and whether the standards should be applicable to additional fluorescent lamp ballasts.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

Because DOE has not yet proposed candidate standard levels for this equipment, however, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notices of proposed rulemaking for this equipment.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	01/22/08	73 FR 3653
Notice: Public Meetings, Data Availability	03/24/10	75 FR 14319
NPRM	12/00/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

Undetermined

Additional Information:

This rulemaking is the second of two rulemakings required for this equipment. Comments pertaining to this rule may be submitted electronically to ballasts.rulemaking@ee.doe.gov.

URL For More Information:

www1.eere.energy.gov/buildings/appliance__standards/residential.fluorescent__lamp.ballasts.html

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1904–AB77, Related to 1904–AA99

RIN: 1904–AB50

DOE—EE

38. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6295(f) and (m)

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Judicial, June 30, 2011.

Abstract:

DOE published an energy conservation standard final rule for residential furnaces and boilers in the Federal Register on November 19, 2007 (72 FR 65136). Petitioners challenged this final rule on several grounds. DOE filed a motion for voluntary remand to allow the agency to consider: 1) The application of regional standards in additional to national standards for furnaces, authorized by Energy Independence and Security Act of 2007 (enacted Dec. 19, 2007) and 2) the effect of alternative standards on natural gas prices. This motion for voluntary remand was granted on April 21, 2009. DOE has initiated this rulemaking to consider amended energy conservation standards for residential furnaces.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of title III (42 U.S.C. 6291 to 6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles. The program covers certain commercial and industrial equipment, including residential furnaces. (42 U.S.C. 6292(a)(5)) EPCA prescribed the initial energy conservation standards for residential furnaces. (42 U.S.C. 6295(f)(1)—(2)) The statute further provides DOE with the authority to conduct rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)(4)).

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

Because DOE has not yet proposed candidate standard levels for this equipment, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that provide the maximum energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notices of proposed rulemaking for this equipment.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Rulemaking Analysis Plan Availability	03/15/10	75 FR 12144
NPRM	12/00/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For More Information:

http://www1.eere.energy.gov/buildings/appliance__standards/residential/furnaces__boilers.html

URL For Public Comments:

www.regulations.gov

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RIN: 1904–AC06

DOE—EE

39. ENERGY EFFICIENCY STANDARDS FOR MANUFACTURED HOUSING

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 17071

CFR Citation:

10 CFR 460

Legal Deadline:

Final, Statutory, December 19, 2011.

Abstract:

The rule would establish energy efficiency standards for manufactured housing and a system to ensure compliance with, and enforcement of, the standards.

Statement of Need:

The Energy Independence and Security Act requires increased energy efficiency standards for manufactured housing.

Summary of Legal Basis:

Section 413 of the Energy Independence and Security Act of 2007 (EISA), 42 U.S.C. 17071 directs DOE to develop and publish energy standards for manufactured housing.

Alternatives:

The statute requires DOE to conduct a rulemaking to establish standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute.

Anticipated Cost and Benefits:

Because DOE has not yet proposed candidate standard levels, DOE cannot provide an estimate of combined aggregate costs and benefits for these actions. DOE will, however, in compliance with all applicable law, issue standards that provide the increased energy savings that are technologically feasible and economically justified. Estimates of energy savings will be provided when DOE issues the notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	02/22/10	75 FR 7556
ANPRM Comment Period End	03/24/10	
NPRM	04/00/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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RIN: 1904–AC11

DOE—EE

FINAL RULE STAGE

40. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL REFRIGERATORS, REFRIGERATOR–FREEZERS, AND FREEZERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 6295(b)(4)

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Statutory, December 31, 2010.

Abstract:

The Energy Independence and Security Act of 2007 amended the Energy Policy and Conservation Act and directed the Secretary to issue a final rule to determine whether to amend the standards for refrigerators, refrigerator-freezers, and freezers. The final rule will contain any amended standards.

Statement of Need:

The Energy Policy and Conservation Act requires minimum energy efficiency standards for appliances, which has the effect of eliminating inefficient appliances and equipment from the market.

Summary of Legal Basis:

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of title III (42 U.S.C. 6291 to 6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles. EPCA covers consumer products and certain commercial equipment, including the types of refrigeration products that are the subject of this rulemaking. (42 U.S.C. 6292(a)(1)) EPCA prescribes energy conservation standards for these products (42 U.S.C. 6295(b)(1)-(2)) and directs DOE to conduct three cycles of rulemakings to determine whether to adopt amended standards. (42 U.S.C. 6295(b)(3)(A)(i), (b)(3)(B)-(C), and (b)(4)) This rulemaking represents the third round of amendments to the standards for refrigeration products.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, DOE conducts a thorough analysis of the alternative standard levels, including the existing standard, based on the criteria specified by the statute

Anticipated Cost and Benefits:

DOE believes that the benefits to the Nation of the proposed energy standards for residential refrigerators and freezers (energy savings, consumer average lifecycle cost (LCC) savings, national net present value (NPV) increase, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some small electric motor users). DOE estimates that energy savings from electricity will be 4.5 quads over 30 years and the benefit to the Nation will be between $2.56 billion and $18.80 billion.

Timetable:

Action	Date	FR Cite
Notice: Public Meeting, Framework Document Availability	09/18/08	73 FR 54089
Notice: Public Meeting, Data Availability	11/16/09	74 FR 58915
NPRM	09/27/10	75 FR 59470
NPRM Comment Period End	11/26/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

Comments pertaining to this rule may be submitted electronically to ResRefFreez-2008-STD-0012@hq.doe.gov.

URL For More Information:

www.eere.energy.gov/buildings/appliance__standards/residential/refrigerators__freezer.html

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1904–AB92

RIN: 1904–AB79

BILLING CODE 6450–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory Priorities for FY 2011

The Department of Health and Human Services (HHS) is the Federal Government's principal agency charged with protecting the health of all Americans and providing essential human services. HHS' responsibilities include: Medicare, Medicaid, support for public health preparedness and emergency response, biomedical research, substance abuse and mental health treatment and prevention, assurance of safe and effective drugs and other medical products, protection of our Nation's food supply, assistance to low-income families, the Head Start program, services to older Americans, and direct health services delivery. Significantly, the Congress tasked HHS as the primary Department to implement the Affordable Care Act of 2010.

These programs constitute a substantial portion of the priorities of the Federal Government, and as such, the HHS budget represents almost a quarter of all Federal outlays, and the Department administers more grant dollars than all other agencies combined. Significantly, the Congress tasked HHS as the primary Department to implement the Affordable Care Act of 2010. The Department has met the statutory deadlines related to the key provisions of this law through the issuance of regulations, bulletins, and other guidance documents. The principle objective of the Department will continue to be implementation of the Affordable Care Act in a manner that promotes consumer protections, improves quality and safety, incentivizes more efficient care delivery, and slows the growth of health care costs. These policies reflect the Department's commitment to put consumers first, to provide stability in private insurance markets, and reform the health care delivery system.

Since assuming the leadership of HHS last year, Secretary Kathleen G. Sebelius has sought to prioritize efforts to promote early childhood health and development, help Americans achieve and maintain healthy weight, prevent and reduce tobacco use, protect the health and safety of Americans in public health emergencies, accelerate the process of scientific discovery to improve patient care, implement a 21st century food safety system, and ensure program integrity and responsible stewardship. Further, the Secretary has worked devotedly to enact meaningful reform of the country's health care system, and the Department has and will continue to focus considerable effort on implementation of the landmark health care reform bill passed by the Congress and signed into law by President Obama in March of 2010.

The Obama Administration has prioritized the use of rulemaking to promote open government and to identify regulatory approaches that maximize net benefits. HHS regulatory priorities in the upcoming fiscal year reflect these goals in two ways. First, they advance transparency through the use of disclosure as a regulatory tool. Second, they maximize the net benefits conferred on society by utilizing rigorous cost-benefit analyses in the development of regulations. Below is an overview of the Department's regulatory priorities for FY 2011 that best exemplify these objectives.

Promotion of Open Government

1. Transparency for Consumers Under the Affordable Care Act

Two regulations to be promulgated by the Department in FY 2011 will require that insurers submit certain information on how they pay claims and set their premiums. One of these regulations will require certain statistics and information on claims, rating processes, and cost sharing to be disclosed to the State and Federal Government, as well as to consumers. HHS estimates the benefits of this regulation to come from improved information for consumers and regulators, which will in turn result in a more efficient insurance market. Improved information for consumers will allow them to make better health insurance choices—to choose higher quality insurers and ones that more closely match their preferences with respect to plan design. This could result in increased satisfaction and decreased morbidity. In addition, consumers may be more likely to choose insurers with more efficient processes, which could result in a reduction in administrative costs. Improved information for regulators will allow for monitoring of the markets to track current industry practices, which will allow for better enforcement of current market regulations through more targeted audits that are based upon insurer responses. Additionally, reporting requirements and the threat of targeted audits will likely influence issuer behavior to motivate compliance. It is not possible to quantify the benefits at this time. The direct costs imposed by the regulation are the reporting requirements. These requirements are still being developed, and will be quantified in the regulation.

The other regulation will ensure that all insurers use a uniform, easily understood format for accurate summaries of benefits and coverage explanations. Together, these two regulations will improve availability of meaningful information about health insurance to consumers, enabling them to better assess the coverage they currently have and/or make choices among different coverage options. HHS estimates the benefits of this regulation to come from improved information for consumers and regulators, which will in turn result in a more efficient insurance market. Improved information for consumers will allow them to make better health insurance choices—to choose higher quality insurers and ones that more closely match their preferences with respect to plan design. This could result in increased satisfaction and decreased morbidity. It is not possible to quantify the benefits at this time. The direct costs imposed by the regulation are the creation and provision of summary documents to consumers at the time of application, prior to enrollment and at reenrollment. There will also be costs imposed by the creation of the coverage facts label section of the summary documents. These requirements are still being developed and will be quantified in the regulation.

2. Public Health and Nutrition

Three rules to be promulgated by the FDA in the upcoming fiscal year will propose new labeling requirements aimed at better disclosing to the public critical information to enable them to make informed decisions about food and drugs that they choose to consume. One proposed rule will require color graphics on cigarette packages depicting the health consequences of smoking. The largest benefits of this proposed rule stem from increased life expectancies for individuals who are induced not to smoke. Other quantifiable benefits come from reductions in cases of non-fatal emphysema, reductions in fire losses, and reductions in medical expenditures. Unquantifiable benefits come from reductions in smokers' non-fatal illnesses other than emphysema, reductions in passive smoking, and reductions in infant and child health effects due to mothers' smoking during pregnancy. Large, one-time costs will arise from the need to change cigarette package labels and remove point-of-sale promotions that do not comply with the new advertising restrictions.

Additionally, there will be smaller ongoing FDA enforcement costs.

Two other key rules will implement provisions of the Affordable Care Act that require certain chain restaurants and vending machine operators to disclose nutritional information about their offerings. In the case of chain restaurants, these businesses will bear the cost of analysis of their menu items for nutritional information where this analysis does not already exist, and the cost of revising existing menus and other displays to note the required information. In the case of vending machines, the bulk of the costs associated with this rule will be in managing the actual disclosure of calories at the machine. Because almost all vending machines sell food that is previously manufactured and packaged, most vended foods are subject to the Nutrition Labeling and Education Act, which means that calorie content is already collected. The requirements of these rules, specifically that calorie and other nutrition information appear at the point of purchase, solves the apparent market failure in information provision stemming from present-biased preferences.

3. Enhanced Insurance Appeal and External Review Processes Under the Affordable Care Act

With a goal of empowering patient consumers, the Affordable Care Act provides individuals with the right to appeal decisions made by their private health insurer to an outside, independent decisionmaker, regardless of consumers' State of residence or type of health insurance. One rule to be promulgated by the Department in FY 2011 will ensure that non-grandfathered plans and issuers comply with State or Federal external review processes. This rule will advance the Administration's objective of transparency by making certain that all consumers—regardless of whether their plan has grandfather status—are afforded an opportunity to appeal the decisions of their health carrier before an independent body. HHS estimates the benefits of the regulation to come from the transformation of the current, highly variable health claims and appeals process into a more uniform and structured process. This will result in a reduction in the incidence of excessive delays and inappropriate denials, averting serious, avoidable lapses in health care quality and resultant injuries and losses to participants; enhance enrollees' level of confidence in and satisfaction with their health care benefits and improve plans' awareness of participant concerns, prompting plan responses that improve quality; helping ensure prompt and precise adherence to contract terms and improving the flow of information between plans and enrollees to bolster the efficiency of labor, health care, and insurance markets. It is not possible to quantify these benefits at this time. The primary sources of costs are those required to administer and conduct the internal and external review process, prepare and distribute required disclosures and notices, and bring plan and issuers' internal and external claims and appeals procedures into compliance with the new requirements. In addition, there are start-up costs for issuers in the individual market to bring themselves into compliance and the costs and transfers associated with the reversal of denied claims. These costs are estimated to total $50.4 million in 2011, $78.8 million in 2012, and $101.1 million in 2013.

4. Notification Requirements for Long-Term Care Facility Closures

A rule to be promulgated by CMS in the upcoming fiscal year will require that, in the case of a long-term care facility closure, the facility administrator provides written notification of closure and the plan for the relocation of residents at least 60 days prior to the impending closing. Such transparency will afford patients and family members a greater opportunity to meaningfully participate in decisions regarding relocation. The costs associated with the implementation of this rule are related to the efforts made by each facility to develop a plan for closure. The benefits would include the protection of residents' health and safety and a smooth transition for residents who need to be relocated, as well as their family members and facility staff.

In addition to the aforementioned rules, the Department's regulatory priorities in the upcoming fiscal year include:

Eliminating Insurance Company Abuses Under the Affordable Care Act

The Affordable Care Act made important changes that will improve the affordability and transparency of private health insurance in the United States. Specifically, the law calls for the annual State review of unreasonable increases in health insurance premiums, which will help protect consumers from unjustified and/or excessive premium increases. In developing a process for the review of rate increases, HHS will propose standards for when and how health insurance issuers will be required to report rate increases, as well as detail the relevant data and documentation that must be submitted in support of rate increases. The proposed rule will detail criteria for how determinations of unreasonableness will be made by HHS and also sets forth the conditions under which HHS will adopt unreasonableness determinations made by States. The rule will also propose standards for when and how health insurance issuers must provide justifications for rate increases determined to be unreasonable and when such justifications must be posted on the issuer's website. It will explain that HHS will post information regarding rate increases on its website to ensure the public disclosure of information on rate increases, including increases determined to be unreasonable. Finally, the proposed rule will address the development by HHS of annual summaries of data on rate trends.

The CLASS Act and Improving Long-Term Care

The Department will promulgate a significant rule in FY 2011 that will improve the quality of long-term care for affected Americans. Implementation of the CLASS (Community Living Assistance Services and Support) Act will provide a new opportunity for all Americans to prepare themselves financially to remain independent under a variety of future health circumstances as they age. While this program may help reduce spending down to Medicaid, costs to implement the proposed regulation have not yet been estimated.

Food Safety

The Department is committed to improvements in our food safety system guided in part by the findings of the President's Food Safety Working Group, which adopted a public-health approach based on three core principles: Prioritizing prevention, strengthening surveillance and enforcement, and improving response and recovery if prevention fails. The goal of this new agenda is to shift emphasis away from mitigating public health harm by removing unsafe products from the market place to a new overriding objective—preventing harm by keeping unsafe food from entering commerce in the first place. As such, an FDA regulation will aim squarely at protecting the youngest and most vulnerable Americans by finalizing a modernization of existing requirements

on current good manufacturing practices for infant formula.

Streamlining Drug and Device Requirements

Two Food and Drug Administration (FDA) final rules will standardize the electronic submission of registrations and listings for devices, data from studies evaluating drugs and biologics for humans, and data on adverse events involving medical devices. Standardization of clinical data structure, terminology, and code sets will increase the efficiency of the Agency review process. FDA estimates that the costs resulting from the proposal would include substantial one-time costs, additional waves of one-time costs as standards mature, and possibly some annual recurring costs. One-time costs would include, among other things, the cost of converting data to standard structures, terminology, and cost sets (i.e., purchase of software to convert data); the cost of submitting electronic data (i.e., purchase of file transfer programs); and the cost of installing and validating the software and training personnel. Additional annual recurring costs may result from software purchases and licensing agreements for use of proprietary terminologies. The proposal could result in many long-term benefits associated with reduced time for preparing applications, including reduced preparation costs and faster time to market for beneficial products. In addition, the proposed rule would improve patient safety through faster, more efficient, comprehensive, and accurate data review, as well as enhanced communication among sponsors and clinicians.

Additionally, a new proposed rule will establish a unique identification system that will identify a device through distribution and use. FDA estimates that the affected industry would incur one-time and recurring costs, including administrative costs, to change and print labels that include the required elements of a unique device identifier (UDI), costs to purchase equipment to print and verify the UDI, and costs to purchase software, integrate and validate the UDI into existing IT systems. Certain entities would be required to submit information about each UDI and the relevant medical device into a database. FDA anticipates that implementation of a UDI system would help improve the efficiency of recalled medical devices and medical device adverse event reporting. The proposed rule would also standardize how medical devices are identified and contribute to future potential public health benefits of initiatives aimed at optimizing the use of automated systems in healthcare. Most of these benefits, however, require complementary developments and innovations in the private and public sectors. Together, these rules will enable the FDA to more quickly and efficiently process and review information submitted on devices, drugs, and biologics, furthering their ability to both better protect the public safety and more rapidly advance innovations to the market.

Medicare Modernization

The Regulatory Plan highlights three final rules that would adjust payment amounts under Medicare for physicians' services, hospital inpatient, and hospital outpatient services for fiscal year 2012. These new payment rules reflect continuing experience with regulating these systems and will implement modernizations to ensure that the Medicare program best serves its beneficiaries, fairly compensates providers, and remains fiscally sound. Additionally, another rule promulgated under the Affordable Care Act will propose a Medicare shared savings program for provider groups to establish Accountable Care Organizations and share in savings generated for Medicare by meeting certain benchmarks.

Health Information Technology

The Department will issue a rule that will modify the existing HIPAA privacy and security enforcement regulations to comply with the provisions of the HITECH Act. This rule will ensure that Americans can be confident that their medical data is kept private as the country increasingly moves to electronic health records. These modifications to the HIPAA Privacy, Security, and Enforcement Rules will benefit health care consumers by strengthening the privacy and security protections afforded their health information by HIPAA covered entities and their business associates. The Agency believes the primary cost associated with this regulation will be for covered entities to revise and redistribute their notices of privacy practices to ensure health care consumers are informed of their new rights and protections. The Agency estimates the cost of revising and redistributing these notices to total approximately $166.1 million over the first year following the effective date of the regulation. Of this total, the cost to health care providers is estimated to be approximately $46 million and to health plans to be approximately $120.1 million. The Agency does not believe that the additional modifications to the Privacy, Security, or Enforcement Rules required by this regulation will significantly increase covered entity or business associate costs. It is estimated that the changes to the HIPAA authorization and access requirements will impose little to no additional costs on covered entities and their business associates, and in some cases will reduce burden. Further, it is expected that the costs of modifying business associate contracts will be mitigated both by the additional one-year transition period which will allow the costs of modifying contracts to be incorporated into the normal renegotiation of contracts as the contracts expire, as well as sample business associate contract language to be provided by the Agency.

Head Start Program Integrity

The Department will finalize a rule in FY 2011 that will implement statutory requirements requiring a re-evaluation of Head Start grantees every 5 years to ensure that taxpayer dollars are spent in the most effective possible manner by this critical program. The Administration on Children and Families estimates the costs of implementing the new reporting requirements described in the rule will be approximately $20,000 annually. In addition, at least 25 percent of grantees reviewed in a year will be required to submit a competitive application for a new 5-year grant, at an estimated cost of less than $1,500 for each grantee. In terms of benefits, the proposed system will fund only high-performing grantees in order to ensure the best services for Head Start children are provided and child outcomes are improved.

Small Business Impact

Finally, HHS actively seeks to minimize regulatory burdens on small business. Over 95 per cent of the entities that we regulate – hospitals, doctors' practices, social service providers, medical device firms, universities and many others – qualify as ''small entities'' under the Regulatory Flexibility Act (RFA). All of the aforementioned actions have been developed in light of and with serious consideration of the small-business impact analysis.

HHS—Office of the Secretary (OS)

FINAL RULE STAGE

41. MODIFICATIONS TO THE HIPAA PRIVACY, SECURITY, AND ENFORCEMENT RULES UNDER THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 111–5, secs 13400 to 13410

CFR Citation:

45 CFR 160; 45 CFR 164

Legal Deadline:

NPRM, Statutory, February 17, 2010.

Abstract:

The Department of Health and Human Services Office for Civil Rights will issue rules to modify the HIPAA Privacy, Security, and Enforcement Rules as necessary to implement the privacy, security, and certain enforcement provisions of subtitle D of the Health Information Technology for Economic and Clinical Health Act (title XIII of the American Recovery and Reinvestment Act of 2009).

Statement of Need:

The Office for Civil Rights will issue rules to modify the HIPAA Privacy, Security, and Enforcement Rules to implement the privacy and security provisions in sections 13400 to 13410 of the Health Information Technology for Economic and Clinical Health Act (title XIII of Division A of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5). These regulations will improve the privacy and security protection of health information.

Summary of Legal Basis:

Subtitle D of the Health Information Technology for Economic and Clinical Health Act (title XIII of the American Recovery and Reinvestment Act of 2009) requires the Office for Civil Rights to modify certain provisions of the HIPAA Privacy and Security Rules to implement sections 13400 to 13410 of the Act.

Alternatives:

The Office for Civil Rights is statutorily mandated to make modifications to the HIPAA Privacy and Security Rules to implement the privacy provisions at sections 13400 to 13410 of the Health Information Technology for Economic and Clinical Health Act (title XIII of the American Recovery and Reinvestment Act of 2009).

Anticipated Cost and Benefits:

These modifications to the HIPAA Privacy, Security, and Enforcement Rules will benefit health care consumers by strengthening the privacy and security protections afforded their health information by HIPAA covered entities and their business associated. The Agency believe the primary cost associate with this regulation will be for covered entities to revise and redistribute their notices of privacy practices to ensure health care consumers are informed of their new rights and protections. The Agency estimates the cost of revising and redistributing these notices to total approximates $166.1 million over the first year following the effective date of the regulation. Of this total, the cost heal care providers is estimated to be approximately $46 million and to health plans to be approximately $120.1 million. The Agency does not believe that the additional modification to Privacy, Security, or Enforcement Rules required by this regulation will significantly increase covered entity or business associates and in some cases will reduce burden. Further, it is expected that the costs of modifying business associate contracts will be mitigated both by the additional one-year transition period which will allow the costs of modifying contracts to be incorporated into the normal renegotiation of contracts as the contracts expire, as well as sample business associate contract language to be provided by the Agency.

Timetable:

Action	Date	FR Cite
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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HHS—Office of Consumer Information and Insurance Oversight (OCIIO)

PROPOSED RULE STAGE

42. • TRANSPARENCY REPORTING

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 111–148, title I, subtitle A, sec 1001 PHS Act, sec 2715A

CFR Citation:

45 CFR 153, Insurance Rules (sec 2715A)

Legal Deadline:

None

Abstract:

The Affordable Care Act requires group health plans and health insurance issuers to submit specific information to the Secretary, the State insurance commissioner, and to make the information available to the public. This includes information on claims payment policies, the number of claims denied, data on rating practices and other information as determined by the Secretary. The provision also requires plans and issuers to provide to individuals upon request the amount of cost sharing that the individual would be responsible for paying for a specific item or service provided by a participating provider. This interim final rule would implement information disclosure provisions in section 2715A of the Public Health Service Act, as added by the Affordable Care Act.

Statement of Need:

The Department of Health and Human Services, along with the Department of Labor and the Treasury Department, will issue interim final rules to implement the information disclosure

provisions in section 2715A of the Public Health Service Act, as added by the Affordable Care Act. This regulation will improve the transparency of information about how health coverage works so consumers will have better information to use and assess the coverage they have now, and/or make choices among different coverage options.

Summary of Legal Basis:

Title I, subtitle A, section 1001 of the Affordable Care Act adds section 2715A to the Public Health Service Act that will require group health plans and health insurance issuers to make certain disclosures to the Secretary, the State insurance commissioner, the public, and in some cases, individuals.

Alternatives:

None—statutory requirement.

Anticipated Cost and Benefits:

HHS estimates the benefits of this regulation to come from improved information for consumers and regulators, which will in tern result in a more efficient insurance market. Improved information for consumers will allow them to make better health insurance choices — to choose higher quality insurers and ones that more closely match their preferences with respect to plan design. This could result in increased satisfaction and decreased morbidity. In addition, consumers may be more likely to choose insurers with more efficient processes, which could result in a reduction in administrative costs. Improved information for regulators will allow for monitoring of the markets to track current industry practices, which will allow for better enforcement of current market regulations through more targeted audits that are based upon insurer responses. Additionally, reporting requirements and the threat of targeted audit will likely influence issuer behavior to motivate compliance. I is not possible to quantify the benefits at this time.

The direct costs imposed by the regulation are reporting requirements. These requirements are still being developed, and will be quantified in the regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—OCIIO

FINAL RULE STAGE

43. • RATE REVIEW

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 111–148

CFR Citation:

45 CFR 154

Legal Deadline:

None

Abstract:

The Affordable Care Act requires the Secretary to work with states to establish an annual review of unreasonable rate increases, to monitor premium increases and to award grants to states to carry out their rate review process. This interim final rule would implement the rate review process.

Statement of Need:

The Affordable Care Act requires standards to be set for the review of rate increases. The proposed rule will detail standards for when and how health insurance issuers will be required to report rate increases, as well as detail the relevant data and documentation that must be submitted in support of the rate increases. The proposed rule will detail criteria for how determinations of unreasonableness will be made by HHS, and also sets forth the conditions under which HHS will adopt unreasonableness determinations made by States. This regulation is part of the health insurance market reform and will increase affordability of health insurance for all Americans.

Summary of Legal Basis:

The Affordable Care Act.

Alternatives:

There are no alternatives, as this rulemaking is a matter of law based on the Affordable Care Act.

Anticipated Cost and Benefits:

HHS expects that costs associated with this rulemaking will be minimal as insurers routinely report to States on rate increases. Insurers may experience slight additional costs in connection with completion of policy rate data collection forms and any necessary submission of justification forms for rates that trigger unreasonable designations. The benefits of these requirements include increased consumer protections around unsubstantiated premium rate increases, reduced health insurance rate increases, increased transparency and consumer confidence in the products they buy, and ensuring financially solvent companies that can pay promised benefits.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/10	75 FR 45014
Interim Final Rule Comment Period End	09/28/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—OCIIO

44. • UNIFORM EXPLANATION OF BENEFITS, COVERAGE FACTS, AND STANDARDIZED DEFINITIONS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 111–148, title I, subtitle A, sec 1001 (Public Health Service Act, sec 2715)

CFR Citation:

45 CFR 153, Insurance Rules (sec 2715)

Legal Deadline:

None

Abstract:

The Affordable Care Act requires the Secretary to develop standards for use by group health plans and health insurance issuers in compiling and providing a summary of benefits and coverage explanation that accurately describes benefits and coverage. The Secretary must also set standards for the definitions of terms used in health insurance coverage, including specific terms set out in the statute. Plans and issuers must provide information according to these standards no later than 24 months after enactment. This interim final rule would implement the information disclosure provisions in section 2715 of PHSA , as added by the Affordable Care Act.

Statement of Need:

The Department of Health and Human Services, along with the Departments of Labor and the Treasury, will issue interim final rules to implement the information disclosure provisions in section 2715 of PHSA, as added by the Affordable Care Act. This regulation will provide consumers with a simplified and uniform overview of their benefits, specific ''Coverage Facts'' or scenarios for the costs of coverage for specific episodes of care, and standardized consumer-friendly health coverage definitions. This will allow consumers to better understand the coverage that they have and allow consumers choosing coverage to better compare coverage options.

Summary of Legal Basis:

Title I, subtitle A, section 1001, of the Affordable Care Act adds section 2715 to the Public Health Service Act that will require group health plans and health insurance issuers to provide a summary of benefits and coverage explanations and standardized definitions to applicants, enrollees, and policyholders.

Alternatives:

None—statutory requirement.

Anticipated Cost and Benefits:

HHS estimates the benefits of this regulation to come from improved information for consumers and regulators, which will in turn result in a more efficient insurance market. Improved information for consumers will allow them to make better health insurance choices—to chose higher quality insurers and ones that more closely match their preference with respect to plan design. This could result in increased satisfaction and decreased morbidity. It is not possible to quantify the benefits at this time.

The direct costs imposed by the regulation are the creation and provision of summary documents to consumers at the time of application, prior to enrollment and at re-enrollment. There will also be costs imposed by the creation of the coverage facts label section of the summary documents. These requirements are still being developed and will be quantified in the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

45. ELECTRONIC SUBMISSION OF DATA FROM STUDIES EVALUATING HUMAN DRUGS AND BIOLOGICS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 355; 21 USC 371; 42 USC 262

CFR Citation:

21 CFR 314.50; 21 CFR 601.12; 21 CFR 314.94; 21 CFR 314.96

Legal Deadline:

None

Abstract:

The Food and Drug Administration is proposing to amend the regulations governing the format in which clinical study data and bioequivalence data are required to be submitted for new drug applications (NDAs), biological license applications (BLAs), and abbreviated new drug applications (ANDAs). The proposal would revise our regulations to require that data submitted for NDAs, BLAs, and ANDAs, and their supplements and amendments, be provided in an electronic format that FDA can process, review, and archive.

Statement of Need:

Before a drug is approved for marketing, FDA must determine that the drug is safe and effective for its intended use. This determination is based in part on clinical study data and bioequivalence data that are submitted as part of the marketing application. Study data submitted to FDA in electronic format have generally been more efficient to process and review.

FDA's proposed rule would address the submission of study data in a standardized electronic format. Electronic submission of study data would improve patient safety and enhance health care delivery by enabling FDA to process, review, and archive data more efficiently. Standardization would also enhance the ability to share study data and communicate results. Investigators and industry would benefit from the use of

standards throughout the lifecycle of a study—in data collection, reporting, and analysis. The proposal would work in concert with ongoing Agency and national initiatives to support increased use of electronic technology as a means to improve patient safety and enhance health care delivery.

Summary of Legal Basis:

Our legal authority to amend our regulations governing the submission and format of clinical study data and bioequivalence data for human drugs and biologics derives from sections 505 and 701 of the Act (U.S.C. 355 and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262).

Alternatives:

FDA considered issuing a guidance document outlining the electronic submission and the standardization of study data, but not requiring electronic submission of the data in the standardized format. This alternative was rejected because the Agency would not fully benefit from standardization until it became the industry standard, which could take up to 20 years.

We also considered a number of different implementation scenarios, from shorter to longer time-periods. The 2-year time-period was selected because the Agency believes it would provide ample time for applicants to comply without too long a delay in the effective date. A longer time-period would delay the benefit from the increased efficiencies, such as standardization of review tools across applications, and the incremental cost savings to industry would be small.

Anticipated Cost and Benefits:

Standardization of clinical data structure, terminology, and code sets will increase the efficiency of the Agency review process. FDA estimates that the costs resulting from the proposal would include substantial one-time costs, additional waves of one-time costs as standards mature, and possibly some annual recurring costs. One-time costs would include, among other things, the cost of converting data to standard structures, terminology, and cost sets (i.e., purchase of software to convert data); the cost of submitting electronic data (i.e., purchase of file transfer programs); and the cost of installing and validating the software and training personnel. Additional annual recurring costs may result from software purchases and licensing agreements for use of proprietary terminologies. The proposal could result in many long-term benefits associated with reduced time for preparing applications, including reduced preparation costs and faster time to market for beneficial products. In addition, the proposed rule would improve patient safety through faster, more efficient, comprehensive and accurate data review, as well as enhanced communication among sponsors and clinicians.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AC52

HHS—FDA

46. UNIQUE DEVICE IDENTIFICATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 1451 to 1461; 21 USC 141 to 149, 321 to 394, 467f, 679, 821, 1034; 28 USC 2112; 42 USC 201 to 262, 263a and 263b, 264, 271, 364

CFR Citation:

21 CFR 16, 801, 803, 806, 810, 814, 820, 821,

Legal Deadline:

None

Abstract:

The Food and Drug Administration Amendments Act of 2007, amended the Federal Food, Drug, and Cosmetic Act by adding section 519(f) (21 U.S.C. 360i(f)). This section requires FDA to promulgate regulations establishing a unique identification system for medical devices requiring the label of medical devices to bear a unique identifier, unless FDA specifies an alternative placement or provides for exceptions. The unique identifier must adequately identify the device through distribution and use, and may include information on the lot or serial number.

Statement of Need:

A unique device identification system will help reduce medical errors; will allow FDA, the healthcare community, and industry to more rapidly review and organize adverse event reports; identify problems relating to a particular device (even down to a particular lot or batch, range of serial numbers, or range of manufacturing or expiration dates); and thereby allow for more rapid, effective, corrective actions that focus sharply on the specific devices that are of concern.

Summary of Legal Basis:

This rule is provided for/mandated by FDAAA. Section 519(f) of the FD&C Act (added by sec. 226 of the Food and Drug Administration Amendments Act of 2007) directs the Secretary to promulgate regulations establishing a unique device identification (UDI) system for medical devices, requiring the label of devices to bear a unique identifier that will adequately identify the device through its distribution and use.

Alternatives:

FDA considered several alternatives that allow certain requirements of the proposed rule to vary, such as the required elements of a UDI and the scope of affected devices.

Anticipated Cost and Benefits:

FDA estimates that the affected industry would incur one-time and recurring costs, including administrative costs, to change and print labels that include the required elements of a UDI, costs to purchase equipment to print and verify the UDI, and costs to purchase software, integrate and validate the UDI into existing IT systems. Certain entities would be required to submit information about each UDI and the relevant medical device into a database, FDA would incur costs to develop,

implement, and administer a database that would serve as a repository of information to facilitate the identification of medical devices through their distribution and use. FDA anticipates that implementation of a UDI system would help improve the efficiency of recalled medical devices and medical device adverse event reporting. The proposed rule would also standardize how medical devices are identified and contribute to future potential public health benefits of initiatives aimed at optimizing the use of automated systems in healthcare. Most of these benefits, however, require complementary developments and innovations in the private and public sectors.

Risks:

This rule is intended to substantially eliminate existing obstacles to the adequate identification of medical devices used in the Unites States. By providing the means to rapidly and definitely identify a device and key attributes that affect its safe and effective use, the rule would reduce medical errors that result from misidentification of a device or confusion concerning its appropriate use. The rule will fulfill a statutory directive to establish a unique device identification system.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0910–AG31

HHS—FDA

47. CIGARETTE WARNING LABEL STATEMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 111–31, The Family Smoking Prevention and Tobacco Control Act, sec 201

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, June 22, 2011.

Section 4 of the Federal Cigarette Labeling and Advertising Act (FCLAA), as amended by section 201 of the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act), requires FDA to issue regulations no later than 24 months after the date of enactment of the Tobacco Control Act that require color graphics depicting the negative health consequences of smoking.

Abstract:

Section 4 of the FCLAA, as amended by section 201 of the Tobacco Control Act, requires FDA to issue regulations that require color graphics depicting the negative health consequences of smoking to accompany required warning statements. FDA also may adjust the type size, text and format of the required label statements on product packaging and advertising if FDA determines that it is appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.

Statement of Need:

This proposed rule is necessary to amend FDA's regulations to add a new requirement for the display of health warnings on cigarette packages and in cigarette advertisements and to specify the color graphics that must accompany each textual warning statement.

Summary of Legal Basis:

The proposed rule would implement a provision of the Tobacco Control Act that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany the nine new textual warning statements that will be required under the Tobacco Control Act. The Tobacco Control Act amends the FCLAA to require each cigarette package and advertisement to bear one of nine new textual warning statements.

Alternatives:

The Agency will compare the proposed rule to two hypothetical alternatives: An otherwise identical rule with a 24-month compliance period and an otherwise identical rule with a 6-month compliance period. Although we will compare the rule to two hypothetical alternatives, they are not viable regulatory options as they are inconsistent with FDA's statutory mandate.

Anticipated Cost and Benefits:

The largest benefits of this proposed rule stem from increased life expectancies for individuals who are induced not to smoke. Other quantifiable benefits come from reductions in cases of non-fatal emphysema, reductions in fire losses, and reductions in medical expenditures. Unquantifiable benefits come from reductions in smokers' non-fatal illnesses other than emphysema, reductions in passive smoking, and reductions in infant and child health effects due to mothers' smoking during pregnancy.Large, one-time costs will arise from the need to change cigarette package labels and remove point-of-sale promotions that do not comply with the new advertising restrictions. Additionally, there will be smaller ongoing FDA enforcement costs.

Risks:

This proposed rule would reduce the risk to the public by helping to clearly and effectively convey the negative health consequences of smoking on cigarette packages and in cigarette advertisements, which would help both to discourage non-smokers, including minor children, from initiating cigarette

use and to encourage current smokers to consider cessation.

Timetable:

Action	Date	FR Cite
NPRM	11/12/10	75 FR 69524
NPRM Comment Period End	01/11/11	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0910–AG41

HHS—FDA

48. ● FOOD LABELING: NUTRITION LABELING FOR FOOD SOLD IN VENDING MACHINES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 343; 21 USC 371

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, March 23, 2011, Proposed rule to be published 1 year after enactment.

Abstract:

The Food and Drug Administration (FDA) is proposing regulations to establish requirements for nutrition labeling of food sold in vending machines. FDA is also proposing the terms and conditions for registering to voluntarily be subject to the requirements of section 4205. FDA is taking this action to carry out the provisions of section 4205 of the Patient Protection and Affordable Care Act (''Affordable Care Act'' or ''ACA''), which was signed into law on March 23, 2010.

Statement of Need:

This proposed rule was mandated by section 4205 of the Affordable Care Act.

Summary of Legal Basis:

On March 23, 2010, the Affordable Care Act (Pub. L. 111-148) was signed into law. Section 4205 amended 403(q)(5) of the Federal Food, Drug, and Cosmetic Act by creating new clause (H) to require that vending machine operators, who own or operate 20 or more machines, disclose calories for food items. FDA has the authority to issue this proposed rule under section 403(q)(5)(H) and 701(a) (21 U.S.C. 343(q)(5)(H), and 371(a)). Section 701(a) of the act vests the Secretary (and, by delegation, the FDA) with the authority to issue regulations for the efficient enforcement of the act.

Alternatives:

Section 4205 requires the Secretary (and, by delegation, the FDA) to establish, by regulation, requirements for calorie disclosure of food items for vending machine operators, who own or operate 20 or more machines. Therefore, there are no alternatives to rulemaking.

Anticipated Cost and Benefits:

The bulk of the costs associated with this rule will be in managing the actual disclosure of calories at the machine. Since almost all vending machines sell food that is previously manufactured and packaged, most vended foods are subject to the Nutrition Labeling Education Act, which means that calorie content is already collected. A likely scenario for response to vending machine labeling is that food manufacturers include a set of calorie label stickers in each case of product.

Since consumers of vended foods do not generally have access to nutrition information prior to purchase, requiring that operators make that information available should benefit consumers. Consumers may ignore future costs of overeating, relative to the current gains from eating, even when they understand the connection. Therefore, consumers do not generally demand calorie and other nutrition information for food away from home, even when they do, given a wider frame of reference, value that information. Given the costs and the uncertain reception for calorie information that many consumers appear not to care about, most vending machine operators have chosen not to display calorie information. The requirements of the proposed rule, specifically, that calorie and other nutrition information appear at the point of purchase, solves the apparent market failure in providing information provision stemming from present-biased preferences.

Risks:

For some vending machine foods, consumers cannot view the nutrition facts panel or otherwise see nutrition information prior to purchasing the item. Completion of this rulemaking will provide consumers information about the nutritional content of food to empower them to make healthier food choices from vending machines.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	
NPRM Comment Period End	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

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RIN: 0910–AG56

HHS—FDA

49. • FOOD LABELING: NUTRITION LABELING OF STANDARD MENU ITEMS IN CHAIN RESTAURANTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 343; 21 USC 371

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, March 23, 2011, Proposed rule to be published 1 year after enactment.

Abstract:

The Food and Drug Administration (FDA) is proposing regulations to establish requirements for nutrition labeling of standard menu items for chain restaurants and similar retail food establishments. FDA is also proposing the terms and conditions for registering to voluntarily be subject to the requirements of section 4205. FDA is taking this action to carry out the provisions of section 4205 of the Patient Protection and Affordable Care Act (''Affordable Care Act'' or ''ACA''), which was signed into law on March 23, 2010.

Statement of Need:

This proposed rule was mandated by section 4205 of the Affordable Care Act.

Summary of Legal Basis:

On March 23, 2010, the Affordable Care Act (Pub. L. 111-148) was signed into law. Section 4205 amended 403(q)(5) of the Federal Food, Drug, and Cosmetic Act by creating new clause (H) to require that chain restaurants, with 20 or more locations, require certain nutrient disclosure. Specifically, section 4205 required the Secretary of Health and Human Services to issue a proposed regulation to carry out clause (H) of the ACA no later than 1 year of enactment of this clause (i.e., Mar. 23, 2011). FDA has the authority to issue this proposed rule under section 403(q)(5)(H) and 701(a) (21 U.S.C. 343(q)(5)(H), and 371(a)). Section 701(a) of the act vests the Secretary (and, by delegation, the FDA) with the authority to issue regulations for the efficient enforcement of the act.

As directed by section 4205, FDA is proposing requirements for menu calorie declaration, as well as other nutrition information declaration to implement the provisions of 403(q)(5)(H). FDA is also proposing the terms and conditions for registering to voluntarily be subject to the requirements of section 4205.

Alternatives:

Section 4205 requires the Secretary (and, by delegation, the FDA) to establish, by regulation, requirements for nutrition labeling of standard menu items for chain restaurants and similar retail food establishments. Therefore, there are no alternatives to rulemaking.

Anticipated Cost and Benefits:

Chain restaurants operating in local jurisdictions that impose different nutrition labeling requirements will benefit from having a uniform national standard. Any restaurant, with fewer than 20 locations, may opt in to the national standard to receive this benefit. Many chain restaurants, with 20 or more locations, will bear costs for adding nutrition information to menus and menu boards. Consumers will benefit from having important nutrition information for the approximately 30 per cent of calories consumed away from home.

Risks:

Americans now consume an estimated one-third of their total calories on foods prepared outside the home and spend almost half of their food dollars on such foods. Unlike packaged foods that are labeled with nutrition information, foods in restaurants, for the most part, do not have nutrition information. Completion of this rulemaking will provide consumers information about the nutritional content of food to empower them to make healthier food choices.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	
NPRM Comment Period End	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

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RIN: 0910–AG57

HHS—FDA

FINAL RULE STAGE

50. INFANT FORMULA: CURRENT GOOD MANUFACTURING PRACTICES; QUALITY CONTROL PROCEDURES; NOTIFICATION REQUIREMENTS; RECORDS AND REPORTS; AND QUALITY FACTORS

Priority:

Other Significant

Legal Authority:

21 USC 321; 21 USC 350a; 21 USC 371; . . .

CFR Citation:

21 CFR 106 and 107

Legal Deadline:

None

Abstract:

The Food and Drug Administration (FDA) is revising its infant formula regulations in 21 CFR parts 106 and 107 to establish requirements for current good manufacturing practices (CGMP), including audits; to establish requirements for quality factors; and to amend FDA's quality control procedures, notification, and record and reporting requirements for infant formula. FDA is taking this action to improve the protection of infants who consume infant formula products.

Statement of Need:

The agency published a proposed rule on July 9, 1996, that would establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements, records and reports for the production of infant formula. This proposal was issued in response to the

1986 Amendments to the Infant Formula Act of 1980. On April 28, 2003, FDA reopened the comment period to update comments on the proposal. The comment was extended on June 27, 2003 and ended on August 26, 2003. The comment period was reopened on August 1, 2006 and ended on September 15, 2006.

Summary of Legal Basis:

The Infant Formula Act of 1980 (the 1980 Act) (Pub. L. 96-359) amended the Federal Food, Drug, and Cosmetic Act (the Act) to include section 412 (21 U.S.C. 350a). This law is intended to improve protection of infants consuming infant formula products by establishing greater regulatory control over the formulation and production of infant formula. In 1982, FDA adopted infant formula recall procedures in subpart D of 21 CFR part 107 of its regulations (47 FR 18832, Apr. 30, 1982), and infant formula quality control procedures in subpart B of 21 CFR part 106 (47 FR 17016, Apr. 20, 1982). In 1985, FDA further implemented the 1980 Act by establishing subparts B, C, and D in 21 CFR part 107 regarding the labeling of infant formula, exempt infant formulas, and nutrient requirements for infant formula, respectively (50 FR 1833, Jan. 14, 1985; 50 FR 48183, Nov. 22, 1985; and 50 FR 45106, Oct. 30, 1985).

In 1986, Congress, as part of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) (the 1986 amendments), amended section 412 of the act to address concerns that had been expressed by Congress and consumers about the 1980 Act and its implementation related to the sufficiency of quality control testing, CGMP, recordkeeping, and recall requirements. The 1986 amendments: (1) State that an infant formula is deemed to be adulterated if it fails to provide certain required nutrients, fails to meet quality factor requirements established by the Secretary (and, by delegation, FDA), or if it is not processed in compliance with the CGMP and quality control procedures established by the Secretary; (2) require that the Secretary issue regulations establishing requirements for quality factors and CGMP, including quality control procedures; (3) require that infant formula manufacturers regularly audit their operations to ensure that those operations comply with CGMP and quality control procedure regulations; (4) expand the circumstances in which firms must make a submission to the Agency to include when there is a major change in an infant formula or a change that may affect whether the formula is adulterated; (5) specify the nutrient quality control testing that must be done on each batch of infant formula; (6) modify the infant formula recall requirements; and (7) give the Secretary authority to establish requirements for retention of records, including records necessary to demonstrate compliance with CGMP and quality control procedures. In 1989, the Agency implemented the provisions on recalls (secs. 412(f) and (g) of the act) by establishing subpart E in 21 CFR part 107 (54 FR 4006, Jan. 27, 1989). In 1991, the Agency implemented the provisions on record and record retention requirements by revising 21 CFR 106.100 (56 FR 66566, Dec. 24, 1991).

The Agency has already promulgated regulations that respond to a number of the provisions of the 1986 amendments. The final rule would address additional provisions of these amendments.

Alternatives:

The 1986 amendments require the Secretary (and, by delegation, FDA) to establish, by regulation, requirements for quality factors and CGMPs, including quality control procedures. Therefore, there are no alternatives to rulemaking.

Anticipated Cost and Benefits:

FDA estimates that the costs from the final rule to producers of infant formula would include first year and recurring costs (e.g., administrative costs, implementation of quality controls, records, audit plans and assurances of quality factors in new infant formulas). FDA anticipates that the primary benefits would be a reduced risk of illness due to Cronobacter sakazakii and Salmonella spp in infant formula. Additional benefits stem from the quality factors requirements that would assure the healthy growth of infants consuming infant formula. Monetized estimates of costs and benefits for this final rule are not available at this time. The analysis for the proposed rule estimated costs of less than $1 million per year. FDA was not able to quantify benefits in the analysis for the proposed rule.

Risks:

Special controls for infant formula manufacturing are especially important because infant formula, particularly powdered infant formula, is an ideal medium for bacterial growth and because infants are at high risk of foodborne illness because of their immature immune systems. In addition, quality factors are of critical need to assure that the infant formula supports healthy growth in the first months of life when infant formula may be an infant's sole source of nutrition. The provisions of this rule will address weaknesses in production that may allow contamination of infant formula, including, contamination with C. sakazakii and Salmonella spp which can lead to serious illness with devastating sequelae and/or death. The provisions would also assure that new infant formulas support healthy growth in infants.

Timetable:

Action	Date	FR Cite
NPRM	07/09/96	61 FR 36154
NPRM Comment Period End	12/06/96	
NPRM Comment Period Reopened	04/28/03	68 FR 22341
NPRM Comment Period Extended	06/27/03	68 FR 38247
NPRM Comment Period End	08/26/03	
NPRM Comment Period Reopened	08/01/06	71 FR 43392
NPRM Comment Period End	09/15/06	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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Related RIN: Split from 0910–AA04

RIN: 0910–AF27

HHS—FDA

51. MEDICAL DEVICE REPORTING; ELECTRONIC SUBMISSION REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321, 331, 351, 352, 360c, 360e, 360i to 360j, 371, 374, 381, 393; 42 USC 264, 271

CFR Citation:

21 CFR 803

Legal Deadline:

None

Abstract:

The Food and Drug Administration (FDA) is amending its postmarket medical device reporting (MDR) regulations to require that manufacturers, importers, and user facilities submit mandatory reports of medical device adverse events to the Agency in an electronic format that FDA can process, review, and archive. FDA is taking this action to improve the Agency's systems for collecting and analyzing postmarketing safety reports. The proposed change would help the Agency to more quickly review safety reports and identify emerging public health issues.

Statement of Need:

The final rule would require user facilities and medical device manufacturers and importers to submit medical device adverse event reports in electronic format instead of using a paper form. FDA is taking this action to improve its adverse event reporting program by enabling it to more quickly receive and process these reports.

Summary of Legal Basis:

The Agency has legal authority under section 519 of the Federal Food, Drug, and Cosmetic Act to require adverse event reports. The final rule would require manufacturers, importers, and user facilities to change their procedures to send reports of medical device adverse events to FDA in electronic format instead of using a hard copy form.

Alternatives:

There are two alternatives. The first alternative is to allow the voluntary submission of electronic MDRs. If a substantial number of reporters fail to voluntarily submit electronic MDRs, FDA will not obtain the benefits of standardized formats and quicker access to medical device adverse event data. The second alternative is to allow small entities more time to comply. Because so many device companies are small entities, this would significantly postpone the benefits of the rule.

Anticipated Cost and Benefits:

The principal benefit would be to public health because the increased speed in the processing and analysis of 173,000 medical device reports currently submitted annually on paper. In addition, requiring electronic submission would reduce FDA annual operating costs by $1.9 million and generate industry savings of about $9.8 million.

The total one-time cost for modifying SOPs and establishing electronic submission capabilities is estimated to range from $81.4 million to $101.0 million. Annually recurring costs totaled $8.8 million and included maintenance of electronic submission capabilities, including renewing the electronic certificate, and for some firms, the incremental cost to maintain high-speed Internet access.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	08/21/09	74 FR 42310
NPRM Comment Period End	11/19/09	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0910–AF86

HHS—FDA

52. ELECTRONIC REGISTRATION AND LISTING FOR DEVICES

Priority:

Other Significant

Legal Authority:

PL 110–85; PL 107–188, sec 321; PL 107–250, sec 207; 21 USC 360(a) through 360(j); 21 USC 360(p)

CFR Citation:

21 CFR 807

Legal Deadline:

None

Abstract:

This rule will convert registration and listing to a paperless process. However, for those companies that do not have access to the Web, FDA will offer an avenue by which they can register, list, and update information with a paper submission. The rule also will amend part 807 to reflect the timeframes for device establishment registration and listing established by sections 222 and 223 of Food and Drug Administration Amendment Act (FDAAA) and to reflect the requirement in section 510(i) of the Act, as amended by section 321 of the Public Health Security and Bioterrorism Preparedness and Response Act (BT Act), that foreign establishments provide FDA with additional pieces of information as part of their registration.

Statement of Need:

FDA is amending the medical device establishment registration and listing requirements under 21 CFR part 807 to reflect the electronic submission requirements in section 510(p) of the Act, which was added by section 207 of MDUFMA and later amended by section 224 of FDAAA. FDA also is amending 21 CFR part 807 to reflect

the requirements in section 321 of the BT Act for foreign establishments to furnish additional information as part of their registration. This rule will improve FDA's device establishment registration and listing system and utilize the latest technology in the collection of this information.

Summary of Legal Basis:

The statutory basis for our authority includes sections 510(a) through (j), 510(p), 701, 801, and 903 of the Act.

Alternatives:

The alternatives to this rulemaking include not updating the registration and listing regulations. Because of the new FDAAA statutory requirements and the advances in data collection and transmission technology, FDA believes this rulemaking is the preferable alternative.

Anticipated Cost and Benefits:

The Agency believes that there may be some one-time costs associated with the rulemaking, which involve resource costs of familiarizing users with the electronic system. Recurring costs related to submission of the information by domestic firms would probably remain the same or decrease because a paper submission and postage is not required. There might be some increase in the financial burden on foreign firms since they will have to supply additional registration information as required by section 321 of the BT Act.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	03/26/10	75 FR 14510
NPRM Comment Period End	06/24/10	
Final Rule	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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RIN: 0910–AF88

HHS—Centers for Medicare & Medicaid Services (CMS)

PROPOSED RULE STAGE

53. • REQUIREMENTS FOR LONG–TERM CARE FACILITIES: NOTIFICATION OF FACILITY CLOSURE (CMS–3230–IFC)

Priority:

Other Significant

Legal Authority:

PL 111–148, sec 6113

CFR Citation:

42 CFR 483; 42 CFR 488; 42 CFR 489

Legal Deadline:

Final, Statutory, March 23, 2011.

Abstract:

This rule would ensure that, in the case of a facility closure, any individual who is the administrator of the facility provides written notification of closure and the plan for the relocation of residents at least 60 days prior to the impending closure, or if the facility's participation in Medicare or Medicaid is terminated, not later than the date the HHS Secretary determines appropriate.

Statement of Need:

Section 6113 of the Affordable Care Act of 2010 (ACA) amends the Act by setting forth certain requirements for LTC facility closures to ensure that, among other things, in the case of a facility closure, any individual who is the administrator of the facility provides written notification of the closure and a plan for the relocation of residents at least 60 days prior to the impending closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate.

Summary of Legal Basis:

Sections 1819(b)(1)(A) of the Social Security Act (the Act) for NFs and 1919 (b)(1)(A) for SNFs state that a skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident. Sections 1819(c)(2)(A) and 1919 (c)(2)(A) of the Act state that, in general, with certain specified exceptions, a nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility. Section 6113 of ACA amends section 1128I of the Act by setting forth certain requirements for LTC facility closures.

Alternatives:

None. This implements a statutory requirement.

Anticipated Cost and Benefits:

The costs associated with the implementation of this rule are related to the efforts made by each facility to develop a plan for closure. The benefits would include the protection of residents' health and safety and a smooth transition for residents who need to be relocated, as well as their family members and facility staff.

Risks:

LTC facility closures have implications related to access, the quality of care, availability of services, and the overall health of residents. Without an organized process for facilities to follow in the event of a nursing home closure, there is a risk to the health and safety of residents.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AQ09

HHS—CMS

54. • MEDICARE SHARED SAVINGS PROGRAM: ACCOUNTABLE CARE ORGANIZATIONS (CMS–1345–P)

Priority:

Other Significant

Legal Authority:

PL 111–148, sec 3022

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, January 1, 2012.

Abstract:

This rule would propose a shared savings program for provider groups to establish Accountable Care Organizations, agree to meet quality measures, and share in savings generated for Medicare by meeting certain benchmarks. Consistent with section 3022 of the Affordable Care Act of 2010, the shared savings program must be established by January 1, 2012.

Statement of Need:

This rule would propose a shared savings program for provider groups to establish Accountable Care Organizations (ACOs), agree to meet quality measures, and share in savings generated for Medicare by meeting certain cost and quality benchmarks beginning January 1, 2012. This rule is aimed at improving quality and Medicare expenditures for Medicare beneficiaries and the Medicare program.

Summary of Legal Basis:

Section 3022 of the Affordable Care Act of 2010 requires the Secretary to establish a shared savings program by January 1, 2012.

Alternatives:

None. This is a statutory requirement.

Anticipated Cost and Benefits:

Medicare expenditures will be adjusted beginning January 1, 2012.

Risks:

If this regulation is not published, the shared savings program will not be established by January 1, 2012, as required by ACA, thereby violating the statute.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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HHS—CMS

55. • PROPOSED CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS FOR ACUTE CARE HOSPITALS AND FY 2012 RATES AND TO THE LONG–TERM CARE HOSPITAL PPS AND RY 2012 RATES (CMS–1518–P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

sec 1886(d) of the Social Security Act

CFR Citation:

42 CFR 412

Legal Deadline:

NPRM, Statutory, April 1, 2011.

Final, Statutory, August 1, 2011.

Abstract:

This annual major proposed rule would revise the Medicare hospital inpatient and long-term care prospective payment systems (IPPS) for operating and capital-related costs. This proposed rule would implement changes arising from our continuing experience with these systems.

Statement of Need:

CMS annually revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs to implement changes arising from our continuing experience with these systems. In addition, we describe the proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. Also, CMS annually updates the payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). The proposed rule solicits comments on the proposed IPPS and LTCH payment rates and new policies. CMS will issue a final rule containing the payment rates for the FY 2012 IPPS and LTCHs at least 60 days before October 1, 2011.

Summary of Legal Basis:

The Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. The Act requires the Secretary to pay for the capital-related costs of hospital inpatient and Long-Term Care stays under a PPS. Under these PPSs, Medicare payment for hospital inpatient and Long-Term Care operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. These changes would be applicable to services furnished on or after October 1, 2011.

Alternatives:

None. This implements a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for FY 2012.

Risks:

If this regulation is not published timely, inpatient hospital and LTCH services will not be paid appropriately beginning October 1, 2011.

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AQ24

HHS—CMS

56. • REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE AND PART B FOR CY 2012 (CMS–1524–P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Social security Act, sec 1102; Social Security Act, sec 1871

CFR Citation:

42 CFR 405; 42 CFR 410 to 411; 42 CFR 413 to 414; 42 CFR 426

Legal Deadline:

Final, Statutory, November 1, 2011.

The statute requires that the final rule be issued by November.

Abstract:

This proposed rule would revise payment polices under the physician fee schedule, as well as other policy changes to payment under Part B. These changes would be applicable to services furnished on or after January 1, annually.

Statement of Need:

The statute requires that we establish each year, by regulation, payment amounts for all physicians' services furnished in all fee schedule areas. This major proposed rule would make changes affecting Medicare Part B payment to physicians and other Part B suppliers.

The final rule has a statutory publication date of November 1, 2011, and an implementation date of January 1, 2012.

Summary of Legal Basis:

Section 1848 of the Social Security Act (the Act) establishes the payment for physician services provided under Medicare. Section 1848 of the Act imposes a deadline of no later than November 1 for publication of the final physician fee schedule rule.

Alternatives:

None. This implements a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for CY 2012.

Risks:

If this regulation is not published timely, physician services will not be paid appropriately.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0938–AQ25

HHS—CMS

57. • CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2012 (CMS–1525–P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

sec 1833 of the Social Security Act

CFR Citation:

42 CFR 410; 42 CFR 416 ; 42 CFR 419

Legal Deadline:

Final, Statutory, November 1, 2011.

Abstract:

This proposed rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. The proposed rule also describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule proposes changes to the Ambulatory Surgical Center Payment System list of services and rates.

Statement of Need:

Medicare pays over 4,000 hospitals for outpatient department services under the hospital outpatient prospective payment system (OPPS). The OPPS is based on groups of clinically similar services called ambulatory payment classification groups (APCs). CMS annually revises the APC payment amounts based on the most recent claims data, proposes new payment policies, and updates the payments for inflation using the hospital operating market basket. The proposed rule solicits comments on the proposed OPPS payment rates and new policies. Medicare pays roughly 5,000 Ambulatory Surgical Centers (ASCs) under the ASC payment system. CMS annually revises the payment under the ASC payment system, proposes new policies, and updates payments for inflation using the Consumer Price Index for All Urban Consumers (CPI-U). CMS will issue a final rule containing the payment rates for the 2012 OPPS and ASC payment system at least 60 days before January 1, 2012.

Summary of Legal Basis:

Section 1833 of the Social Security Act establishes Medicare payment for hospital outpatient services and ASC services. The final rule revises the Medicare hospital OPPS and ASC payment system to implement applicable statutory requirements. In addition, the proposed and final rules describe changes to the outpatient APC system, relative payment weights, outlier adjustments, and other amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the

prospective payment system as well as changes to the rates and services paid under the ASC payment system. These changes would be applicable to services furnished on or after January 1, 2012.

Alternatives:

None. This is a statutory requirement.

Anticipated Cost and Benefits:

Total expenditures will be adjusted for CY 2012.

Risks:

If this regulation is not published timely, outpatient hospital and ASC services will not be paid appropriately beginning January 1, 2012.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

Undetermined

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RIN: 0938–AQ26

HHS—CMS

FINAL RULE STAGE

58. • CIVIL MONEY PENALTIES FOR NURSING HOMES (CMS–2435–F)

Priority:

Other Significant

Legal Authority:

42 USC 1302 and 1395 (hh)

CFR Citation:

42 CFR 488

Legal Deadline:

Final, Statutory, March 23, 2011, 1 year after enactment of PPACA.

Abstract:

This rule revises and expands current Medicare and Medicaid regulations regarding the imposition of civil money penalties by CMS when nursing homes are not in compliance with Federal participation requirements.

Statement of Need:

The intent of this final rule is to improve the efficiency and effectiveness of the nursing home enforcement process, particularly as it relates to civil money penalties imposed by CMS. The new provisions will reduce the delay between the identification of problems with noncompliance and the effect of certain penalties that are intended to motivate a nursing home to maintain continuous compliance with basic expectations regarding the provision of quality care. The new provisions also eliminate a facility's ability to significantly defer the direct financial effect of an applicable civil monetary penalty until after an often long litigation process. Specifically, this rule would allow for civil money penalty reductions when facilities self-report and promptly correct their noncompliance; offer, in cases where civil money penalties are imposed, an independent informal dispute resolution process where interests of both facilities and residents are represented and balanced; provide for the establishment of an escrow account where civil money penalties may be placed until any applicable administrative appeal processes have been completed; and improve the extent to which civil money penalties collected from Medicare facilities can benefit nursing home residents. Through the proposed revisions, we intend to directly promote and improve the health, safety, and overall well-being of residents.

Summary of Legal Basis:

Section 6111 of the Affordable Care Act of 2010 amended the Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties when facilities do not meet Medicare and Medicaid participation requirements.

Alternatives:

None. This rule implements a statutory requirement. The proposed rule was published on July 12, 2010. Alternatives proposed by commenters will be considered in the preparation of the final rule.

Anticipated Cost and Benefits:

The regulatory impact statement provides that these regulatory proposals would have no consequential effect on State, local, or tribal governments or on the private sector. The anticipated benefits of this regulation include stronger protections for nursing home residents, improved due process for nursing homes, incentives for prompt self-correction of deficiencies, and increased quality improvement.

Risks:

CMS does not expect any additional risks to providers and/or States as a result of the implementation of this rule.

Timetable:

Action	Date	FR Cite
NPRM	07/12/10	75 FR 39641
NPRM Comment Period End	08/11/10	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State

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HHS—Administration for Children and Families (ACF)

PROPOSED RULE STAGE

59. DESIGNATION RENEWAL OF HEAD START GRANTEES

Priority:

Other Significant

Legal Authority:

Improving Head Start for School Readiness Act of 2007, PL 110–134

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rule would implement provisions of the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134), requiring the Secretary to develop a system that will evaluate each grantee's performance every 5 years to determine which grantees are providing services of such high quality that they should be given another 5-year grant without needing to recompete for the grant.

Statement of Need:

The Administration for Children and Families will issue rules to amend 45 CFR chapter XIII by adding a new part 1307, Policies and Procedures for Designation Renewal of Head Start and Early Head Start Grantees, in order to respond to the statutory requirements of The Improving Head Start for School Readiness Act of 2007, which establishes that Head Start grantees will be awarded grants for a 5-year period and only grantees delivering high quality services will be given another 5-year grant non-competitively. These regulations will describe the proposed system for designation renewal, including a proposal to transition all current continuous grants into 5-year grants over a 3-year period. These regulations will encourage excellence, establish accountability for poor performance, and open up Head Start to new energetic organizations that may have great capacity to run high quality programs.

Summary of Legal Basis:

Section 641 of the Head Start Act requires the Secretary of HHS to develop and implement a system for designation renewal (e.g., Designation Renewal System (DRS)) to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves and publish a notice in the Federal Register describing a proposed system for designation renewal, including a proposal for the transition to such system.

Alternatives:

The Administration for Children and Families is statutorily mandated to develop and implement a system for designation renewal. As a precursor to developing the system, the Head Start Act required the Secretary to establish an Advisory Committee to inform the development of a DRS and make recommendations to the Secretary. We are proposing to adopt the majority of the Advisory Committee's recommendations in whole or with minor modifications. In addition, we are considering additional and alternative criteria to be incorporated into the system for designation renewal, and ask for public comments regarding numerous provisions of the rule, as described in the preamble.

Anticipated Cost and Benefits:

The Agency estimates the costs of implementing the new reporting requirements described in the rule will be approximately $20,000 annually. In addition, at least 25 percent of grantees reviewed in a year will be required to submit a competitive application for a new 5-year grant, at an estimated cost of less than $1,500 for each grantee. In terms of benefits, the proposed system will fund only high-performing grantees in order to ensure the best services for Head Start children are provided and child outcomes are improved.

Timetable:

Action	Date	FR Cite
NPRM	09/22/10	75 FR 57704
NPRM Comment Period End	12/21/10	
Final Action	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—Administration on Aging (AOA)

PROPOSED RULE STAGE

60. • COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS ENROLLMENT AND ELIGIBILITY RULES UNDER THE AFFORDABLE CARE ACT

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 111–148, sec 8002

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Department of Health and Human Services will issue rules to implement the Community Living Assistance Services and Supports (CLASS) program included in the Affordable Care Act. Specifically, the rules will define the enrollment and eligibility criteria for the program. Participation in the program is voluntary.

Statement of Need:

About 14 million people spend more than $230 billion a year on long-term services and supports to assist them with daily living. Four times that many rely solely on unpaid care provided by family and friends. Medicare does not pay for long-term care, and while Medicaid is the largest public payer of these services, it is only available for people with few other resources. The CLASS program represents a significant new opportunity for all Americans to prepare themselves financially to remain as independent as possible under a variety of future health circumstances.

Summary of Legal Basis:

Section 8002 of Public Law 111-148 (Affordable Care Act) requires the promulgation of regulations to implement the CLASS program. Specifically, the law states, ''[t]he Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.''

Alternatives:

Under the law, the Secretary, in consultation with appropriate actuaries and other experts, will develop at least three actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan. Under the law, the Secretary will designate the final benefit plan by October 1, 2012.

Anticipated Cost and Benefits:

The program will help Americans prepare themselves financially to remain as independent as possible under a variety of future health circumstances and their financial independence may help reduce spending down to Medicaid. Costs to implement the proposed regulation have not yet been estimated.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	
Final Action	10/00/12	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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BILLING CODE 4150–24–S

DEPARTMENT OF HOMELAND SECURITY (DHS)

Statement of Regulatory Priorities

The Department of Homeland Security (DHS) was created in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107-296. DHS has a vital mission: To secure the nation from the many threats we face. This requires the dedication of more than 225,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. Our duties are wide-ranging, but our goal is clear—keeping America safe.

Our mission gives us five main areas of responsibility:

1. Guarding against Terrorism;
2. Securing our Borders;
3. Enforcing our Immigration Laws;
4. Improving our Readiness for, Response to, and Recovery from Disasters; and
5. Maturing and Unifying the Department.

In achieving these goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and government agencies—at the State, local, tribal, Federal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure, and we are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. For a further discussion of our five main areas of responsibility, see the DHS website at http://www.dhs.gov/xabout/responsibilities.shtm.

The regulations we have summarized below in the Department's fall 2010 regulatory plan and in the Unified Agenda support the Department's five responsibility areas listed above. These regulations will improve the Department's ability to accomplish its mission.

The regulations we have identified in this year's fall regulatory plan continue to address legislative initiatives including, but not limited to, the following acts: The Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act), Public Law 110-53 (Aug. 3, 2007); the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109-295 (Oct. 4, 2006); the Consolidated Natural Resources Act of 2008 (CNRA), Public Law No. 110-220 (May 7, 2008); the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109-347 (Oct. 13, 2006); and the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329 (Sep. 30, 2008).

DHS strives for organizational excellence and uses a centralized and unified approach in managing its regulatory resources. The Office of the General Counsel manages the Department's regulatory program, including the Unified Agenda and The Regulatory Plan. In addition, DHS senior leadership reviews each significant regulatory project to ensure that the project fosters and supports the Department's mission.

DHS is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to protect civil rights and civil liberties, integrate our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public. DHS is also committed to the principles described in Executive Order 12866, as amended, such as promulgating regulations that are cost-effective and maximizing the net benefits of regulations. The Department values public involvement in the development of its regulatory plan, agenda, and regulations, and takes particular concern with the impact its rules have on small businesses. DHS and each of its components continue to emphasize the use of plain language in our notices and rulemaking documents to promote a better understanding of regulations and increased public participation in the Department's rulemakings.

The fall 2010 Regulatory Plan for DHS includes regulations from DHS components—including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (Coast Guard), U.S. Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), the U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA), which have active regulatory programs. In addition, it includes regulations from the Department's major offices and directorates such as the National Protection and Programs Directorate (NPPD). Below is a discussion of the fall 2010 regulatory plan for DHS regulatory components, as well as for DHS offices and directorates.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) administer immigration benefits and services while protecting homeland security. USCIS has a strong commitment to welcoming individuals who seek entry through the U.S. immigration system, providing clear and useful information regarding the immigration process, promoting the values of citizenship, and assisting those in need of humanitarian protection. Based on a comprehensive review of the planned USCIS regulatory agenda, USCIS will promulgate several rulemakings to directly support these commitments and goals.

Regulations Related to the Commonwealth of Northern Mariana Islands

During 2009, USCIS issued a series of regulations to implement the extension of U.S. immigration law to the Commonwealth of Northern Mariana Islands (CNMI), as required under title VII of the Consolidated Natural Resources Act of 2008. USCIS will issue the following CNMI final rules during fiscal year 2011: ''CNMI Transitional Worker Classification,'' ''E-2 Nonimmigrant Status for Aliens of the CNMI with Long-Term Investor Status,'' and the joint USCIS/Department of Justice (DOJ) regulation ''Application of Immigration Regulations to the CNMI.''

Improvements to the Immigration System

USCIS is currently engaged in a multi-year transformation effort to create a more efficient, effective, and customer-focused organization by improving our business processes and technology. In the coming years, USCIS will publish several rules to facilitate that effort. To improve customer service specifically, USCIS is pursuing a regulatory initiative that will provide for selection of visa numbers by lottery for H-1B petitions based on electronic registration.

Registration Requirements for Employment-Based Categories Subject to Numerical Limitations

USCIS will propose a revised registration process for H-1B petitioners who are subject to a numerical limit or ''cap.'' The rule would propose to create a process by which USCIS would randomly select a sufficient number of timely filed registrations to meet the applicable cap. Only petitioners whose registrations are randomly selected would be eligible to file an H-1B petition for a cap-subject prospective worker. Enhancing customer service, the

rule would eliminate the need for petitioning employers to prepare and file complete H-1B petitions before knowing whether a prospective worker has ''won'' the H-1B lottery. The rule would also reduce the costs incurred by USCIS in entering data and subsequently returning non-selected petitions to employers once the cap is reached.

Regulatory Changes Involving Humanitarian Benefits

USCIS offers protection to individuals who face persecution by adjudicating applications for refugees and asylees. Other humanitarian benefits are available to individuals who have been victims of severe forms of trafficking or criminal activity.

Asylum and Withholding Definitions

USCIS plans a regulatory proposal to amend the regulations that govern asylum eligibility. The amendments are expected to focus on portions of the regulations that deal with determinations of whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the definition of membership in a particular social group. This effort should provide greater stability and clarity in this important area of the law.

Exception to the Persecution Bar for Asylum, Refugee, or Temporary Protected Status, and Withholding of Removal

DHS, in a joint rulemaking with DOJ, will propose amendments to existing DHS and DOJ regulations to resolve ambiguity in the statutory language precluding eligibility for asylum, refugee resettlement, temporary protected status, and withholding of removal of an applicant who ordered, incited, assisted, or otherwise participated in the persecution of others. The proposed rule would provide a limited exception for persecutory actions taken by the applicant under duress and clarify the required levels of the applicant's knowledge of the persecution.

''T'' and ''U'' Nonimmigrants

USCIS plans additional regulatory initiatives related to T nonimmigrants (victims of trafficking), U nonimmigrants (victims of criminal activity), and Adjustment of Status for T and U status holders. By promulgating additional regulations related to these victims of specified crimes or severe forms of human trafficking, USCIS hopes to provide greater stability for these vulnerable groups, their advocates, and the community. These rulemakings will contain provisions that seek to ease documentary requirements for this vulnerable population and provisions that provide greater clarity to the law enforcement community. In addition, publication of these rules will inform the community about how their petitions are adjudicated.

United States Coast Guard

The U.S. Coast Guard (Coast Guard) is a military, multi-mission, maritime service of the United States and the only military organization within DHS. It is the principal Federal agency responsible for maritime safety, security, and stewardship and delivers daily value to the Nation through multi-mission resources, authorities, and capabilities.

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is one of the U.S. Government's most significant and important strengths in the maritime environment.

America is a maritime nation, and our security, resilience, and economic prosperity are intrinsically linked to the oceans. Safety, efficient waterways, and freedom of transit on the high seas are essential to our well-being. The Coast Guard is leaning forward, poised to meet the demands of the new millennium. The Coast Guard creates value for the public through solid prevention and response efforts. Activities involving oversight and regulation, enforcement, maritime presence, and public and private partnership foster increased maritime safety, security, and stewardship.

The statutory responsibilities of the Coast Guard include ensuring marine safety and security, preserving maritime mobility, protecting the marine environment, enforcing U.S. laws and international treaties, and performing search and rescue. The Coast Guard supports the Department's overarching goals of mobilizing and organizing our Nation to secure the homeland from terrorist attacks, natural disasters, and other emergencies. The rulemaking projects identified for the Coast Guard in the Unified Agenda, and the rules appearing in the fall 2010 Regulatory Plan below, contribute to the fulfillment of those responsibilities and reflect our regulatory policies. The Coast Guard's rulemaking projects support maritime safety, security, and environmental protection as indicated by the wide range of topics covered in its rulemaking projects in this Unified Agenda.

Inspection of Towing Vessels

In 2004, Congress amended U.S. law by adding towing vessels to the types of commercial vessels that must be inspected by the Coast Guard. Congress also provided guidance relevant to the use of a safety management system as part of the inspection regime. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. The proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee (TSAC). It would establish a new subchapter dedicated to towing vessels and covering vessel equipment, systems, operational standards, and inspection requirements. To implement this change, the Coast Guard is developing regulations to prescribe standards, procedures, tests, and inspections for towing vessels. This rulemaking supports maritime safety and maritime stewardship.

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

This rule would set performance standards for the quality of ballast water discharged in U.S. waters and require that all vessels that operate in U.S. waters and are bound for ports or places in the U.S. and are equipped with ballast tanks, install and operate a Coast Guard approved Ballast Water Management System (BWMS) before discharging ballast water into U.S. waters. This would include vessels bound for offshore ports or places. As the effectiveness of ballast water exchange varies from vessel to vessel, the Coast Guard believes that setting performance standards would be the most effective way for approving BWMS that are environmentally protective and scientifically sound. Ultimately, the approval of BWMS would require procedures similar to those located in title 46, subchapter Q, of the Code of Federal Regulations, to ensure that the BWMS works, not only in the laboratory, but also under shipboard conditions. These would include: Pre-approval requirements, application requirements, land-based/shipboard

testing requirements, design and construction requirements, electrical requirements, engineering requirements, and piping requirements. This requirement is intended to meet the requirements of the National Invasive Species Act (NISA). Ballast water discharged from ships is a significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria, or pathogens, have the potential to displace native species, degrade native habitats, spread disease, and disrupt human economic and social activities that depend on water resources. This rulemaking supports maritime stewardship.

Outer Continental Shelf Activities

The Coast Guard is revising regulations to address new developments in the offshore industry, to fully address existing legislation, to effectively implement interagency agreements, to respond to comments received from the notice of proposed rulemaking (Outer Continental Shelf Activities, 64 FR 68416 (Dec. 7, 1999), and to update security requirements and procedures. This proposed rule would improve the level of safety in the workplace and security for personnel and units engaged in Outer Continental Shelf (OCS) activities. The Coast Guard is the lead Federal agency for OCS workplace safety and health—other than for matters generally related to drilling and production that are regulated by the Bureau of Ocean Energy Management, Regulation, and Enforcement—on facilities and vessels engaged in the exploration for, or development or production of, minerals on the OCS. The last major revision of the Coast Guard's OCS regulations occurred in 1982. At that time, the offshore industry was not as technologically advanced as it is today. Offshore activities were in relatively shallow water near land, where help was readily available during emergency situations. The regulations required only basic equipment, primarily for lifesaving appliances and hand-held portable fire extinguishers. Since 1982, the requirements in 33 CFR chapter I, subchapter N, have not kept pace with the changing offshore technology or the safety problems it creates as OCS activities extend to deeper water (10,000 feet) and move farther offshore (150 miles). This rulemaking would reassess all of the Coast Guard's current OCS regulations in order to help make the OCS a safer workplace, and it supports the Commandant's strategic goals of marine safety and environmental stewardship.

Updates to 33 CFR Subchapter H—Maritime Security.

The intent of this rulemaking is to strengthen security of our Nation's ports, vessels, facilities, and Outer Continental Shelf facilities by incorporating clarifications realized since the original Maritime Transportation Security Act (MTSA) regulations of 2003, Security and Accountability for Every Port Act of 2006 (SAFE Port Act) requirements, and the Coast Guard and Maritime Transportation Act of 2006.This proposed rule would incorporate feedback received from industry stakeholders, Coast Guard field units, and the public since the original MTSA regulations came into effect in 2003. The proposed rule would also consolidate into regulation appropriate actions promulgated in a series of Policy Advisory Council (PAC) papers, Navigation and Inspection Circulars (NVICs), and MTSA Help Desk responses; address screening standards for port facilities and vessels; establish security training standards that will be modeled after the courses developed by the Maritime Administration (MARAD); and the training standards (mandatory and non-mandatory) and courses developed by the International Maritime Organization (IMO). It would also update existing regulations regarding the areas of maritime security plans, facility and vessel security plans, and facility exercise requirements in the SAFE Port Act of 2006. This rulemaking supports the Commandant's strategic goal of maritime security.

Assessment Framework and Organizational Restatement Regarding Preemption for Certain Regulations Issued by the Coast Guard

This rule would restate the preemptive effect of existing Coast Guard regulations and articulate the assessment framework for evaluating the preemptive effect of future regulations. This rule would not alter the preemptive effect of any regulation: It would merely restate the existing law. By clarifying the preemptive effect of Coast Guard regulations, the Coast Guard intends to increase transparency, encourage appropriate State regulation, and avoid or reduce litigation related to State and local attempts to regulate in preempted areas. In doing so, the Coast Guard intends to comply with the May 2009 presidential memoranda on preemption, and on transparency and open government, and also intends to reinforce a uniform maritime regulatory regime that is predictable and useful for maritime interests. The Coast Guard expects no additional cost impacts to the industry from this rule, because it only restates and clarifies the status of Federal and State law as it exists.

The following Coast Guard rulemakings may be of particular interest to small entities:

Inspection of Towing Vessels

Based on preliminary analysis, the Coast Guard determined 1,059 operators of 5,208 uninspected towing vessels would incur additional costs from this rulemaking and over 92 percent of these entities are small businesses. This rulemaking would require operators of previously uninspected towing vessels to incur the costs of becoming regulated under a new inspection regime.

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

Based on preliminary analysis in the notice of proposed rulemaking (74 FR 44632), the Coast Guard determined 850 U.S. operators of 2,616 vessels would incur additional costs from this rulemaking and over 57 percent of these entities are small businesses. This rulemaking would require operators to purchase and install ballast water management systems costing between $258,000 and $419,000 per vessel, depending vessel and technology type.

Updates to 33 CFR Subchapter H—Maritime Security

Based on preliminary analysis, the Coast Guard determined that 55 percent of operators affected by this rulemaking are small entities. This rulemaking would require operators to incur additional costs for training and exercise provisions.

United States Customs and Border Protection

U.S. Customs and Border Protection (CBP) is the Federal agency principally responsible for the security of our Nation's borders, both at and between the ports of entry and at official crossings into the United States. CBP must accomplish its border security and enforcement mission without stifling the flow of legitimate trade and travel. The primary mission of CBP is its homeland security mission, that is, to prevent terrorists and terrorist weapons from entering the United States. An important aspect of this priority mission involves improving security at our borders and ports of entry, but it also means extending our zone of security beyond our physical borders.

CBP is also responsible for administering laws concerning the

importation into the United States of goods and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S. trade, immigration, and other laws of the United States at our borders; inspecting imports, overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles, and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its priority mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security. Consistent with its primary mission of homeland security, CBP intends to finalize several rules during the next fiscal year that are intended to improve security at our borders and ports of entry. We have highlighted some of these rules below.

Electronic System for Travel Authorization (ESTA).

On June 9, 2008, CBP published an interim final rule amending DHS regulations to implement the Electronic System for Travel Authorization (ESTA) for aliens who wish to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. This rule is intended to fulfill the requirements of section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). The rule establishes ESTA and delineates the data field DHS has determined will be collected by the system. The rule requires that each alien traveling to the United States under the VWP must obtain electronic travel authorization via the ESTA System in advance of such travel. VWP travelers may obtain the required ESTA authorization by electronically submitting to CBP biographic and other information as currently required by the I-94W Nonimmigrant Alien Arrival/Departure Form (I-94W). By **Federal Register** notice dated November 13, 2008, the Secretary of Homeland Security informed the public that ESTA would become mandatory beginning January 12, 2009. This means that all VWP travelers must either obtain travel authorization in advance of travel under ESTA or obtain a visa prior to traveling to the United States.

By shifting from a paper to an electronic form and requiring the data in advance of travel, CBP will be able to determine before the alien departs for the U.S., the eligibility of nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk. By modernizing the VWP, the ESTA is intended to increase national security and provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays based on lengthy processes at ports of entry. CBP intends to issue a final rule during the next fiscal year. On August 9, 2010, CBP published an interim final rule amending the ESTA regulations to require ESTA applicants to pay a congressionally mandated fee which is the sum of two amounts: a $10 travel promotion fee for an approved ESTA and a $4 operational fee for the use of ESTA set by the Secretary of Homeland Security to, at a minimum, ensure the recovery of the full costs of providing and administering the ESTA. CBP is working to finalize the 2008 and 2010 interim final rules during fiscal year 2011.

Importer Security Filing and Additional Carrier Requirements

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act) calls for CBP to promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting. See Public Law No. 109-347, section 203 (Oct. 13, 2006). This includes appropriate security elements of entry data for cargo destined for the United States by vessel prior to loading of such cargo on vessels at foreign seaports. The SAFE Port Act requires that the information collected reasonably improve CBP's ability to identify high-risk shipments to prevent smuggling and ensure cargo safety and security.

On November 25, 2008, CBP published an interim final rule ''Importer Security Filing and Additional Carrier Requirements,'' amending CBP regulations to require carriers and importers to provide to CBP, via a CBP-approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. This rule, which became effective on January 26, 2009, improves CBP risk assessment and targeting capabilities, facilitates the prompt release of legitimate cargo following its arrival in the United States, and assists CBP in increasing the security of the global trading system. The comment period for the interim final rule concluded on June 1, 2009. CBP is analyzing comments and conducting a structured review of certain flexibility provided in the interim final rule. CBP intends to publish a final rule during fiscal year 2011.

Implementation of the Guam-CNMI Visa Waiver Program

CBP published an interim final rule in November 2008 amending the DHS regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver program. This rule implements portions of the Consolidated National Resources Act of 2008 (CNRA), which extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and, among others things, provides for a visa waiver program for travel to Guam and the CNMI. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. The rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver program. CBP intends to issue a final rule during fiscal year 2011.

Global Entry Program

Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, CBP issued a notice of proposed rulemaking (NPRM) in the fall of 2009, proposing to establish an international trusted traveler program called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP proposed to establish Global Entry as a permanent voluntary regulatory program. CBP will evaluate the public comments received in response to the NPRM, in order to develop a final rule. CBP intends to issue a final rule during fiscal year 2011.

The rules discussed above foster DHS' mission. Under section 403(1) of the Homeland Security Act of 2002, the former-U.S. Customs Service, including

functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions of the Border Patrol and transferred into CBP. It is noted that certain regulatory authority of the United States Customs Service relating to customs revenue function was retained by the Department of the Treasury (see the Department of the Treasury Regulatory Plan). In addition to its plans to continue issuing regulations to enhance border security, CBP, during fiscal year 2011, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit program. CBP regulations regarding the customs revenue function are discussed in the regulatory plan of the Department of the Treasury.

Federal Emergency Management Agency

The mission of the Federal Emergency Management Agency (FEMA) is to support our citizens and first responders to ensure that, as a Nation, we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. In fiscal year 2011, FEMA will continue to serve that mission and promote the Department of Homeland Security's goals. In furtherance of the Department and Agency's goals, in the upcoming fiscal year, FEMA will be working on regulations to implement provisions of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Pub. L. 109-295, Oct. 4, 2006), and to implement lessons learned from past events.

Public Assistance Program regulations

FEMA will work to revise the Public Assistance Program regulations in 44 CFR part 206 to reflect changes made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by PKEMRA, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act) (Pub. L. No. 109-308, Oct. 6, 2006), the Local Community Recovery Act of 2006 (Pub. L. No. 109-218, Apr. 20, 2006), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. No. 109-347, Oct. 13, 2006), and to make other substantive and nonsubstantive clarifications and corrections to the Public Assistance regulations. The proposed changes would expand eligibility to include performing arts facilities and community arts centers pursuant to section 688 of PKEMRA; include education in the list of critical services pursuant to section 689(h) of PKEMRA, thus allowing private nonprofit educational facilities to be eligible for restoration funding; add accelerated Federal assistance to available assistance pursuant to section 681 of PKEMRA; include household pets and service animals in essential assistance pursuant to section 689 of PKEMRA and section 4 of the PETS Act; provide for expedited payments of grant assistance for the removal of debris pursuant to section 610 of the SAFE Port Act; and allow for a contract to be set aside for award based on a specific geographic area pursuant to section 2 of the Local Community Recovery Act of 2006. Other changes would include adding or changing requirements to improve and streamline the Public Assistance grant application process.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulatory actions planned for fiscal year 2011.

United States Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) is the principal criminal investigative arm of the Department of Homeland Security and one of the three Department components charged with the civil enforcement of the Nation's immigration laws. ICE's primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration.

During fiscal year 2011, ICE will pursue rulemaking actions that improve two critical subject areas: The detention of aliens who are subject to final orders of removal and the processes for the Student and Exchange Visitor Program (SEVP).

Continued Detention of Aliens Subject to Final Orders of Removal

ICE will improve the post order custody review process in a final rule related to the continued detention of aliens subject to final orders of removal in light of the U.S. Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 543 U.S. 371 (2005), as well as make changes pursuant to the enactment of the Homeland Security Act of 2002. During fiscal year 2011, ICE will also issue a companion notice of proposed rulemaking that will allow the public an opportunity to comment on new sections of the custody determination process not previously published for comment.

Processes for the Student and Exchange Visitor Program

ICE will improve SEVP processes by publishing a final Optional Practical Training (OPT) rule, which will respond to comments on the OPT Interim Final Rule (IFR) published on June 9, 2008. The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics degree and who accept employment with employers who participate in USCIS' E-Verify employment verification program.

National Protection and Programs Directorate

The goal of the National Protection and Programs Directorate (NPPD) is to advance the Department's risk-reduction mission. Reducing risk requires an integrated approach that encompasses both physical and virtual threats and their associated human elements.

Secure Handling of Ammonium Nitrate Program

The Secure Handling of Ammonium Nitrate Act, section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act, Public Law No. 110-161, amended the Homeland Security Act of 2002 to provide DHS with the authority to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

The Secure Handling of Ammonium Nitrate Act directs DHS to promulgate regulations requiring potential buyers and sellers of ammonium nitrate to register with DHS. As part of the registration process, the statute directs DHS to screen registration applicants against the Federal Government's Terrorist Screening Database. The statute also requires sellers of ammonium nitrate to verify the identities of those seeking to purchase it; to record certain information about each sale or transfer of ammonium nitrate; and to report thefts and losses of ammonium nitrate to DHS.

The rule would aid the Federal Government in its efforts to prevent the

misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule will limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the Nation's supply of ammonium nitrate, it will be more difficult for terrorists to obtain ammonium nitrate materials for use in terrorist acts.

DHS published an advance notice of proposed rulemaking (ANPRM) for the Secure Handling of Ammonium Nitrate Program on October 29, 2008, and has received a number of public comments on that ANPRM. DHS is presently reviewing those comments and is in the process of developing a notice of proposed rulemaking, which the Department hopes to issue during fiscal year 2011.

Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program

The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) is an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and verifies aliens' travel documents by comparison of biometric identifiers. The goals of US-VISIT are to enhance the security of U.S. citizens and visitors to the United States, facilitate legitimate travel and trade, ensure the integrity of the U.S. immigration system, and protect the privacy of visitors to the United States.

The US-VISIT program, through CBP officers or Department of State (DOS) consular offices, collects biometrics (digital fingerprints and photographs) from aliens seeking to enter the United States. DHS checks that information against government databases to identify suspected terrorists, known criminals, or individuals who have previously violated U.S. immigration laws. This system assists DHS and DOS in determining whether an alien seeking to enter the United States is, in fact, admissible to the United States under existing law. No biometric exit system currently exists, however, to assist DHS or DOS in determining whether an alien has overstayed the terms of his or her visa or other authorization to be present in the United States.

NPPD published a notice of proposed rulemaking on April 24, 2008, proposing to establish an exit program at all air and sea ports of departure in the United States. Congress subsequently enacted the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law No.110-329 (Sep. 30, 2008), requiring DHS to delay issuance of a final rule until the conclusion of pilot tests to analyze the collection of biometrics from at least two air exit scenarios. DHS currently is reviewing the results of those tests. DHS continues to work to ensure that the final air/sea exit rule will be issued as soon as practicable.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA is committed to continuously setting the standard for excellence in transportation security through its people, processes, and technology as we work to meet the immediate and long-term needs of the transportation sector.

In fiscal year 2011, TSA will promote the DHS mission by emphasizing regulatory efforts that allow TSA to better identify, detect, and protect against threats against various modes of the transportation system, while facilitating the efficient movement of the traveling public, transportation workers, and cargo.

Screening of Air Cargo

TSA will finalize an interim final rule that codifies a statutory requirement of the Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act), Public Law 110-53 (Aug. 3, 2007) that TSA establish a system to screen 100 percent of cargo transported on passenger aircraft by August 3, 2010. To assist in carrying out this mandate, TSA has established a voluntary program under which it certifies cargo screening facilities to screen cargo according to TSA standards prior to its being tendered to aircraft operators for carriage on passenger aircraft.

Large Aircraft Security Program (General Aviation)

TSA plans to issue a supplemental notice of proposed rulemaking (SNPRM) to propose amendments to current aviation transportation security regulations to enhance the security of general aviation (GA) by expanding the scope of current requirements and by adding new requirements for certain GA aircraft operators. To date, the Government's focus with regard to aviation security generally has been on air carriers and commercial operators. As vulnerabilities and risks associated with air carriers and commercial operators have been reduced or mitigated, terrorists may perceive that GA aircraft are more vulnerable and may view them as attractive targets. This rule would enhance aviation security of certain GA aircraft to undertake other security measures. TSA published a notice of proposed rulemaking on October 30, 2008, and received over 7,000 public comments, generally urging significant changes to the proposal. The SNPRM will respond to the comments and contain proposals on addressing security in the GA sector.

Security Training for Surface Mode Employees

TSA will propose regulations to enhance the security of several non-aviation modes of transportation. In particular, TSA will propose regulations requiring freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, over-the-road bus operators, and motor carriers transporting certain hazardous materials to conduct security training for front line employees. This regulation would implement sections 1408 (Public Transportation), 1517 (Freight Railroads), and 1534(a) (Over the Road (OTR) Buses) of the 9/11 Act. The NPRM will define which employees must be trained under these provisions, in compliance with the definitions of frontline employees in the pertinent provisions of the 9/11 Act. Some parts of the proposed rule would extend beyond the requirements of the 9/11 Act; those portions are authorized by the Aviation and Transportation Security Act.

Aircraft Repair Station Security.

TSA will finalize a rule requiring repair stations that are certificated by the Federal Aviation Administration under 14 CFR part 145 to adopt and implement standard security programs and to comply with security directives issued by TSA. TSA issued a notice of proposed rulemaking on November 18, 2009. The final rule will also codify the scope of TSA's existing inspection program and require regulated parties to allow DHS officials to enter, inspect, and test property, facilities, and records relevant to repair stations. This rulemaking action implements section 1616 of the 9/11 Act.

Standardized Vetting, Adjudication, and Redress Process and Fees

TSA is developing a proposed rule to revise and standardize the procedures, adjudication criteria, and fees for most

of the security threat assessments (STA) of individuals that TSA conducts. The scope of the rulemaking will include transportation workers from almost all modes of transportation who are required to undergo an STA by a regulatory program and new programs, including those covered under the 9/11 Act. In addition, TSA will propose equitable fees to cover the cost of the STAs and credentials for some personnel. TSA plans to identify new efficiencies in processing STAs and ways to streamline existing regulations by simplifying language and removing redundancies.

United States Secret Service

The United States Secret Service does not have any significant regulatory actions planned for fiscal year 2011.

DHS Regulatory Plan for Fiscal Year 2011

A more detailed description of the priority regulations that comprise DHS' fall 2010 regulatory plan follows.

DHS—Office of the Secretary (OS)

PROPOSED RULE STAGE

61. SECURE HANDLING OF AMMONIUM NITRATE PROGRAM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

sec 563 of the 2008 Consolidated Appropriations Act, subtitle J—Secure Handling of Ammonium Nitrate, PL 110–161

CFR Citation:

6 CFR 31

Legal Deadline:

NPRM, Statutory, May 26, 2008, Publication of Notice of Proposed Rulemaking.

Abstract:

This rulemaking will implement the December 2007 amendment to the Homeland Security Act entitled ''Secure Handling of Ammonium Nitrate.'' The amendment requires the Department of Homeland Security to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility. . .to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

Statement of Need:

Pursuant to section 563 of the 2008 Consolidated Appropriations Act, the Secure Handling of Ammonium Nitrate Act, Public Law 110-161, the Department of Homeland Security is required to promulgate a rulemaking to create a registration regime for certain buyers and sellers of ammonium nitrate. The rule, as proposed by this NPRM, would create that regime, and will aid the Federal Government in its efforts to prevent the misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule would limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the Nation's supply of ammonium nitrate, it would be much more difficult for terrorists to obtain ammonium nitrate materials for use in improvised explosive devices. As a result, there is a direct value in the deterrence of a catastrophic terrorist attack using ammonium nitrate, such as the Oklahoma City attack that killed over 160, injured 853 people, and is estimated to have caused $652 million in damages ($921 million in 2009).

Summary of Legal Basis:

Section 563 of the 2008 Consolidated Appropriations Act, subtitle J— Secure Handling of Ammonium Nitrate, Public Law 110-161, authorizes and requires this rulemaking.

Alternatives:

The Department of Homeland Security is required by statute to publish regulations implementing the Secure Handling of Ammonium Nitrate Act. As part of its notice of proposed rulemaking, the Department will seek public comment on the numerous alternative ways in which the final Secure Handling of Ammonium Nitrate Program could carry out the requirements of the Secure Handling of Ammonium Nitrate Act.

Anticipated Cost and Benefits:

A proposed rule registering certain buyers and sellers of ammonium nitrate would have costs to ammonium nitrate (AN) purchasers, including farms, fertilizer mixers, farm supply wholesalers and coops, golf courses, landscaping services, explosives distributors, mines, retail garden centers, and lab supply wholesalers. There would also be costs to AN sellers, such as ammonium nitrate fertilizer and explosive manufacturers, fertilizer mixers, farm supply wholesalers and coops, retail garden center, explosives distributors, fertilizer applicator services, and lab supply wholesalers. Costs will relate to the point of sale requirements, registration activities, recordkeeping, inspections/audits, and reporting of theft or loss.

Because the value of the benefits of reducing risk of a terrorist attack is a function of both the probability of an attack and the value of the consequence, it is difficult to identify the particular risk reduction associated with the implementation of this rule. When the proposed rule is published, DHS will provide a break even analysis. The program elements that would help achieve the risk reductions will be discussed in the break even analysis. These elements and related qualitative benefits include point of sale identification requirements and requiring individuals to be screened against the TSDB resulting in known bad actors being denied the ability to purchase ammonium nitrate.

Risks:

Explosives containing ammonium nitrate are commonly used in terrorist attacks. Such attacks have been carried out both domestically and internationally. The 1995 Murrah Federal Building attack in Oklahoma City claimed the lives of 167 individuals and demonstrated firsthand to America how ammonium nitrate could be misused by terrorists. In addition to the Murrah Building attack, the Provisional Irish Republican Army used ammonium nitrate as part of its London, England bombing campaign in the early 1980s. More recently, ammonium nitrate was used in the 1998 East African Embassy bombings and in November 2003 bombings in Istanbul, Turkey. Additionally, since the events of 9/11, stores of ammonium nitrate have been confiscated during raids on terrorist sites around the world, including sites in Canada, England, India, and the Philippines.

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By preventing the misappropriation or use of ammonium nitrate in acts of terrorism, this rulemaking will support the Department's efforts to prevent terrorist attacks and to reduce the Nation's vulnerability to terrorist attacks. This rulemaking is complementary to other Department programs seeking to reduce the risks posed by terrorism, including the Chemical Facility Anti-Terrorism

Standards program (which seeks in part to prevent terrorists from gaining access to dangerous chemicals) and the Transportation Worker Identification Credential program (which seeks in part to prevent terrorists from gaining access to certain critical infrastructure), among other programs.

Timetable:

Action	Date	FR Cite
ANPRM	10/29/08	73 FR 64280
Correction	11/05/08	73 FR 65783
ANPRM Comment Period End	12/29/08	
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1601–AA52

DHS—OS

FINAL RULE STAGE

62. COLLECTION OF ALIEN BIOMETRIC DATA UPON EXIT FROM THE UNITED STATES AT AIR AND SEA PORTS OF DEPARTURE; UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US–VISIT)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184 to 1185 (pursuant to EO 13323); 8 USC 1221; 8 USC 1365a, 1365b; 8 USC 1379; 8 USC 1731 to 1732

CFR Citation:

8 CFR 215.1; 8 CFR 215.8

Legal Deadline:

None

Abstract:

DHS established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) in accordance with a series of legislative mandates requiring that DHS create an integrated automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates travel documents. This rule requires aliens to provide biometric identifiers at entry and upon departure at any air and sea port of entry at which facilities exist to collect such information.

Statement of Need:

This rule establishes an exit system at all air and sea ports of departure in the United States. This rule requires aliens subject to United States Visitor and Immigrant Status Indicator Technology Program biometric requirements upon entering the United States to also provide biometric identifiers prior to departing the United States from air or sea ports of departure.

Alternatives:

The proposed rule would require aliens who are subject to US-VISIT biometric requirements upon entering the United States to provide biometric information before departing from the United States at air and sea ports of entry. The rule proposed a performance standard for commercial air and vessel carriers to collect the biometric information and to submit this information to DHS no later than 24 hours after air carrier staff secure the aircraft doors on an international departure, or for sea travel, no later than 24 hours after the vessel's departure from a U.S. port. DHS is considering numerous alternatives based upon public comment on the alternatives in the NPRM. Alternatives included various points in the process, kiosks, and varying levels of responsibility for the carriers and government. DHS may select another variation between the outer bounds of the alternatives presented or another alternative if subsequent analysis warrants.

Anticipated Cost and Benefits:

The proposed rule expenditure and delay costs for a 10-year period are estimated at $3.5 billion. Alternative costs range from $3.1 billion to $6.4 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these, two are economic costs: Social costs resulting from increased traveler queue and processing time; and social costs resulting from increased flight delays. Ten-year benefits are estimated at $1.1 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these, five are benefits, which include costs that could be avoided for each alternative: Cost avoidance resulting from improved detection of aliens overstaying visas; cost avoidance resulting from improved U.S. Immigrations and Customs Enforcement (ICE) efficiency attempting apprehension of overstays; cost avoidance resulting from improved efficiency processing exit/entry data; improved compliance with NSEERS requirements due to the improvement in ease of compliance; and improved national security environment. These benefits are measured quantitatively or qualitatively.

Timetable:

Action	Date	FR Cite
NPRM	04/24/08	73 FR 22065
NPRM Comment Period End	06/23/08	
Final Rule	04/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 1650–AA04

RIN: 1601–AA34

DHS—U.S. Citizenship and Immigration Services (USCIS)

PROPOSED RULE STAGE

63. ASYLUM AND WITHHOLDING DEFINITIONS

Priority:

Other Significant

Legal Authority:

8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation:

8 CFR 208

Legal Deadline:

None

Abstract:

This rule proposes to amend Department of Homeland Security regulations that govern asylum eligibility. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group, the requirements for failure of State protection, and determinations about whether persecution is inflicted on account of a protected ground. This rule codifies long-standing concepts of the definitions. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may under certain circumstances be eligible for asylum on that basis. After the Board of Immigration Appeals published a decision on this issue in 1999, Matter of R-A-, Int. Dec. 3403 (BIA 1999), it became clear that the governing regulatory standards required clarification. The Department of Justice began this regulatory initiative by publishing a proposed rule addressing these issues in 2000.

Statement of Need:

This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims which often fall within the particular social group ground concerns people who have suffered or fear domestic violence. This rule is expected to consolidate issues raised in a proposed rule in 2000, and to address issues that have developed since the publication of the proposed rule. This should provide greater stability and clarity in this important area of the law.

Summary of Legal Basis:

The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act.

Alternatives:

A sizable body of interpretive case law has developed around the meaning of the refugee definition. Historically, much of this case law has addressed more traditional asylum and withholding claims based on the protected grounds of race, religion, nationality, or political opinion. In recent years, however, the United States increasingly has encountered asylum and withholding applications with more varied bases, related, for example, to an applicant's gender or sexual orientation. Many of these new types of claims are based on the ground of ''membership in a particular social group,'' which is the least well-defined of the five protected grounds within the refugee definition.

On December 7, 2000, a proposed rule was published in the Federal Register providing guidance on the definitions of ''persecution'' and ''membership in a particular social group.'' Prior to publishing a final rule, the Department will be considering how the nexus between persecution and a protected ground might be further conceptualized; how membership in a particular social group might be defined and evaluated; and what constitutes a State's inability or unwillingness to protect the applicant where the persecution arises from a non-State actor. This rule will provide guidance to the following adjudicators: USCIS asylum officers, Department of Justice Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals. The alternative to publishing this rule would be to allow the standards governing this area of law to continue to develop piecemeal through administrative and judicial precedent. This approach has resulted in inconsistent and confusing standards, and the Department has therefore determined that promulgation of the final rule is necessary.

Anticipated Cost and Benefits:

By providing a clear framework for key asylum and withholding issues, we anticipate that adjudicators will have clear guidance, increasing administrative efficiency, and consistency in adjudicating these cases. The rule will also promote a more consistent and predictable body of administrative and judicial precedent governing these types of cases. We anticipate that this will enable applicants to better assess their potential eligibility for asylum, and to present their claims more efficiently when they believe that they may qualify, thus reducing the resources spent on adjudicating claims that do not qualify. In addition, a more consistent and predictable body of law on these issues will likely result in fewer appeals, both administrative and judicial, and reduce the associated litigation costs. The Department has no way of accurately predicting how this rule will impact the number of asylum applications filed in the United States. Based on anecdotal evidence and on the reported experience of other nations that have adopted standards under which the results are similar to those we anticipate from this rule, we do not

believe this rule will cause a large change in the number of asylum applications filed.

Risks:

The failure to promulgate a final rule in this area presents significant risks of further inconsistency and confusion in the law. The Government's interests in fair, efficient and consistent adjudications would be compromised.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76588
NPRM Comment Period End	01/22/01	
NPRM	03/00/11	
NPRM Comment Period End	05/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS No. 2092-00

Transferred from RIN 1115-AF92

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RIN: 1615–AA41

DHS—USCIS

64. REGISTRATION REQUIREMENT FOR PETITIONERS SEEKING TO FILE H–1B PETITIONS ON BEHALF OF ALIENS SUBJECT TO NUMERICAL LIMITATIONS

Priority:

Other Significant

Legal Authority:

8 USC 1184(g)

CFR Citation:

8 CFR 103; 8 CFR 299

Legal Deadline:

None

Abstract:

The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of alien workers subject to annual numerical limitations. This rule proposes an electronic registration program for petitions subject to numerical limitations contained in the Immigration and Nationality Act (the Act). Initially, the program would be for the H-1B nonimmigrant classification; however, other nonimmigrant classifications will be added as needed. This action is necessary because the demand for H-1B specialty occupation workers by U.S. companies generally exceeds the numerical limitation. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H-1B petitions.

Statement of Need:

U.S. Citizenship and Immigration Services (USCIS) proposes to establish a mandatory Internet-based electronic registration process for U.S. employers seeking to file H-1B petitions for alien workers subject to either the 65,000 or 20,000 caps. This registration process would allow U.S. employers to electronically register for consideration of available H-1B cap numbers. The mandatory proposed registration process will alleviate administrative burdens on USCIS service centers and eliminate the need for U.S. employers to needlessly prepare and file H-1B petitions without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on that petition.

Summary of Legal Basis:

Section 214(g) of the Immigration and Nationality Act provides limits on the number of alien temporary workers who may be granted H-1B nonimmigrant status each fiscal year (commonly known as the ''cap''). USCIS has responsibility for monitoring the requests for H-1B workers and administers the distribution of available H-1B cap numbers in light of these limits.

Alternatives:

To ensure a fair and orderly distribution of H-1B cap numbers, USCIS evaluated its current random selection process, and has found that when it receives a significant number of H-1B petitions within the first few days of the H-1B filing period, it is extremely difficult to handle the volume of petitions received in advance of the H-1B random selection process. Further, the current petition process of preparing and mailing H-1B petitions, with the required filing fee, can be burdensome and costly for employers, if the petition is returned because the cap was reached and the petition was not selected in the random selection process.

Accordingly, this rule proposes to implement a new process to allow U.S. employers to electronically register for consideration of available H-1B cap numbers without having to first prepare and submit the petition.

Anticipated Cost and Benefits:

USCIS estimates that this rule will result in a net benefit to society. Currently, employers submit a petition, at great expense, without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on the petition. The new mandatory, Internet-based registration system allows employers to complete a much shorter and less expensive registration process for consideration of available H-1B cap numbers. The new system will also relieve a significant administrative burden and expense from USCIS.

This rule will reduce costs for some employers and increase them for others. For employers that are not allocated a cap number and therefore do not ultimately file a petition, there will be a significant cost savings. Employers that are allocated a cap number and ultimately file a petition will experience the new and additional cost of filing the registration. Additionally, USCIS will incur additional costs to implement and maintain the registration system. USCIS has weighed the benefits and costs associated with this rule and determined that the benefits to society outweigh the costs.

Risks:

There is a risk that a petitioner will submit multiple petitions for the same H-1B beneficiary so that the U.S. employer will have a better chance of his or her petition being selected. Accordingly, should USCIS receive multiple petitions for the same H-1B beneficiary by the same petitioner, the system will only accept the first petition and reject the duplicate petitions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	
NPRM Comment Period End	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

USCIS 2443-08

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RIN: 1615–AB71

DHS—USCIS

65. • EXCEPTION TO THE PERSECUTION BAR FOR ASYLUM, REFUGEE, AND TEMPORARY PROTECTED STATUS, AND WITHHOLDING OF REMOVAL

Priority:

Other Significant

Legal Authority:

8 USC 1101; 8 USC 1103; 8 USC 1158; 8 USC 1226; PL 107–26; PL 110–229; . . .

CFR Citation:

8 CFR 1; 8 CFR 208; 8 CFR 244; 8 CFR 1244; . . .

Legal Deadline:

None

Abstract:

This joint rule proposes amendments to Department of Homeland Security (DHS) and Department of Justice (DOJ) regulations to describe the circumstances under which an applicant will continue to be eligible for asylum, refugee, or temporary protected status, special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act, and withholding of removal, even if DHS or DOJ has determined that the applicant's actions contributed, in some way, to the persecution of others. The purpose of this rule is to resolve ambiguity in the statutory language precluding eligibility for asylum, refugee, and temporary protected status of an applicant who ordered, incited, assisted, or otherwise participated in the persecution of others. The proposed amendment would provide a limited exception for actions taken by the applicant under duress and clarify the required levels of the applicant's knowledge of the persecution.

Statement of Need:

This rule resolves ambiguity in the statutory language precluding eligibility for asylum, refugee, and temporary protected status of an applicant who ordered, incited, assisted, or otherwise participated in the persecution of others. The proposed amendment would provide a limited exception for actions taken by the applicant under duress and clarify the required levels of the applicant's knowledge of the persecution.

Summary of Legal Basis:

In Negusie v. Holder, 129 S. Ct. 1159 (2009), the Supreme Court addressed whether the persecutor bar should apply where an alien's actions were taken under duress. DHS believe that this is an appropriate subject for rulemaking and propose to amend the applicable regulations to set out their interpretation of the statute. In developing this regulatory initiative, DHS has carefully considered the purpose and history behind enactment of the persecutor bar, including its international law origins and the criminal law concepts upon which they are based.

Alternatives:

DHS did consider the alternative of not publishing a rulemaking on these issues. To leave this important area of the law without an administrative interpretation, however, would confuse adjudicators and the public.

Anticipated Cost and Benefits:

The programs affected by this rule exist so that the United States may respond effectively to global humanitarian situations and assist people who are in need. USCIS provides a number of humanitarian programs and protection to assist individuals in need of shelter or aid from disasters, oppression, emergency medical issues, and other urgent circumstances. This rule will advance the humanitarian goals of the asylum/refugee program, and other specialized programs. The main benefits of such tend to be intangible and difficult to quantify in economic and monetary terms. These forms of relief have not been available to certain persecutors. This rule will allow an exception to this bar from protection for applicants who can meet the appropriate evidentiary standard. Consequently, this rule may result in a small increase in the number of applicants for humanitarian programs. To the extent a small increase in applicants occurs, there could be additional fee costs incurred by these applicants.

Risks:

If DHS were not to publish a regulation, the public would face a lengthy period of confusion on these issues. There could also be inconsistent interpretations of the statutory language, leading to significant litigation and delay for the affected public.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 1615–AB89

DHS—USCIS

FINAL RULE STAGE

66. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS; ELIGIBILITY FOR T NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8

USC 1187; 8 USC 1201; 8 USC 1224 to 1227; 8 USC 1252 to 1252a; 22 USC 7101; 22 USC 7105; . . .

CFR Citation:

8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

Legal Deadline:

None

Abstract:

T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid law enforcement with their investigation or prosecution of the traffickers, and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States. The rule establishes application procedures and responsibilities for the Department of Homeland Security and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, and who can demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. This rule addresses the essential elements that must be demonstrated for classification as a T nonimmigrant alien; the procedures to be followed by applicants to apply for T nonimmigrant status; and evidentiary guidance to assist in the application process.

Summary of Legal Basis:

Section 107(e) of the Trafficking Victims Protection Act (TVPA), Public Law 106-386, as amended, established the T classification to create a safe haven for certain eligible victims of severe forms of trafficking in persons, who assist law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.

Alternatives:

To develop a comprehensive Federal approach to identifying victims of severe forms of trafficking in persons, to provide them with benefits and services, and to enhance the Department of Justice's ability to prosecute traffickers and prevent trafficking in persons in the first place, a series of meetings with stakeholders were conducted with representatives from key Federal agencies; national, State, and local law enforcement associations; non-profit, community-based victim rights organizations; and other groups. Suggestions from these stakeholders were used in the drafting of this regulation.

Anticipated Cost and Benefits:

There is no cost to applicants associated with this regulation. Applicants for T nonimmigrant status do not pay application or biometric fees.

The anticipated benefits of these expenditures include: Assistance to trafficked victims and their families, prosecution of traffickers in persons, and the elimination of abuses caused by trafficking activities.

Benefits which may be attributed to the implementation of this rule are expected to be:

1. An increase in the number of cases brought forward for investigation and/or prosecution;

2. Heightened awareness by the law enforcement community of trafficking in persons;

3. Enhanced ability to develop and work cases in trafficking in persons cross-organizationally and multi-jurisdictionally, which may begin to influence changes in trafficking patterns.

Risks:

There is a 5,000-person limit to the number of individuals who can be granted T-1 status per fiscal year. Eligible applicants who are not granted T-1 status due solely to the numerical limit will be placed on a waiting list to be maintained by U.S. Citizenship and Immigration Services (USCIS).

To protect T-1 applicants and their families, USCIS will use various means to prevent the removal of T-1 applicants on the waiting list, and their family members who are eligible for derivative T status, including its existing authority to grant deferred action, parole, and stays of removal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Interim Final Rule Effective	03/04/02	
Interim Final Rule Comment Period End	04/01/02	
Interim Final Rule	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State

Additional Information:

CIS No. 2132-01; AG Order No. 2554-2002

There is a related rulemaking, CIS No. 2170-01, the new U nonimmigrant status (RIN 1615-AA67).

Transferred from RIN 1115-AG19

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RIN: 1615–AA59

DHS—USCIS

67. ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT FOR ALIENS IN T AND U NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224 to 1227; 8 USC 1252 to 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105

CFR Citation:

8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline:

None

Abstract:

This rule sets forth measures by which certain victims of severe forms of trafficking who have been granted T nonimmigrant status and victims of certain criminal activity who have been granted U nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000; and Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

This regulation is necessary to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents. T nonimmigrant status is available to aliens who are victims of a severe form of trafficking in persons and who are assisting law enforcement in the investigation or prosecution of the acts of trafficking. U nonimmigrant status is available to aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes.

Summary of Legal Basis:

This rule implements the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386, 114 Stat. 1464 (Oct. 28, 2000), as amended, to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents.

Alternatives:

USCIS did not consider alternatives to managing T and U applications for adjustment of status. Ease of administration dictates that adjustment of status applications from T and U nonimmigrants would be best handled on a first in, first out basis, because that is the way applications for T and U status are currently handled.

Anticipated Cost and Benefits:

USCIS uses fees to fund the cost of processing applications and associated support benefits. The fees to be collected resulting from this rule will be approximately $3 million in the first year, $1.9 million in the second year, and an average about $32 million in the third and subsequent years. To estimate the new fee collections to be generated by this rule, USCIS estimated the fees to be collected for new applications for adjustment of status from T and U nonimmigrants and their eligible family members. After that, USCIS estimated fees from associated applications that are required such as biometrics, and others that are likely to occur in direct connection with applications for adjustment, such as employment authorization or travel authorization.

The anticipated benefits of these expenditures include: Continued assistance to trafficked victims and their families, increased investigation and prosecution of traffickers in persons, and the elimination of abuses caused by trafficking activities.

Benefits that may be attributed to the implementation of this rule are expected to be:

1. An increase in the number of cases brought forward for investigation and/or prosecution;

2. Heightened awareness of trafficking-in-persons issues by the law enforcement community; and

3. Enhanced ability to develop and work cases in trafficking in persons cross-organizationally and multi-jurisdictionally, which may begin to influence changes in trafficking patterns.

Risks:

Congress created the U nonimmigrant status (''U visa'') to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Although there are no specific data on alien crime victims, statistics maintained by the Department of Justice have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/12/08	73 FR 75540
Interim Final Rule Effective	01/12/09	
Interim Final Rule Comment Period End	02/10/09	
Interim Final Rule	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

CIS No. 2134-01

Transferred from RIN 1115-AG21

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RIN: 1615–AA60

DHS—USCIS

68. NEW CLASSIFICATION FOR VICTIMS OF CRIMINAL ACTIVITY; ELIGIBILITY FOR THE ''U'' NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102

CFR Citation:

8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

Legal Deadline:

None

Abstract:

This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-U.S. Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the

U nonimmigrant classifications. Specifically, the rule addresses the essential elements that must be demonstrated to receive the nonimmigrant classification, procedures that must be followed to make an application, and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

This rule provides requirements and procedures for aliens seeking U nonimmigrant status. U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in the investigation or prosecution of that criminal activity. The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

Summary of Legal Basis:

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes, while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.

Alternatives:

USCIS has identified four alternatives, the first being chosen for the rule:

1. USCIS would adjudicate petitions on a first in, first out basis. Petitions received after the limit has been reached would be reviewed to determine whether or not they are approvable, but for the numerical cap. Approvable petitions that are reviewed after the numerical cap has been reached would be placed on a waiting list and written notice sent to the petitioner. Priority on the waiting list would be based upon the date on which the petition is filed. USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stay of removal.

2. USCIS would adjudicate petitions on a first in, first out basis, establishing a waiting list for petitions that are pending or received after the numerical cap has been reached. Priority on the waiting list would be based upon the date on which the petition was filed. USCIS would not provide interim relief to petitioners whose petitions are placed on the waiting list.

3. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be reviewed to identify particularly compelling cases for adjudication. New filings would be rejected once the numerical cap is reached. No official waiting list would be established; however, interim relief until the start of the next fiscal year would be provided for some compelling cases. If a case was not particularly compelling, the filing would be denied or rejected.

4. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be rejected once the numerical cap is reached. No waiting list would be established, nor would interim relief be granted.

Anticipated Cost and Benefits:

USCIS estimates the total annual cost of this interim rule to applicants to be $6.2 million. This cost includes the biometric services fee that petitioners must pay to USCIS, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required for a visit to an Application Support Center, and the cost of traveling to an Application Support Center.

This rule will strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

Risks:

In the case of witness tampering, obstruction of justice, or perjury, the interpretive challenge for USCIS was to determine whom the BIWPA was meant to protect, given that these criminal activities are not targeted against a person. Accordingly it was determined that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of, or undue control over, the alien through manipulation of the legal system.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective	10/17/07	
Interim Final Rule Comment Period End	11/17/07	
Interim Final Rule	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

Transferred from RIN 1115-AG39

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RIN: 1615–AA67

DHS—USCIS

69. E–2 NONIMMIGRANT STATUS FOR ALIENS IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS WITH LONG–TERM INVESTOR STATUS

Priority:

Other Significant

Legal Authority:

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

This final rule amends Department of Homeland Security regulations governing E-2 nonimmigrant treaty investors to establish procedures for classifying long-term investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E-2 nonimmigrants. This final rule implements the CNMI nonimmigrant investor visa provisions of the Consolidated Natural Resources Act of 2008, extending the immigration laws of the United States to the CNMI.

Statement of Need:

This final rule responds to a congressional mandate that requires the Federal Government to assume responsibility for visas for entry to CNMI by foreign investors.

Anticipated Cost and Benefits:

Public Costs: This rule reduces the employer's annual cost by $200 per year ($500-$300), plus any further reduction caused by eliminating the paperwork burden associated with the CNMI's process. In 2006 to 2007, there were 464 long-term business entry permit holders and 20 perpetual foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. The total savings to employers from this rule is thus expected to be $100,000 per year ($500 x $200). Cost to the Federal Government: The yearly Federal Government cost is estimated at $42,310.

Benefits: The potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States reduces the integrity of the United States immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulations of CNMI foreign investors should help reduce abuse by foreign employees in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/14/09	74 FR 46938
NPRM Comment Period End	10/14/09	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State

Additional Information:

CIS No. 2458-08

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RIN: 1615–AB75

DHS—USCIS

70. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL WORKER CLASSIFICATION

Priority:

Other Significant

Legal Authority:

PL 110–229

CFR Citation:

8 CFR 214.2

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) is creating a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification (CW classification) in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system under the Immigration and Nationality Act (INA). A CW transitional worker is an alien worker who is ineligible for another classification under the INA and who performs services or labor for an employer in the CNMI. The CNRA imposes a 5-year transition period before the INA requirements become fully applicable in the CNMI. The new CW classification will be in effect for the duration of that transition period, unless extended by the Secretary of Labor. The rule also establishes employment authorization incident to CW status.

Statement of Need:

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) created a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification. The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system under the Immigration and Nationality Act.

Anticipated Cost and Benefits:

Each of the estimated 22,000 CNMI transitional workers will be required to pay a $320 fee per year, for an annualized cost to the affected public of $7 million. However, since these workers will not have to pay CNMI fees, the total present value costs of this rule are a net cost savings ranging from $9.8 million to $13.4 million depending on the validity period of CW status (1 or 2 years), whether out-of-status aliens present in the CNMI are eligible for CW status, and the discount rate applied. The intended benefits of the rule include improvements in national and homeland security and protection of human rights.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/09	74 FR 55094
Interim Final Rule Comment Period End	11/27/09	
Interim Final Rule Comment Period End Extended	12/09/09	74 FR 64997
Interim Final Rule Comment Period End	01/08/10	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

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RIN: 1615–AB76

DHS—USCIS

71. APPLICATION OF IMMIGRATION REGULATIONS TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Priority:

Other Significant

Legal Authority:

PL 110–229

CFR Citation:

8 CFR 208 and 209; 8 CFR 214 and 215; 8 CFR 217; 8 CFR 235; 8 CFR 248; 8 CFR 264; 8 CFR 274a

Legal Deadline:

Final, Statutory, November 28, 2009, Consolidated Natural Resources Act (CNRA) of 2008.

Abstract:

On October 28, 2009, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) published a joint interim final rule in the Federal Register implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule finalizes the interim rule with additional changes to provisions concerning adjustment of status and change of status of aliens in the CNMI, immigrant petitions for multinational executives, acceptable documents for employment eligibility verification (Form I-9), and the Northern Marianas identification card. It is intended that such changes will ameliorate any adverse impact that implementation of the CNRA may have on CNMI employers and alien workers.

Statement of Need:

The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing: Asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Employment Eligibility Verification; employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program. Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal.

Anticipated Cost and Benefits:

The stated goals of the CNRA are to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth. While those goals are expected to be partly facilitated by the changes made in this rule, they are general and qualitative in nature. There are no specific changes made by this rule with sufficiently identifiable direct or indirect economic impacts so as to be quantified.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/09	74 FR 55725
Interim Final Rule Comment Period End	11/27/09	
Correction	12/22/09	74 FR 67969
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS 2460-08

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RIN: 1615–AB77

DHS—U.S. Coast Guard (USCG)

PROPOSED RULE STAGE

72. OUTER CONTINENTAL SHELF ACTIVITIES

Priority:

Other Significant

Legal Authority:

43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356; DHS Delegation No 0170.1

CFR Citation:

33 CFR 140 to 147

Legal Deadline:

None

Abstract:

The Coast Guard is the lead Federal agency for workplace safety and health, other than for matters generally related to drilling and production that are regulated by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) on facilities and vessels engaged in the exploration for, or development or production of, minerals on the OCS. This project would revise the regulations on Outer Continental Shelf (OCS) activities to: 1) Add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores and accommodation spaces; and 2) address foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged. This project would affect the owners and operators of facilities and vessels engaged in offshore activities.

Statement of Need:

The last major revision of Coast Guard OCS regulations occurred in 1982. At

that time, the offshore industry was not as technologically advanced as it is today. Offshore activities were in relatively shallow water near land, where help was readily available during emergency situations. The equipment regulations required only basic equipment, primarily for lifesaving appliances and hand-held portable fire extinguishers. Since 1982, the requirements in 33 CFR chapter I, subchapter N, have not kept pace with the changing offshore technology or the safety problems created as OCS activities extend to deeper water (10,000 feet) and move farther offshore (150 miles). This rulemaking reassesses all of our current OCS regulations in order to help make the OCS a safer workplace.

Summary of Legal Basis:

The authority for the Coast Guard to prescribe, change, revise, or amend these regulations is provided under 14 U.S.C. 85; 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356; and Department of Homeland Security Delegation No. 0170.1. Section 145.100 also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

Alternatives:

The Coast Guard considered filling the shortfall in existing OCS regulations by extending the current vessel and Mobile Offshore Drilling Unit regulations. This approach was rejected after concluding that the differences between fixed and floating units made this approach impractical. We also considered requiring compliance with industry standards. Those standards, though, do not cover all of the areas needing regulation. The new rule would adopt available consensus standards where appropriate.

Nonregulatory alternatives, such as agency policy documents and voluntary acceptance of industry standards were also considered. They were also rejected because enforceable regulations are necessary in order to carry out the relevant statutes.

Anticipated Cost and Benefits:

The Coast Guard is currently estimating the costs and benefits associated with this rulemaking. Industry would incur additional costs as a result of provisions for training, firefighting, lifesaving, and monitoring of unsafe conditions. This proposed rule supports the Commandant's strategic goals of marine safety and environmental stewardship and is designed to help make the OCS a safer workplace by preventing accidents or reducing the consequences of accidents on the OCS. In addition, the proposed rule will include measures that meet the changing offshore technology and the safety problems it creates as OCS activities extend to deeper water and move farther offshore.

Risks:

The extensive revisions to health and safety requirements for OCS units in this rule would substantially reduce the risk of injury or illness on those units.

Timetable:

Action	Date	FR Cite
Request for Comments	06/27/95	60 FR 33185
Comment Period End	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended	03/16/00	65 FR 14226
NPRM Comment Period Extended	06/30/00	65 FR 40559
NPRM Comment Period End	11/30/00	
Supplemental NPRM	08/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

Docket Numbers: The notice of request for comments published June 27, 1995, was assigned Coast Guard docket number 95-016. Following the request for comments, that docket was terminated. This project continues under Docket No. USCG-1998-3868 and RIN 1625-AA18. This docket may be viewed online by going to www.regulations.gov.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA18

DHS—USCG

73. INSPECTION OF TOWING VESSELS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

46 USC 3103; 46 USC 3301; 46 USC 3306; 46 USC 3308; 46 USC 3316; 46 USC 3703; 46 USC 8104; 46 USC 8904; DHS Delegation No 0170.1

CFR Citation:

46 CFR 2; 46 CFR 15; 46 CFR 136 to 144

Legal Deadline:

NPRM, Statutory, January 13, 2011.

On October 15, 2010, the Coast Guard Authorization Act of 2010 was enacted as Public Law 111-281. It requires that a proposed rule be issued within 90 days after enactment and that a final rule be issued within 1 year of enactment.

Abstract:

This rulemaking would implement a program of inspection for certification of towing vessels, which were previously uninspected. It would prescribe standards for safety management systems and third-party auditors and surveyors, along with standards for construction, operation, vessel systems, safety equipment, and recordkeeping.

Statement of Need:

This rulemaking would implement sections 409 and 415 of the Coast Guard and Maritime Transportation Act of 2004. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. This proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee. It would establish a new subchapter dedicated to towing vessels; covering vessel equipment, systems, operational standards, and inspection requirements.

Summary of Legal Basis:

Proposed new subchapter authority: 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; DHS Delegation 0170.1.

The Coast Guard and Maritime Transportation Act of 2004 (CGMTA 2004), Public Law 108-293, 118 Stat. 1028, (Aug. 9, 2004), established new

authorities for towing vessels as follows:

Section 415 added towing vessels, as defined in section 2101 of title 46, United States Code (U.S.C.), as a class of vessels that are subject to safety inspections under chapter 33 of that title (Id. at 1047).

Section 415 also added new section 3306(j) of title 46, authorizing the Secretary of Homeland Security to establish, by regulation, a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels (Id.).

Section 409 added new section 8904(c) of title 46, U.S.C., authorizing the Secretary to establish, by regulation, ''maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).'' (Id. at 1044-45).

Alternatives:

We considered the following alternatives for the notice of proposed rulemaking (NPRM):

One regulatory alternative would be the addition of towing vessels to one or more existing subchapters that deal with other inspected vessels, such as cargo and miscellaneous vessels (subchapter I), offshore supply vessels (subchapter L), or small passenger vessels (subchapter T). We do not believe, however, that this approach would recognize the often ''unique'' nature and characteristics of the towing industry in general and towing vessels in particular.

In addition to inclusion in a particular existing subchapter (or subchapters) for equipment-related concerns, the same approach could be adopted for use of a safety management system by requiring compliance with title 33, Code of Federal Regulations, part 96 (Rules for the Safe Operation of Vessels and Safety Management Systems). Adoption of these requirements, without an alternative safety management system, would also not be ''appropriate for the characteristics, methods of operation, and nature of service of towing vessels.''

The Coast Guard has had extensive public involvement (four public meetings, over 100 separate comments submitted to the docket, as well as extensive ongoing dialogue with members of the Towing Safety Advisory Committee (TSAC)) regarding development of these regulations. Adoption of one of the alternatives discussed above would likely receive little public or industry support, especially considering the TSAC efforts toward development of standards to be incorporated into a separate subchapter dealing specifically with the inspection of towing vessels.

An approach that would seem to be more in keeping with the intent of Congress would be the adoption of certain existing standards from those applied to other inspected vessels. In some cases, these existing standards would be appropriately modified and tailored to the nature and operation of certain categories of towing vessels. The adopted standards would come from inspected vessels that have demonstrated ''good marine practice'' within the maritime community. These regulations would be incorporated into a subchapter specifically addressing the inspection for certification of towing vessels. The law requiring the inspection for certification of towing vessels is a statutory mandate, compelling the Coast Guard to develop regulations appropriate for the nature of towing vessels and their specific industry.

Anticipated Cost and Benefits:

We estimate that owners and operators of towing vessels would incur additional costs from this rulemaking. The cost of this rulemaking would involve provisions for safety management systems, standards for construction, operation, vessel systems, safety equipment, and recordkeeping. Our cost assessment includes existing and new vessels. We are currently developing cost estimates for the proposed rule.

The Coast Guard developed the requirements in the proposed rule by researching both the human factors and equipment failures that caused towing vessel accidents. We believe that the proposed rule would address a wide range of causes of towing vessel accidents and supports the main goal of improving safety in the towing industry. The primary benefit of the proposed rule is an increase in vessel safety and a resulting decrease in the risk of towing vessel accidents and their consequences.

Risks:

This regulatory action would reduce the risk of towing vessel accidents and their consequences. Towing vessel accidents result in fatalities, injuries, property damage, pollution, and delays.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

Additional Information:

The Regulations.gov docket number is USCG-2006-24412.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AB06

DHS—USCG

74. ASSESSMENT FRAMEWORK AND ORGANIZATIONAL RESTATEMENT REGARDING PREEMPTION FOR CERTAIN REGULATIONS ISSUED BY THE COAST GUARD

Priority:

Other Significant

Legal Authority:

14 USC 2; 14 USC 91; 33 USC 1223; 33 USC 1231; 33 USC 1903(b); 46 USC 3203; 46 USC 3306; 46 USC 3703; 46 USC 3717; 46 USC 4302; 46 USC 6101; DHS Delegation No 0170.1

CFR Citation:

33 CFR 1.06

Legal Deadline:

None

Abstract:

The proposed rule will operate in two ways. First, it will describe the Coast Guard's interpretation of the preemptive effect of certain current Coast Guard regulations. This analysis will apply to previously promulgated

regulations even if a complete description of federalism implications was clearly articulated in the development of the regulation. Second, the rule will set forth criteria and a process that the Coast Guard will undertake in future regulatory projects for evaluating the preemptive impact of those regulations. This part of the analysis is prospective in nature and will lay out a roadmap for future regulatory projects regarding federalism and preemption principles. This rulemaking will support the Coast Guard's broad role and responsibility of further enhancing maritime stewardship by reinforcing a uniform maritime regulatory regime that is predictable and useful for maritime interests.

Statement of Need:

In light of recent Federal court cases and the President's May 20, 2009, memorandum regarding preemption, the Coast Guard believes that a clear agency statement of the preemptive impact of our regulations, particularly those regulations issued prior to the promulgation of E.O. 13132, can be of great benefit to State and local governments, the public, and regulated entities. Therefore, the Coast Guard intends to issue a general statement of preemption policy, coupled with specific statements of policy regarding regulations issued under the authority of statutes with preemptive effect, including, among others, the Ports and Waterways Safety Act (PWSA) of 1972, as amended (33 U.S.C. 1221 et. seq.). The Coast Guard proposes to publish these policies in a new section 1.06 of title 33 of the Code of Federal Regulations, to allow for easy access by interested persons and parties.

Summary of Legal Basis:

The statutory authorities for the Coast Guard to prescribe, change, revise, or amend these regulations are provided under 14 U.S.C. 2 and 91; 33 U.S.C. 1223, 1231, and 1903(b); 46 U.S.C. 3203, 3306, 3703, 3717, 4302, and 6101; and Department of Homeland Security Delegation No. 0170.1.

Alternatives:

The Coast Guard considered alternative mechanisms for restating the preemptive effect of regulations, including the use of a notice of policy. These methods would not provide the same level of transparency as codification in the Code of Federal Regulations, however, because they would not be as readily located by State and local government or other members of the public. They also would not satisfy the President's May 20, 2009, memorandum regarding preemption, which directs agencies to include preemption provisions in the codified regulation.

Anticipated Cost and Benefits:

We expect no additional cost impacts to the industry from this proposed rule, because it only restates and clarifies the status of Federal and State law as it exists.

Risks:

Not applicable to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

The docket number for this rulemaking is USCG-2008-1259. The docket can be found at www.regulations.gov.

URL For More Information:

http://www.regulations.gov

URL For Public Comments:

http://www.regulations.gov

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RIN: 1625–AB32

DHS—USCG

75. UPDATES TO MARITIME SECURITY

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

33 USC 1226; 33 USC 1231; 46 USC ch 701; 50 USC 191 and 192; EO 12656; 3 CFR 1988 Comp, p 585; 33 CFR 1.05–1; 33 CFR 6.04–11; 33 CFR 6.14; 33 CFR 6.16; 33 CFR 6.19; DHS Delegation No 0170.1

CFR Citation:

33 CFR subchapter H

Legal Deadline:

None

Abstract:

The Coast Guard proposes certain additions, changes, and amendments to 33 CFR, subchapter H. Subchapter H is comprised of parts 101 thru 106. Subchapter H implements the major provisions of the Maritime Transportation Security Act of 2002. This rulemaking is the first major revision to subchapter H. The proposed changes would further enhance the security of our Nation's ports, vessels, facilities, and Outer Continental Shelf facilities and incorporate requirements from legislation implemented since the original publication of these regulations in 2003. This rulemaking has international interest because of the close relationship between subchapter H and the International Ship and Port Security Code (ISPS).

Statement of Need:

This rulemaking is needed to incorporate Coast Guard Policy Advisory Council (PAC) decisions on the interpretation of regulations, guidance provided in response to questions to the Maritime Transportation Security Act of 2002 (MTSA) hotline, and to implement various requirements found in the Security and Accountability for Every Port Act of 2006 and the Coast Guard and Maritime Transportation Act of 2006. In addition, this rulemaking is needed to incorporate recommendations from the Merchant Marine Personnel Advisory Committee. It also incorporates various U.S. Maritime Administration and International Maritime Organization voluntary consensus standards related to maritime security training.

Summary of Legal Basis:

The fundamental legal basis for subchapter H remains the Maritime Transportation Security Act of 2002 as amended by the Security and Accountability for Every Port Act of 2006 and the Coast Guard and Maritime Transportation Act of 2006.

Alternatives:

The Coast Guard is currently evaluating a number of alternatives based on applicability and risk (threat,

vulnerability, and consequence). However, an overall update to make necessary changes to subchapter H and address improvements resulting from our experience since 2003 is prudent.

Anticipated Cost and Benefits:

The Coast Guard is currently estimating the costs associated with this rulemaking. Industry would incur additional costs as a result of provisions for standardized training requirements, updates to security plans and other documentation, and full-scale exercises requirements for high-risk facilities. The potential benefit from these provisions is reduction in risk of security incidents. This rulemaking expands and improves competencies associated with Maritime Domain Awareness (MDA). MDA is the effective understanding of anything associated with the global maritime domain that could impact the United States' security, safety, economy, or environment. The proposed rule would improve MDA through training, exercise, and security plan enhancements. As a result, the primary benefit of the proposed rule would result from reducing the risk of a Transportation Security Incident (TSI) and therefore averting or mitigating the economic and environmental consequences of a TSI.

Risks:

With this rulemaking, the Coast Guard seeks to maintain the risk reduction goals established with the promulgation of the original MTSA regulations and further reduce risks by incorporating provisions related to more recent legislation and warranted by our experience with subchapter H since 2003.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

The Regulations.gov docket number for this rulemaking is USCG-2007-0009.

URL For More Information:

http://www.regulations.gov

URL For Public Comments:

http://www.regulations.gov

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RIN: 1625–AB38

DHS—USCG

FINAL RULE STAGE

76. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

16 USC 4711

CFR Citation:

33 CFR 151

Legal Deadline:

None

Abstract:

This rulemaking adds performance standards to 33 CFR part 151, subparts C and D, for discharges of ballast water. It supports the Coast Guard's broad roles and responsibilities of maritime safety and maritime stewardship. This project is economically significant.

Statement of Need:

The unintentional introduction of nonindigenous species into U.S. waters via the discharge of vessels' ballast water has had significant impacts to the Nation's aquatic resources, biological diversity, and coastal infrastructures. This rulemaking would amend the ballast water management requirements (33 CFR part 151, subparts C and D) and establish standards that specify the level of biological treatment that must be achieved by a ballast water treatment system before ballast water can be discharged into U.S. waters. This would increase the Coast Guard's ability to protect U.S. waters against the introduction of nonindigenous species via ballast water discharges.

Summary of Legal Basis:

Congress has directed the Coast Guard to develop ballast water regulations to prevent the introduction of nonindigenous species into U.S. waters under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and reauthorized and amended it with the National Invasive Species Act of 1996. This rulemaking does not have a statutory deadline.

Alternatives:

The Coast Guard would use the standard rulemaking process to develop regulations for ballast water discharge standards. Nonregulatory alternatives such as navigation and vessel inspection circulars and the Marine Safety Manual have been considered and may be used for the development of policy and directives to provide the maritime industry and our field offices guidelines for implementation of the regulations. Nonregulatory alternatives cannot be substituted for the standards we would develop with this rule. Congress has directed the Coast Guard to review and revise its BWM regulations not less than every 3 years based on the best scientific information available to the Coast Guard at the time of that review.

On August 28, 2009, the Coast Guard published the Notice of Proposed Rulemaking (NPRM) entitled Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters in the Federal Register (74 FR 44632). The proposed rule included a phase-in schedule (phase-one and phase-two) for the implementation of ballast water discharge standards based on vessel's ballast water capacity and build date (one that is one thousand times more stringent). The proposed phase-one standard is the same standard adopted by the International Maritime Organization (IMO) for concentration of living organisms in ballast water discharges. For phase-two, we propose incorporating a practicability review to determine whether technology to achieve a more stringent standard than

the IMO standard can practicably be implemented.

Based on the comments received, we plan to move forward swiftly with a final rule.

Anticipated Cost and Benefits:

This rulemaking would affect certain vessels operating in U.S. waters seeking to discharge ballast water into waters of the United States. Owners and operators of these vessels would be required to install and operate Coast Guard approved ballast water management systems before discharging ballast water into U.S. waters. Cost estimates for individual vessels vary due to the vessel class, type and size, and the particular technology of the ballast water management system installed. We expect the highest annual costs of this rulemaking during the periods of installation as the bulk of the existing fleet of vessels must meet the standards according to proposed phase-in schedules. The primary cost driver of this rulemaking is the installation costs for existing vessels. Operating and maintenance costs are substantially less than the installation costs.

We evaluated the benefits of this rulemaking by researching the impact of aquatic nonindigenous species (NIS) invasions in the U.S. waters, since ballast water discharge is one of the main vectors of NIS introductions in the marine environment. The primary benefit of this rulemaking would be the economic and environmental damages avoided from the reduction in the number of new invasions as a result of the reduction in concentration of organisms in discharged ballast water. We expect that the benefits of this rulemaking would increase as the technology is developed to achieve more stringent ballast water discharge standards.

The Coast Guard issued a preliminary regulatory analysis of the costs, benefits, and other impacts of the 2009 NPRM. In this preliminary analysis, we estimated the total phase-one costs to be about $1.18 billion over a 10-year period of analysis (this and other values below at a 7 percent discount rate). As previously described, the implementation costs vary by year. We estimated the annualized cost over the same period to be approximately $168 million per year. We did not provide cost estimates for the phase-two costs in this preliminary analysis since data and information was not available at that time for technology that would meet the anticipated phase-two standard (1,000 x the IMO standard). In the same preliminary analysis, we estimated annualized benefits (damages avoided) for phase one are potentially as high as $553 million, with a mid-range estimate of $165 million to $282 million per year. We estimated total phase-one benefits to be as high as $3.88 billion, with a mid-range estimate of $1.16 billion to $1.98 billion over a 10-year period of analysis.

The Coast Guard has received public comments on the impacts of the NPRM and will be incorporating these comments into a revised Regulatory Analysis for the next rulemaking publication.

Risks:

Ballast water discharged from ships is a significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria or pathogens, have the potential to displace native species, degrade native habitats, spread disease and disrupt human economic and social activities that depend on water resources. It is estimated that for areas such as the Great Lakes, San Francisco Bay, and Chesapeake Bay, one nonindigenous species becomes established per year. At this time, it is difficult to estimate the reduction of risk that would be accomplished by promulgating this rulemaking; however, it is expected a major reduction will occur. We are currently requesting information on costs and benefits of more stringent ballast water discharge standards.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	
NPRM	08/28/09	74 FR 44632
Public Meeting	09/14/09	74 FR 46964
Public Meeting	09/22/09	74 FR 48190
Public Meeting	09/28/09	74 FR 49355
Notice—Extension of Comment Period	10/15/09	74 FR 52941
Public Meeting	10/22/09	74 FR 54533
Public Meeting Correction	10/26/09	74 FR 54944
NPRM Comment Period End	12/04/09	74 FR 52941
Final Rule	04/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

The Regulations.gov docket number for this rulemaking is USCG-2001-10486.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1625–AA32

DHS—U.S. Customs and Border Protection (USCBP)

FINAL RULE STAGE

77. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 109–347, sec 203; 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433 to 1434; 19 USC 1624; 19 USC 2071 note; 46 USC 60105

CFR Citation:

19 CFR 4; 19 CFR 12.3; 19 CFR 18.5; 19 CFR 103.31a; 19 CFR 113; 19 CFR 123.92; 19 CFR 141.113; 19 CFR 146.32; 19 CFR 149; 19 CFR 192.14

Legal Deadline:

None

Abstract:

This interim final rule implements the provisions of section 203 of the

Security and Accountability for Every Port Act of 2006. It amends CBP Regulations to require carriers and importers to provide to CBP, via a CBP-approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and insure cargo safety and security. Under the rule, importers and carriers must submit specified information to CBP before the cargo is brought into the United States by vessel. This advance information will improve CBP's risk assessment and targeting capabilities, assist CBP in increasing the security of the global trading system, and facilitate the prompt release of legitimate cargo following its arrival in the United States.

Statement of Need:

Vessel carriers are currently required to transmit certain manifest information by way of the CBP Vessel Automated Manifest System (AMS) 24 hours prior to lading of containerized and non-exempt break bulk cargo at a foreign port. For the most part, this is the ocean carrier's or non-vessel operating common carrier (NVOCC)'s cargo declaration. CBP analyzes this information to generate its risk assessment for targeting purposes.

Internal and external government reviews have concluded that more complete advance shipment data would produce even more effective and vigorous cargo risk assessments. In addition, pursuant to section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Based upon its analysis, as well as the requirements under the SAFE Port Act, CBP is requiring the electronic transmission of additional data for improved high-risk targeting. Some of these data elements are being required from carriers (Container Status Messages and Vessel Stow Plan) and others are being required from ''importers,'' as that term is defined for purposes of the regulations.

This rule intends to improve CBP's risk assessment and targeting capabilities and enables the agency to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system and, thereby, reducing the threat to the United States and world economy.

Summary of Legal Basis:

Pursuant to section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Alternatives:

CBP considered and evaluated the following four alternatives:

Alternative 1 (the chosen alternative): Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements;

Alternative 2: Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is not exempt from the Importer Security Filing requirements;

Alternative 3: Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and

Alternative 4: Only the Additional Carrier Requirements are required.

Anticipated Cost and Benefits:

When the NPRM was published, CBP estimated that approximately 11 million import shipments conveyed by 1,000 different carrier companies operating 37,000 unique voyages or vessel-trips to the United States will be subject to the rule. Annualized costs range from $890 million to $7.0 billion (7 percent discount rate over 10 years).

The annualized cost range results from varying assumptions about the importers' estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to carriers for transmitting additional data to CBP.

The regulation may increase the time shipments are in transit, particularly for shipments consolidated in containers. For such shipments, the supply chain is generally more complex and the importer has less control of the flow of goods and associated security filing information. Foreign cargo consolidators may be consolidating multiple shipments from one or more shippers in a container destined for one or more buyers or consignees. In order to ensure that the security filing data is provided by the shippers to the importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24-hour deadline, consolidators may advance their cut-off times for receipt of shipments and associated security filing data.

These advanced cut-off times would help prevent a consolidator or carrier from having to unpack or unload a container in the event the security filing for one of the shipments contained in the container is inadequate or not accepted by CBP. For example, consolidators may require shippers to submit, transmit, or obtain CBP approval of their security filing data before their shipments are stuffed in the container, before the container is sealed, or before the container is delivered to the port for lading. In such cases, importers would likely have to increase the times they hold their goods as inventory, and thus incur additional inventory carrying costs to sufficiently meet these advanced cut-off times imposed by their foreign consolidators. The high end of the cost ranges presented assumes an initial supply chain delay of 2 days for the first year of implementation (2008) and a delay of 1 day for years 2 through 10 (2009 to 2017).

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. CBP would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, CBP has undertaken a ''break-even'' analysis to inform decisionmakers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the proposed rule. CBP's

analysis finds that the incremental costs of this regulation are relatively small compared to the median value of a shipment of goods, despite the rather large absolute estimate of present value cost.

The benefit of this rule is the improvement of CBP's risk assessment and targeting capabilities, while at the same time, enabling CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system, and thereby reducing the threat to the United States and the world economy.

Timetable:

Action	Date	FR Cite
NPRM	01/02/08	73 FR 90
NPRM Comment Period End	03/03/08	
NPRM Comment Period Extended	02/01/08	73 FR 6061
NPRM Comment Period End	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective	01/26/09	
Interim Final Rule Comment Period End	06/01/09	
Correction	07/14/09	74 FR 33920
Correction	12/24/09	74 FR 68376
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1651–AA70

DHS—USCBP

78. CHANGES TO THE VISA WAIVER PROGRAM TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

8 USC 1103; 8 USC 1187; 8 CFR 2

CFR Citation:

8 CFR 217.5

Legal Deadline:

None

Abstract:

This rule implements the Electronic System for Travel Authorization (ESTA) for aliens who travel to the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. Under the rule, VWP travelers are required to provide certain biographical information to CBP electronically before departing for the United States. This allows CBP to determine before their departure whether these travelers are eligible to travel to the United States under the VWP and whether such travel poses a security risk. The rule is intended to fulfill the requirements of section 711 of the Implementing recommendations of the 9/11 Commission Act of 2007 (9/11 Act). In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, the ESTA is intended to increase national security and to provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays at the ports of entry.

Statement of Need:

Section 711 of the 9/11 Act requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system that will collect biographical and other information in advance of travel to determine the eligibility of the alien to travel to the United States, and to determine whether such travel poses a law enforcement or security risk. ESTA is intended to fulfill these statutory requirements.

Under this rule, VWP travelers provide certain information to CBP electronically before departing for the United States. VWP travelers who receive travel authorization under ESTA are not required to complete the paper Form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status. By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP is able to determine the eligibility of citizens and eligible nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk, before such individuals begin travel to the United States. ESTA provides for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.

Summary of Legal Basis:

The ESTA program is based on congressional authority provided under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 and section 217 of the Immigration and Nationality Act (INA).

Alternatives:

CBP considered three alternatives to this rule:

1. The ESTA requirements in the rule, but with a $1.50 fee per each travel authorization (more costly)

2. The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the I-94W form (less burdensome)

3. The ESTA requirements in the rule, but only for the countries entering the VWP after 2009 (no new requirements for VWP, reduced burden for newly entering countries)

CBP determined that the rule provides the greatest level of enhanced security and efficiency at an acceptable cost to traveling public and potentially affected air carriers.

Anticipated Cost and Benefits:

The purpose of ESTA is to allow DHS and CBP to establish the eligibility of certain foreign travelers to travel to the United States under the VWP, and whether the alien's proposed travel to the United States poses a law enforcement or security risk. Upon review of such information, DHS will

determine whether the alien is eligible to travel to the United States under the VWP.

Costs to Air & Sea Carriers

CBP estimated that eight U.S.-based air carriers and eleven sea carriers will be affected by the rule. An additional 35 foreign-based air carriers and five sea carriers will be affected. CBP concluded that costs to air and sea carriers to support the requirements of the ESTA program could cost $137 million to $1.1 billion over the next 10 years depending on the level of effort required to integrate their systems with ESTA, how many passengers they need to assist in applying for travel authorizations, and the discount rate applied to annual costs.

Costs to Travelers

ESTA will present new costs and burdens to travelers in VWP countries who were not previously required to submit any information to the U.S. Government in advance of travel to the United States. Travelers from Roadmap countries who become VWP countries will also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B1/B2), which is currently required for short-term pleasure or business to travel to the United States. CBP estimated that the total quantified costs to travelers will range from $1.1 billion to $3.5 billion depending on the number of travelers, the value of time, and the discount rate. Annualized costs are estimated to range from $133 million to $366 million.

Benefits

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the Visa Waiver Program under section 217 of the Immigration and Nationality Act (INA, 8 U.S.C. 1187) by simultaneously enhancing program security requirements and extending visa-free travel privileges to citizens and eligible nationals of eligible foreign countries that are partners in the war on terrorism.

By requiring passenger data in advance of travel, CBP may be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for the screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

CBP concluded that the total benefits to travelers could total $1.1 billion to $3.3 billion over the period of analysis. Annualized benefits could range from $134 million to $345 million.

In addition to these benefits to travelers, CBP and the carriers should also experience the benefit of not having to administer the I-94W except in limited situations. While CBP has not conducted an analysis of the potential savings, it should accrue benefits from not having to produce, ship, and store blank forms. CBP should also be able to accrue savings related to data entry and archiving. Carriers should realize some savings as well, though carriers will still have to administer the I-94 for those passengers not traveling under the VWP and the Customs Declaration forms for all passengers aboard the aircraft and vessel.

Timetable:

Action	Date	FR Cite
Interim Final Action	06/09/08	73 FR 32440
Interim Final Rule Effective	08/08/08	
Interim Final Rule Comment Period End	08/08/08	
Notice – Announcing Date Rule Becomes Mandatory	11/13/08	73 FR 67354
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

http://www.cbp.gov/xp/cgov/travel/id__visa/esta/

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1651–AA83

RIN: 1651–AA72

DHS—USCBP

79. ESTABLISHMENT OF GLOBAL ENTRY PROGRAM

Priority:

Other Significant

Legal Authority:

8 USC 1365b(k)(1); 8 USC 1365b(k)(3); 8 USC 1225; 8 USC 1185(b)

CFR Citation:

8 CFR 235; 8 CFR 103

Legal Deadline:

None

Abstract:

CBP already operates several regulatory and non-regulatory international registered traveler programs, also known as trusted traveler programs. In order to comply with the Intelligence Reform Terrorism Prevention Act of 2004 (IRPTA), CBP is proposing to amend its regulations to establish another international registered traveler program called Global Entry. The Global Entry program would expedite the movement of low-risk, frequent international air travelers by providing an expedited inspection process for pre-approved, pre-screened travelers. These travelers would proceed directly to automated Global Entry kiosks upon their arrival in the United States. This Global Entry Program, along with the other programs that have already been established, are consistent with CBP's strategic goal of facilitating legitimate trade and travel while securing the homeland. A pilot of Global Entry has been operating since June 6, 2008.

Statement of Need:

CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008, and the pilot has been very successful. As a result, there is a desire on the part of

the public that the program be established as a permanent program, and expanded, if possible. By establishing this program, CBP will make great strides toward facilitating the movement of people in a more efficient manner, thereby accomplishing our strategic goal of balancing legitimate travel with security. Through the use of biometric and recordkeeping technologies, the risk of terrorists entering the United States would be reduced. Improving security and facilitating travel at the border, both of which are accomplished by Global Entry, are primary concerns within CBP jurisdiction.

Summary of Legal Basis:

The Global Entry program is based on section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended by section 565 of the Consolidated Appropriations Act, which requires the Secretary of Homeland Security to create a program to expedite the screening and processing of pre-approved low risk air travelers into the United States.

Anticipated Cost and Benefits:

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. CBP estimates that over a 5-year period, 250,000 enrollees will be processed (an annual average of 50,000 individuals). CBP will charge a fee of $100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an ''opportunity cost of time'' to travel to an Enrollment Center upon acceptance of the initial application. We assume that 1 hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of $28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration's ''Economic Values for FAA Investment and Regulatory Decisions, A Guide.'' (July 3, 2007). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

Timetable:

Action	Date	FR Cite
NPRM	11/19/09	74 FR 59932
NPRM Comment Period End	01/19/10	
Final Rule	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.globalentry.gov

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RIN: 1651–AA73

DHS—USCBP

80. IMPLEMENTATION OF THE GUAM–CNMI VISA WAIVER PROGRAM

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 110–229, sec 702

CFR Citation:

8 CFR 100.4; 8 CFR 212.1; 8 CFR 233.5; 8 CFR 235.5; 19 CFR 4.7b; 19 CFR 122.49a

Legal Deadline:

Final, Statutory, November 4, 2008, PL 110–229.

Abstract:

This rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program.

Statement of Need:

Currently, aliens who are citizens of eligible countries may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen (15) days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission. Section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), supersedes the Guam visa waiver program by providing for a visa waiver program for Guam and the Commonwealth of the Northern Mariana Islands (Guam-CNMI Visa Waiver Program). Section 702(b) requires DHS to promulgate regulations within 180 days of enactment of the CNRA to allow nonimmigrant visitors from eligible countries to apply for admission into Guam and the CNMI, for business or pleasure, without a visa, for a period of authorized stay of no longer than forty-five (45) days.

Summary of Legal Basis:

The Guam-CNMI Visa Waiver Program is based on congressional authority provided under 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA).

Alternatives:

None

Anticipated Cost and Benefits:

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing U.S. Visa Waiver Program or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor

entry permits. CBP anticipates that the annual cost to the CNMI will be $6 million. These are losses associated with the reduced visits from foreign travelers who may no longer visit the CNMI upon implementation of this rule.

The anticipated benefits of the rule are enhanced security that will result from the federalization of the immigration functions in the CNMI.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective	01/16/09	
Interim Final Rule Comment Period End	03/17/09	
Technical Amendment; Change of Implementation Date	05/28/09	74 FR 25387
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

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Related RIN: Related to 1651–AA81

RIN: 1651–AA77

DHS—Transportation Security Administration (TSA)

PROPOSED RULE STAGE

81. LARGE AIRCRAFT SECURITY PROGRAM, OTHER AIRCRAFT OPERATOR SECURITY PROGRAM, AND AIRPORT OPERATOR SECURITY PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

6 USC 469; 18 USC 842; 18 USC 845; 46 USC 70102 to 70106; 46 USC 70117; 49 USC 114; 49 USC114(f)(3); 49 USC 5103; 49 USC 5103a; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation:

49 CFR 1515; 49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1542; 49 CFR 1544; 49 CFR 1550

Legal Deadline:

None

Abstract:

On October 30, 2008, the Transportation Security Administration (TSA) issued a Notice of Proposed Rulemaking (NPRM), proposing to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements, and by adding new requirements for certain large aircraft operators and airports serving those aircraft. TSA also proposed that all aircraft operations, including corporate and private charter operations, with aircraft having a maximum certificated takeoff weight (MTOW) above 12,500 pounds (''large aircraft'') be required to adopt a large aircraft security program. TSA also proposed to require certain airports that serve large aircraft to adopt security programs. TSA is preparing a supplemental NPRM (SNPRM), which will include a comment period for public comments.

After considering comments received on the NPRM and meeting with stakeholders, TSA decided to revise the original proposal to tailor security requirements to the general aviation industry. TSA is considering alternatives to the following proposed provisions in the SNPRM: (1) The type of aircraft subject to TSA regulation; (2) compliance oversight; (3) watch list matching of passengers; (4) prohibited items; (5) scope of the background check requirements and the procedures used to implement the requirement; and (6) other issues. Additionally, in the SNPRM, TSA plans to propose security measures for foreign aircraft operators. U.S. and foreign operators would implement commensurate measures under the proposed rule.

Statement of Need:

This rule would enhance current security measures and might apply security measures currently in place for operators of certain types of aircraft to operators of other aircraft, including general aviation operators. While the focus of TSA's existing aviation security programs has been on air carriers and commercial operators, TSA is aware that general aviation aircraft of sufficient size and weight may inflict significant damage and loss of lives if they are hijacked and used as missiles. TSA has current regulations that apply to large aircraft operated by air carriers and commercial operators, including the twelve-five program, the partial program, and the private charter program. However, the current regulations in 49 CFR part 1544 do not cover all general aviation operations, such as those operated by corporations and individuals, and such operations do not have the features that are necessary to enhance security. Therefore, TSA is preparing a SNPRM which proposes to establish new security measures for operators, including general aviation operators, that are not covered under TSA's current regulations.

Summary of Legal Basis:

49 U.S.C. 114, 40113, 44903.

Alternatives:

DHS considered continuing to use voluntary guidance to secure general aviation, but determined that to ensure that each aircraft operator maintains an appropriate level of security, these security measures would need to be mandatory requirements.

Anticipated Cost and Benefits:

This proposed rule would yield benefits in the areas of security and quality governance. The rule would enhance security by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. These measures would deter malicious individuals from perpetrating acts that might compromise transportation or national security by using large aircraft for these purposes.

As stated above, TSA is revising this proposed rule and preparing a SNPRM. Aircraft operators, passengers, and TSA would incur costs to comply with the requirements of the proposed rule. TSA is currently evaluating the costs of the revised rule which will be published in the SNPRM.

Risks:

This rulemaking addresses the national security risk of general aviation aircraft being used as a weapon or as a means to transport persons or weapons that could pose a threat to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/30/08	73 FR 64790
NPRM Comment Period End	12/29/08	
Notice—NPRM Comment Period Extended	11/25/08	73 FR 71590
NPRM Extended Comment Period End	02/27/09	
Notice—Public Meetings; Requests for Comments	12/28/08	73 FR 77045
Supplemental NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

Public Meetings held on: Jan. 6, 2009, at White Plains, NY; Jan. 8, 2009, at Atlanta, GA; Jan 16, 2009, at Chicago, IL; Jan. 23, 2009, at Burbank, CA; and Jan. 28, 2009, at Houston, TX.

Additional Comment Sessions held in Arlington, VA, on April 16, 2009, May 6, 2009, and June 15, 2009.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 1652–AA03, Related to 1652–AA04

RIN: 1652–AA53

DHS—TSA

82. PUBLIC TRANSPORTATION AND PASSENGER RAILROADS—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, secs 1408 and 1517

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, November 1, 2007, Interim Rule for public transportation agencies is due 90 days after date of enactment.

Final, Statutory, February 3, 2008, Rule for railroads is due 6 months after date of enactment.

Final, Statutory, August 3, 2008, Rule for public transportation agencies is due 1 year after date of enactment.

According to section 1408 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), interim final regulations for public transportation agencies are due 90 days after the date of enactment (Nov. 1, 2007), and final regulations are due 1 year after the date of enactment of this Act.According to section 1517 of the same Act, final regulations for railroads are due no later than 6 months after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose a new regulation to improve the security of public transportation and passenger railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. This rulemaking will propose general requirements for a public transportation security training program and a passenger railroad training program to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

Statement of Need:

A security training program for public transportation agencies and for passenger railroads is proposed to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; sections 1408 and 1517 of Public Law 110-53, Implementing

Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Alternatives:

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

TSA will estimate the costs that the public transportation agencies and passenger railroads covered by this proposed rule would incur following its implementation. These costs will include estimates for the following elements: 1) creating or modifying a security training program and submitting it to TSA; 2) training (initial and recurrent) all security-sensitive employees; 3) maintaining records of employee training; 4) being available for inspections; 5) providing information on security coordinators and alternates; and 6) reporting security concerns. TSA will also estimate the costs TSA itself would expect to incur with the implementation of this rule.

The primary benefit of the Security Training NPRM will be to enhance United States surface transportation security by reducing the vulnerability of public transportation agencies and passenger railroads to terrorist activity through the training of security-sensitive employees. TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the Security Training NPRM and the costs of implementing the rulemaking. This break-even analysis uses scenarios extracted from the TSA Transportation Sector Security Risk Assessment (TSSRA) to determine the degree to which the Security Training NPRM must reduce the overall risk of a terrorist attack in order for the expected benefits of the NPRM to justify the estimated costs. For its analyses, TSA uses scenarios with varying levels of risk, but only details the consequence estimates. To maintain consistency, TSA developed the analyses with a method similar to that used for the break-even analyses conducted in earlier DHS rules.

After estimating the total consequence of each scenario by monetizing lives lost, injuries incurred, capital replacement and clean-up, and lost revenue, TSA will use this figure and the annualized cost of the NPRM for public transportation and passenger rail to calculate a breakeven annual likelihood of attack.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN: Related to 1652–AA57, Related to 1652–AA59

RIN: 1652–AA55

DHS—TSA

83. FREIGHT RAILROADS—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1517

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, February 3, 2008, Rule is due 6 months after date of enactment.

According to section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 6 months after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to improve the security of freight railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Alternatives:

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

TSA will estimate the costs that the freight rail systems covered by this proposed rule would incur following its implementation. These costs will include estimates for the following elements: 1) Creating or modifying a security training program and submitting it to TSA; 2) training (initial and recurrent) all security-sensitive employees; 3) maintaining records of employee training; 4) being available for inspections; 5) providing information on security coordinators and alternates; and 6) reporting security concerns. TSA will also estimate the costs TSA itself would expect to incur with the implementation of this rule.

The primary benefit of the Security Training NPRM will be to enhance United States surface transportation security by reducing the vulnerability of freight railroad systems to terrorist activity through the training of security-sensitive employees. TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the Security Training NPRM and the costs of implementing the rulemaking. This break-even analysis uses scenarios extracted from the TSA Transportation Sector Security Risk Assessment (TSSRA) to determine the degree to which the Security Training NPRM must reduce the overall risk of a terrorist attack in order for the expected benefits of the NPRM to justify the estimated costs. For its analyses, TSA uses scenarios with varying levels of risk, but only details the consequence estimates. To maintain consistency, TSA developed the analyses with a method similar to that used for the break-even analyses conducted in earlier DHS rules.

After estimating the consequence of each scenario by monetizing lives lost, injuries incurred, capital replacement and clean-up, and lost revenue, TSA will use this figure and the annualized cost of the NPRM for freight rail to calculate a breakeven annual likelihood of attack.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN: Related to 1652–AA55, Related to 1652–AA59

RIN: 1652–AA57

DHS—TSA

84. OVER–THE–ROAD BUSES—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1534

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, February 3, 2008, Rule due 6 months after date of enactment.

According to section 1534 of Public Law 110-53, Implementing

Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007); 121 Stat. 266), TSA must issue a regulation no later than 6 months after date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to improve the security of over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Alternatives:

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

TSA will estimate the costs that the commercial over-the-road bus (OTRB) entities covered by this proposed rule would incur following its implementation. These costs will include estimates for the following elements: 1) Creating or modifying a security training program and submitting it to TSA; 2) training (initial and recurrent) all security-sensitive employees; 3) maintaining records of employee training; 4) being available for inspections; 5) providing information on security coordinators and alternates; and 6) reporting security concerns. TSA will also estimate the costs TSA itself would expect to incur with the implementation of this rule.

The primary benefit of the Security Training NPRM will be to enhance United States surface transportation security by reducing the vulnerability of commercial OTRB operators to terrorist activity through the training of security-sensitive employees. TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the Security Training NPRM and the costs of implementing the rulemaking. This break-even analysis uses scenarios extracted from the TSA Transportation Sector Security Risk Assessment (TSSRA) to determine the degree to which the Security Training NPRM must reduce the overall risk of a terrorist attack in order for the expected benefits of the NPRM to justify the estimated costs. For its analyses, TSA uses scenarios with varying levels of risk, but only details the consequence estimates. To maintain consistency, TSA developed the analyses with a method similar to that used for the break-even analyses conducted in earlier DHS rules.

After estimating the consequence of each scenario by monetizing lives lost, injuries incurred, capital replacement and clean-up, and lost revenue, TSA will use this figure and the annualized cost of the NPRM for OTRB operators to calculate a breakeven annual likelihood of attack.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN: Related to 1652–AA55, Related to 1652–AA57

RIN: 1652–AA59

DHS—TSA

FINAL RULE STAGE

85. AIRCRAFT REPAIR STATION SECURITY

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

49 USC 114; 49 USC 44924

CFR Citation:

49 CFR 1554

Legal Deadline:

Final, Statutory, August 8, 2004, Rule within 240 days of the date of enactment of Vision 100.

Final, Statutory, August 3, 2008, Rule within 1 year after the date of enactment of 9/11 Commission Act.

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations.'' Section 1616 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110—531; Aug. 3, 2007; 21 Stat. 266) requires TSA issue a final rule on foreign repair station security.

Abstract:

The Transportation Security Administration (TSA) proposed to add a new regulation to improve the security of domestic and foreign aircraft repair stations, as required by the section 611 of Vision 100—Century of Aviation Reauthorization Act and section 1616 of the 9/11 Commission Act of 2007. The regulation proposed general requirements for security programs to be adopted and implemented by repair stations certificated by the Federal Aviation Administration (FAA). A notice of proposed rulemaking (NPRM) was published in the Federal Register on November 18, 2009, requesting public comments to be submitted by January 19, 2010. The comment period was extended to February 19, 2010, on request of the stakeholders to allow the aviation industry and other interested entities and individuals additional time to complete their comments.

Statement of Need:

The Transportation Security Administration (TSA) is proposing regulations to improve the security of domestic and foreign aircraft repair stations. The NPRM proposed to require repair stations that are certificated by the Federal Aviation Administration to adopt and carry out a security program. The proposal will codify the scope of TSA's existing inspection program. The proposal also provides procedures for repair stations to seek review of any TSA determination that security measures are deficient.

Summary of Legal Basis:

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA to issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations'' within 240 days from date of enactment of Vision 100. Section 1616 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266) requires that the FAA may not certify any foreign repair stations if the regulations are not issued within 1 year after the date of enactment of the 9/11 Commission Act unless the repair station was previously certificated or is in the process of certification.

Alternatives:

TSA is required by statute to publish regulations requiring security programs for aircraft repair stations. As part of its notice of proposed rulemaking, TSA sought public comment on the numerous alternative ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

TSA anticipates costs to aircraft repair stations mainly related to the establishment of security programs, which may include adding such measures as access controls, a personnel identification system, security awareness training, the designation of a security coordinator, employee background verification, and contingency plan. The total 10-year undiscounted cost of the program is $344 million. The discounted at 7 percent, 10-year cost of the program is $241 million. Security coordinator costs of $132 million and training costs of $132 million represent the largest portions of the program.

A major line of defense against an aviation-related terrorist act is the prevention of explosives, weapons, and/or incendiary devices from getting on board a plane. To date, efforts have been primarily related to inspection of baggage, passengers, and cargo, and security measures at airports that serve air carriers. With this rule, attention is given to aircraft that are located at repair stations, and to aircraft parts that are at repair stations, themselves to reduce the likelihood of an attack against aviation and the country. Since repair station personnel have direct access to all parts of an aircraft, the potential exists for a terrorist to seek to commandeer or compromise an aircraft when the aircraft is at one of these facilities. Moreover, as TSA tightens security in other areas of aviation, repair stations increasingly may become attractive targets for terrorist organizations attempting to evade aviation security protections currently in place.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By requiring security programs for aircraft repair stations, TSA will focus on preventing unauthorized access to repair work and to aircraft to prevent sabotage or hijacking.

Timetable:

Action	Date	FR Cite
Notice—Public Meeting; Request for Comments	02/24/04	69 FR 8357
Report to Congress	08/24/04	
NPRM	11/18/09	74 FR 59873
NPRM Comment Period End	01/19/10	
NPRM Comment Period Extended	12/29/09	74 FR 68774
NPRM Extended Comment Period End	02/19/10	
Final Rule	05/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 1652–AA38

DHS—TSA

86. AIR CARGO SCREENING

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 110–53, sec 1602; 49 USC 114; 49 USC 40113; 49 USC 44901 to 44905; 49 USC 44913 to 44914; 49 USC 44916; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation:

49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1544; 49 CFR 1548; 49 CFR 1549

Legal Deadline:

Other, Statutory, February 3, 2009, Screen 50 percent of cargo on passenger aircraft.

Other, Statutory, August 3, 2010, Screen 100 percent of cargo on passenger aircraft.

Final, Statutory, November 3, 2010, 1 year after effective date of the interim final rule.

Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, Aug. 3, 2007) requires that the Secretary of Homeland Security establish a system to screen 50 percent of cargo on passenger aircraft NLT 18 months after the date of enactment and 100 percent of such cargo NLT 3 years after the date of enactment. The 9/11 Act also requires that TSA issue a final rule NLT 1 year after the effective date of the interim final rule (Nov. 2010).

Abstract:

On September 16, 2009, the Transportation Security Administration (TSA) issued an Interim Final Rule (IFR) that established the Certified Cargo Screening Program (CCSP) that certifies shippers, manufacturers, and other entities to screen air cargo intended for transport on a passenger aircraft. This is the primary means through which TSA will meet the requirements of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 that mandates that 100 percent of air cargo transported on passenger aircraft, operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation, be screened by August 2010, to ensure the security of all such passenger aircraft carrying cargo.

Under this rulemaking, each certified cargo screening facility (CCSF) and its employees and authorized representatives that will be screening cargo must successfully complete a security threat assessment. The CCSF must also submit to an assessment of their security measures by TSA-approved validators, screen cargo using TSA-approved methods, and initiate strict chain of custody measures to ensure the security of the cargo throughout the supply chain prior to tendering it for transport on passenger aircraft.

TSA will issue a final rule responding to public comments from the IFR.

Statement of Need:

TSA is establishing a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

The system shall require, at a minimum, that equipment, technology, procedures, personnel, or other methods approved by the Administrator of TSA, used to screen cargo carried on passenger aircraft, provide a level of security commensurate with the level of security for the screening of passenger checked baggage.

Summary of Legal Basis:

49 U.S.C. 114; section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, 10/3/2007), codified at 49 U.S.C. 44901(g).

Alternatives:

The Interim Final Rule (IFR) states that as an alternative to establishing the CCSP, TSA considered meeting the statutory requirements by having aircraft operators screen cargo intended for transportation on passenger aircraft—that is, continuing the current cargo screening program but expanding it to 85 percent of air cargo on passenger aircraft, with the remaining 15 percent assumed to be shipped via other modes. Under this alternative, the cost drivers are screening equipment, personnel for screening, training of personnel, and delays. Delays are the largest cost component, totaling $7.0 billion over 10 years, undiscounted. In summary,

the undiscounted 10 year cost of the alternative is $11.1 billion, and discounted at 7 percent, the cost is $7.7 billion.

Anticipated Cost and Benefits:

TSA estimates the cost of the rule will be $1.9 billion (discounted at 7 percent) over 10 years. TSA analyzed the alternative of not establishing the Certified Cargo Screening Program (CCSP) and, instead, having aircraft operators and air carriers perform screening of all cargo transported on passenger aircraft. Absent the CCSP, the estimated cost to aircraft operators and air carriers is $7.7 billion (discounted at 7 percent) over 10 years.

The bulk of the costs for both the CCSP and the alternative are attributed to personnel and the impact of cargo delays resulting from the addition of a new operational process.

The benefits of the FR are five-fold. First, passenger air carriers will be more firmly protected against an act of terrorism or other malicious behaviors by the screening of 100 percent of cargo

shipped on passenger aircraft. Second, allowing the screening process to occur throughout the supply chain via the Certified Cargo Screening

Program will reduce potential bottlenecks and delays at the airports. Third, the FR will allow market forces to identify the most efficient venue for screening along the supply chain, as entities upstream from the aircraft operator may apply to become CCSFs and screen cargo. Fourth, the CCSP enables members to screen

valuable cargo earlier in the supply chain and avoid any potentially invasive screening that may occur at the aircraft operator level. Finally, validation firms will perform assessments of the entities that become CCSFs, allowing TSA to set priorities for compliance inspections.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/16/09	74 FR 47672
Interim Final Rule Comment Period End	11/16/09	
Interim Final Rule Effective	11/16/09	
Final Rule	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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RIN: 1652–AA64

DHS—U.S. Immigration and Customs Enforcement (USICE)

PROPOSED RULE STAGE

87. CONTINUED DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253

CFR Citation:

8 CFR 241

Legal Deadline:

None

Abstract:

This notice of proposed rulemaking (NPRM) is proposing to amend the Department of Homeland Security (DHS) regulatory provisions for custody determinations for aliens in immigration detention who are subject to an administratively final order of removal. The proposed amendment would add a paragraph to 8 CFR 241.4(g) providing that U.S. Immigration and Customs Enforcement (ICE) shall have a reasonable period of time to effectuate an alien's removal where the alien is not in immigration custody when the order of removal becomes administratively final. The proposed rule would also clarify the removal period time frame afforded to the agency following an alien's compliance with his or her obligations regarding removal subsequent to a period of obstruction or failure to cooperate. The rule proposes to make conforming changes to 241.13(b)(2). Lastly, the rule proposes to add a paragraph to 8 CFR 241.13(b)(3) to make clear that aliens certified by the Secretary under section 236A of the Immigration and Nationality Act, 8 U.S.C. 1226a, are not subject to the provisions of 8 CFR 241.13, in accordance with the separate detention standard provided under the Act.

Statement of Need:

The companion final rule will improve the post order custody review process in the final rule related to the Detention of Aliens Subject to Final Orders of Removal in light of the U.S. Supreme Court's decisions in Zadvydas v. Davis, 533 U.S. 678 (2001), Clark v. Martinez, 543 U.S. 371 (2005) and conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). This notice of proposed rulemaking (NPRM) will propose to amend 8 CFR 241.1(g) to provide for a new 90-day removal period once an alien comes into compliance with his or her obligation to make timely application in good faith for travel or other documents and not conspire or act to prevent removal.

Anticipated Cost and Benefits:

This proposed rule will clarify the regulatory provisions concerning the removal of aliens that are subject to an administratively final order of removal. DHS does not anticipate there will be cost impacts to the public as a result of the rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Related to 1653–AA13

RIN: 1653–AA60

DHS—USICE

FINAL RULE STAGE

88. CONTINUED DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority:

Other Significant

Legal Authority:

8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; . . .

CFR Citation:

8 CFR 241

Legal Deadline:

None

Abstract:

The U.S. Department of Homeland Security is finalizing, with amendments, the interim rule that was published on November 14, 2001, by the former Immigration and Naturalization Service (Service). The interim rule included procedures for conducting custody determinations in light of the U.S. Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), which held that the detention period of certain aliens who are subject to a final administrative order of removal is limited under section 241(a)(6) of the Immigration and Nationality Act (Act) to the period reasonably necessary to effect their removal. The interim rule amended section 241.4 of title 8, Code of Federal Regulations (CFR), in addition to creating two new sections: 8 CFR 241.13 (establishing custody review procedures based on the significant likelihood of the alien's removal in the reasonably foreseeable future) and 241.14 (establishing custody review procedures for special circumstances cases). Subsequently, in the case of Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court clarified a question left open in Zadvydas, and held that section 241(a)(6) of the Act applies equally to all aliens described in that section. This rule amends the interim rule to conform to the requirements of Martinez. Further, the procedures for custody determinations for post-removal period aliens who are subject to an administratively final order of removal, and who have not been released from detention or repatriated, have been revised in response to comments received and experience gained from administration of the interim rule published in 2001. This final rule also makes conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). Additionally, certain portions of the final rule were determined to require public comment and, for this reason, have been developed into a separate/companion notice of proposed rulemaking; RIN 1653-AA60.

Statement of Need:

This rule will improve the post order custody review process in the final rule related to the Detention of Aliens Subject to Final Orders of Removal in light of the U.S. Supreme Court's decisions in Zadvydas v. Davis, 533 U.S. 678 (2001), Clark v. Martinez, 543 U.S. 371 (2005) and conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). A companion notice of proposed rulemaking (NPRM) will propose to amend 8 CFR 241.1(g) to provide for a new 90-day removal period once an alien comes into compliance with his or her obligation to make timely application in good faith for travel or other documents and not conspire or act to prevent removal.

Anticipated Cost and Benefits:

The changes are administrative and procedural in nature, and will not result in cost impacts to the public. The benefits of making these changes to the regulations will allow for expedited review of the post-order custody review process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/14/01	66 FR 56967
Interim Final Rule Comment Period End	01/14/02	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

INS No. 2156-01

Transferred from RIN 1115-AG29

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RIN: 1653–AA13

DHS—USICE

89. EXTENDING PERIOD FOR OPTIONAL PRACTICAL TRAINING BY 17 MONTHS FOR F–1 NONIMMIGRANT STUDENTS WITH STEM DEGREES AND EXPANDING THE CAP–GAP RELIEF FOR ALL F–1 STUDENTS WITH PENDING H–1B PETITIONS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184 to 1187; 8 USC 1221; 8 USC 1281 and 1282; 8 USC 1301 to 1305

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

Currently, foreign students in F-1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by U.S. Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) are eligible for 12 months of optional practical training (OPT) to work for a

U.S. employer in a job directly related to the student's major area of study. The maximum period of OPT is 29 months for F-1 students who have completed a science, technology, engineering, or mathematics (STEM) degree and accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. Employers of F-1 students with an extension of post-completion OPT authorization must report to the student's designated school official (DSO) within 48 hours after the OPT student has been terminated from, or otherwise leaves, his or her employment with that employer prior to end of the authorized period of OPT.

The final rule will respond to public comments and may make adjustments to the regulations.

Statement of Need:

ICE will improve SEVP processes by publishing the Final Optional Practical Training (OPT) rule, which will respond to comments on the OPT interim final rule (IFR). The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics (STEM) degree and who accept employment with employers who participate in the U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program.

Alternatives:

DHS is considering several alternatives to the 17-month extension of OPT and cap-gap extension, ranging from taking no action to further extension for a larger populace. The interim final rule addressed an immediate competitive disadvantage faced by U.S. industries and ameliorated some of the adverse impacts on the U.S. economy. DHS continues to evaluate both quantitative and qualitative alternatives.

Anticipated Cost and Benefits:

Based on an estimated 12,000 students per year that will receive an OPT extension and an estimated 5,300 employers that will need to enroll in E-verify, DHS projects that this rule will cost students approximately $1.49 million per year in additional information collection burdens, $4,080,000 in fees, and cost employers $1,240,000 to enroll in E-Verify and $168,540 per year thereafter to verify the status of new hires. However, this rule will increase the availability of qualified workers in science, technology, engineering, and mathematical fields; reduce delays that place U.S. employers at a disadvantage when recruiting foreign job candidates, thereby improving strategic and resource planning capabilities; increase the quality of life for participating students, and increase the integrity of the student visa program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/08	73 FR 18944
Interim Final Rule Comment Period End	06/09/08	
Final Rule	03/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.dhs.gov/sevis/

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RIN: 1653–AA56

DHS—Federal Emergency Management Agency (FEMA)

PROPOSED RULE STAGE

90. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

Priority:

Other Significant

Legal Authority:

42 USC 5121 to 5207

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

This proposed rule would revise the Federal Emergency Management Agency's Public Assistance program regulations. Many of these changes reflect amendments made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by the Post-Katrina Emergency Management Reform Act of 2006 and the Security and Accountability For Every Port Act of 2006. The proposed rule also proposes to reflect lessons learned from recent events, and propose further substantive and non-substantive clarifications and corrections to improve upon the Public Assistance regulations. This proposed rule is intended to improve the efficiency and consistency of the Public Assistance program, as well as implement new statutory authority by expanding Federal assistance, improving the Project Worksheet process, empowering grantees, and improving State Administrative Plans.

Statement of Need:

The proposed changes implement new statutory authorities and incorporate necessary clarifications and corrections to streamline and improve the Public Assistance program. Portions of FEMA's Public Assistance regulations have become out of date and do not implement all of FEMA's available statutory authorities. The current regulations inhibit FEMA's ability to clearly articulate its regulatory requirements, and the Public Assistance applicants' understanding of the program. The proposed changes are intended to improve the efficiency and consistency of the Public Assistance program.

Summary of Legal Basis:

The legal authority for the changes in this proposed rule is contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 to 5207, as amended by the Post-Katrina Emergency Management Reform Act of 2006, 6 U.S.C. 701 et seq, the Security and Accountability For Every Port Act of 2006, 6 U.S.C. 901 note, the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333, and the Pets Evacuation and Transportation Standards Act of 2006, Public Law 109-308, 120 Stat. 1725.

Alternatives:

One alternative is to revise some of the current regulatory requirements (such as application deadlines) in addition to implementing the amendments made to the Stafford Act by (1) the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109-295, 120 Stat. 1394; 2) the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109-

347, 120 Stat. 1884; 3) the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333; and 4) the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109-308, 120 Stat. 1725. Another alternative is to expand funding by expanding force account labor cost eligibility to Category A Projects (debris removal).

Anticipated Cost and Benefits:

The proposed rule is expected to have economic impacts on the public, grantees, subgrantees, and FEMA. The expected benefits are a reduction in property damages, societal losses, and losses to local businesses, as well as improved efficiency and consistency of the Public Assistance program. The total economic impact of the proposed rule is estimated to be approximately $50 million per year (in 2010 dollars). The primary economic impact of the proposed rule is the additional transfer of funding from FEMA through the Public Assistance program to grantees and subgrantees that is effectuated by this rulemaking. The proposed rule will also incur additional administrative costs to grantees and FEMA, which is estimated to be approximately $230,000, and $20,000 per year, respectively. However, most of the proposed changes are not expected to result in any additional cost to FEMA or any changes in the eligibility of assistance.

Risks:

This action does not adversely affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1660–AA51

BILLING CODE 9110–9B–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2011 highlights the most significant regulatory initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the Nation's housing agency, committed to addressing the housing needs of Americans, promoting economic and community development, and enforcing the Nation's fair housing laws, HUD plays a significant role in the lives of families and communities throughout America. Through its programs, HUD works to strengthen the housing market and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; and build inclusive and sustainable communities free from discrimination.

The state of America's housing market plays a major role in shaping the well-being of individuals and families, the stability of neighborhoods, and the strength of America's economy. That is why the recent downturn of the housing market—with high rates of foreclosure, increases in vacant properties, and plummeting home values—has been so devastating for families and communities alike. During this most recent downturn in the housing market, millions of families have lost their homes, and at least 3 million homeowners remain at risk of losing their homes. The effect of the crisis on neighborhoods has been no less dramatic. The high rate of foreclosures has undermined the stability of many neighborhoods across America.

In 2009, HUD took a prominent role in the Administration's Federal recovery strategy by helping American families keep their homes and stabilizing neighborhoods hard hit by foreclosure. In the midst of a credit crunch, HUD's Federal Housing Administration (FHA) assisted nearly 1.95 million households in fiscal year 2009. HUD led efforts in foreclosure mitigation, homeownership counseling, and curbing mortgage abuse and lending discrimination. Through funds awarded to HUD under the American Recovery and Reinvestment Act, HUD provided grant funds to State and local governments and nonprofit organizations to stabilize communities and neighborhoods negatively affected by foreclosure. HUD's efforts to help homeowners struggling to keep their homes and neighborhoods in distress did not abate in 2010. In 2010, HUD introduced its FHA Short Refinance option, which enables lenders to provide additional refinancing options to homeowners who owe more on their mortgages than their homes are worth. Through additional funding provided by Congress, HUD's Neighborhood Stabilization program continues into 2010 to help neighborhoods that have suffered from foreclosures.

Although homeownership historically has been the primary vehicle by which American families have built wealth, the recent crisis has shown that homeownership at any cost is fraught with peril. Americans need sustainable homeownership in which the costs are appropriate for a family's financial situation and the risks associated with homeownership are understood and manageable. In this regard, Secretary Donovan has directed that HUD must have a balanced, comprehensive national housing policy, one that supports and preserves sustainable homeownership, but also provides affordable rental housing, with a focus on preservation of developments that are integral to sustainability, such as those adjacent to significant transportation options, or with great access to jobs. Additionally, increasing affordable rental housing provides a means of addressing homelessness.

While HUD continues with programs to stem foreclosures and stabilize neighborhoods, with signs suggesting that the Nation is on the road to recovery, HUD is better able to direct efforts to implement the Secretary's balanced comprehensive national housing policy. HUD's regulatory plan for FY 2011 reflects one step in achieving this balanced, comprehensive national housing policy and is based on major legislation recently enacted that supports such a policy.

Priority: Providing Sustainable Homeownership Through Consumer Education

Consumer protections help prevent borrowers from falling victim to fraudulent loan products and aggressive marketing techniques. Such products and techniques contributed to the current housing crisis. One way to assist consumers from falling victims to fraudulent loan products is to ensure that they fully understand the home purchase process and the benefits but also the ongoing costs of homeownership. Such consumer education over the years has been increasingly provided by housing counselors, individuals trained and experienced in assisting individuals with mortgage-related issues, personal finances, and how to avoid default and foreclosure. Through HUD-funded and HUD-approved housing counseling agencies, HUD helps ensure that prospective and current homeowners have access to needed counseling services, as well as for those who rent.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) signed into law by President Obama on July 21, 2010, recognizes the importance that housing counseling plays in protecting consumers from mortgage fraud and provides for the establishment of an Office of Housing Counseling within HUD. The new office's responsibilities include ensuring that homeownership counseling addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home. The new office will also oversee that HUD-approved counseling agencies provide counseling on the benefits and costs of renting. HUD's new Office of Housing Counseling is charged with several other duties and responsibilities, and HUD's FY 2011 regulatory plan includes the rulemaking that will provide the regulatory foundation for the new Office of Housing Counseling to carry out all of its important duties and responsibilities.

Regulatory Action: Housing Counseling—New Program Requirements

HUD will issue a rule that reflects the authority of HUD's new Office of Housing Counseling. The Dodd-Frank Wall Street Reform and Consumer Protection Act provides that this office will establish, coordinate, and administer all regulations, requirements, standards, and performance measures under programs and laws administered by HUD that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling. The new law also directs HUD, through this office, to among other things, establish standards for the eligibility of organizations (including governmental

and nonprofit organizations) to receive HUD housing counseling grants; establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services; provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals; and ensure that counselors receiving funding under HUD's housing counseling grant program are properly certified, in accordance with standards established by HUD.

Priority: Improving Energy Efficiency in Housing

Despite significant improvements in housing quality in recent decades, much of the Nation's housing stock is not energy efficient. Increasing the Nation's affordable housing stock must also include establishing or improving energy efficiency in such housing. HUD initiated new energy efficiency programs through the American Recovery and Reinvestment Act of 2009 (Recovery Act). These included: A $250 million Green Retrofit Program for assisted multifamily buildings; $600 million for high performing energy retrofit and green projects in public housing; and additional formula and competitive programs that either contained incentives for energy efficiency and green, or could be utilized for that purpose. HUD estimates that up to 88,000 units may be retrofitted through these programs, for an estimated energy savings of $21 million.

While HUD's programs and initiatives under the Recovery Act focused on public and assisted multifamily housing, HUD's FY 2011 regulatory plan focuses on establishing a regulatory foundation to improve energy efficiency in FHA's title I Property Improvement Loan Insurance program (Title I program). Through the Title I program, FHA makes it easier for consumers to obtain affordable home improvement loans by insuring loans made by private lenders to improve properties that meet certain requirements. Title I program loans may be used to finance permanent property improvements that protect or improve the basic livability or utility of the property. HUD's FY 2011 rulemaking for the Title I program will provide for qualified borrowers to obtain low cost loans for specified energy improvements.

Regulatory Action: Title I Energy Retrofit Property Improvement Loans

HUD's rule amending the Title I program to provide for low cost loans for energy improvements has its foundation in the Recovery through Retrofit Report (Report), issued on October 19, 2009, by the Vice President and the White House Middle Class Task Force. The Report builds on the foundation laid out in the Recovery Act to expand green job opportunities in the United States and boost energy savings for middle class Americans by retrofitting homes for energy efficiency. The Report recognizes that making American homes and buildings more energy efficient presents an unprecedented opportunity for communities throughout the country. Home retrofits can potentially help people earn money, as home retrofit workers, while also helping them save money, by lowering their utility bills. The regulatory amendments to be addressed by this rulemaking will take into consideration the experience of HUD, Title I lenders, and consumers participating in HUD's Title I program Energy Retrofit Loan Demonstration to be launched late 2010. The demonstration will allow HUD to assess the success of the proposed modifications to its existing Title I program and address any programmatic concerns before undertaking final codification of regulatory amendments.

Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's regulatory plan that will be made effective in calendar year 2011. HUD expects that the neither the total economic costs nor the total efficiency gains will exceed $100 million.

HUD—Office of Housing (OH)

PROPOSED RULE STAGE

91. • TITLE I ENERGY RETROFIT PROPERTY IMPROVEMENT LOANS (FR–5445)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

12 USC 1703; 42 USC 3535(d)

CFR Citation:

24 CFR 201

Legal Deadline:

None

Abstract:

This proposed rule would amend HUD's regulations for the title I Property Improvement Loan Insurance program (Title I program) to better assist qualified borrowers obtain low-cost loans for specified energy improvements. Through the Title I program, FHA makes it easier for consumers to obtain affordable home improvement loans by insuring loans made by private lenders to improve properties that meet certain requirements. Title I program loans may be used to finance permanent property improvements that protect or improve the basic livability or utility of the property. The proposed rule is being issued in response to the Recovery through Retrofit Report (Report), issued on October 19, 2009, by the Vice President and the White House Middle Class Task Force. The Report builds on the foundation laid out in the American Recovery and Reinvestment Act (Pub. L. 111-5; approved February 17, 2009) to expand green job opportunities in the United States and boost energy savings for middle class Americans by retrofitting homes for energy efficiency. The Report recognizes that making American homes and buildings more energy efficient presents an unprecedented opportunity for communities throughout the country. Home retrofits can potentially help people earn money, as home retrofit workers, while also helping them save money, by lowering their utility bills. By encouraging nationwide weatherization of homes, workers of all skill levels will be trained, engaged, and will participate in ramping up a national home retrofit market.

The proposed regulatory amendments build upon the experience of HUD, title I lenders and consumers participating in the Department's Title I program Energy Retrofit Loan Demonstration. Before undertaking rulemaking to codify the regulatory amendments on a permanent, nationwide basis, HUD decided to conduct a demonstration involving a limited number of lenders and areas of the country. The demonstration will allow HUD to assess the success of the proposed modifications to the existing program and to address any programmatic concerns before authorizing its use throughout the country.

Statement of Need:

The Report identified several barriers that have prevented a self-sustaining retrofit market from forming. Among other barriers, the Report found that homeowners face high upfront costs and many are concerned that they will be prevented from recouping the value of their investment if they choose to sell their home. The upfront costs of home retrofit projects are often beyond the average homeowner's budget. The report found that the solution to the lack of home energy retrofit financing is to make such financing more accessible and more consumer friendly. The proposed regulatory amendments will help to address these needs by enabling qualified borrowers obtain title I low cost loans for energy-related home improvements.

Summary of Legal Basis:

The Title I program is authorized under title I, section 2, of the National Housing Act (12 U.S.C. 1703). Specifically, under section 2(a) of the National Housing Act, the Secretary of HUD is authorized to help homeowners finance alterations, repairs, and improvements in connection with existing structures or manufactured homes. HUD's implementing regulations are codified at 24 CFR part 201.

Alternatives:

The primary alternative HUD considered to amending the Title I regulations was use of the existing FHA Energy Efficient Mortgage (EEM) program. The FHA EEM program allows a borrower to finance and incremental amount on their first mortgage to invest in energy efficiency, with an additional appraisal or further credit qualification, provided that the benefit of projected energy savings exceed the cost of the improvements, as estimated by an energy audit, HUD ultimately determined that the EEM was not an optimal vehicle for achieving the energy innovation goals of this rule. First the FHA EEM is, by definition, a negative equity instrument, and negative equity is extremely problematic in the current housing market. Another problematic feature of the EEM program is that the financing may exceed the benefit from and useful life of the measures, and result in a total net cost to the consumer that does not represent the optimal use of funds.

Anticipated Cost and Benefits:

The aggregate net benefits are obtained by multiplying the individual net benefits by the expected number of loans and adding the expected social benefits of reduced energy consumption. As a base case, HUD assumes a consumer household with annual savings of $1000, a zero percent price growth and a 7 percent discount rate. The present value of a technical retrofit for this base case scenario is $11,400. Assuming a rebound effect of 30 percent yields a comfort benefit of $3,400 and energy savings of $8,000 per participant (the ''rebound effect'' refers to the fact that the reaction of the consumer to the energy-saving technology will not necessarily reduce energy consumption by what is technically possible). Approximately 24,000 loans are expected over two years. For the base case scenario, this would equal $41 million comfort benefits and $96 million in energy saving for each year of the program. The benefits of the FHA program may not equal the sum of the benefits of all retrofits financed through the program, but only reflect the benefits of the retrofits that would not have occurred without the program; however, the existence of significant market imperfections and the lack of affordable financing makes it reasonable to assume that a large proportion, if not all of the loans, will generate benefits. The cost of receiving the energy-savings is the upfront investment plus the costs of financing the investment. the cost per investment is thus equal to the size of the loan.

Risks:

This rule poses no risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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HUD—OH

92. • HOUSING COUNSELING: NEW PROGRAM REQUIREMENTS (FR–5446)

Priority:

Other Significant

Legal Authority:

12 USC 1701x; 42 USC 3535(d)

CFR Citation:

24 CFR 214

Legal Deadline:

None

Abstract:

This proposed rule would amend HUD's regulations for the Housing Counseling program to address the new program requirements and certification requirements for HUD approved housing counselors as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, approved July 21, 2010). The proposed rule would also reflect the authority and responsibility of HUD's new Office of Housing Counseling to coordinate and administer HUD's Housing Counseling program.

HUD's Housing Counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Section 106 authorizes HUD to provide, make grants to, or contract with public or private organizations to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling program will be administered. These regulations apply to all agencies participating in HUD's Housing Counseling program.

The proposed regulatory amendments will implement the changes made to

section 106 of the Housing and Urban Development Act of 1968 by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which include directing that HUD-approved housing counseling agencies provide counseling that addresses the entire process of homeownership and that HUD establish materials and forms to be used by HUD-approved housing counselors.

Statement of Need:

The rulemaking is needed because HUD's current regulations for the Housing Counseling program do not reflect the changes made to section 106 of section 106 of the Housing and Urban Development Act of 1968 by the Dodd-Frank Wall Street Reform. The changes enhance the choices and protections afforded borrowers participating in HUD's single family mortgage insurance programs.

Summary of Legal Basis:

The Housing Counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as recently amended by subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Alternatives:

As noted, the purpose of this rule is to update HUD's regulations that do not reflect current statutory requirements. While certain statutory changes may be implemented through HUD's annual competitive allocation of fund for the Housing Counseling program provided by appropriations acts, the regulation nevertheless needs to be amended to reflect the program changed made by changes to the underlying statutory authority.

Anticipated Cost and Benefits:

The benefit of the proposed regulatory amendments will be to strengthen the protection of consumers, primarily those who are prospective homeowners but also current homeowners through the enhanced counseling requirements provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The more comprehensive counseling services directed to be provided and the review of materials and forms by HUD designed to better educate consumers about homeownership are expected to produce homebuyers better educated about the homeownership process and less vulnerable to fraudulent mortgage practices. Costs are expected to minimal. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes funding to help establish HUD's new Office of Housing Counseling and the additional functions to be carried out by this office. The Dodd-Frank Wall Street Reform and Consumer Protection Act also authorizes additional funding for the expansion of services to be carried out by HUD-approved counseling agencies.

Risks:

This rule poses no risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 4210–67–S

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

The Department of the Interior (DOI) is the principal Federal steward of our Nation's public lands and resources, including many of our cultural treasures. We serve as trustee to Native Americans and Alaska natives and are responsible for relations with the island territories under United States jurisdiction. We manage more than 500 million acres of Federal lands, including 392 park units, 548 wildlife refuges, and approximately 1.7 billion of submerged offshore acres. This includes some of the highest quality renewable energy resources available to help the United States achieve the President's goal of energy independence, including geothermal, solar, and wind.

The Department protects and recovers endangered species; protects natural, historic, and cultural resources; manages water projects that are a life line and economic engine for many communities in the West; manages forests and fights wildfires; manages Federal energy resources; educates children in Indian schools; and provides recreational opportunities for over 400 million visitors annually in our national parks, public lands, national wildlife refuges, and recreation areas.

We will continue to review and update our regulations and policies to ensure that they are effective and efficient, and that they promote accountability and sustainability. We will emphasize regulations and policies that:

- Promote environmentally responsible, safe, and balanced development of renewable and conventional energy on our public lands and the Outer Continental Shelf;
- Use the best available science to ensure that public resources are protected, conserved, and used wisely;
- Adopt performance approaches focused on achieving cost-effective, timely results;
- Improve the nation-to-nation relationship with American Indian tribes;
- Promote partnerships with States, tribes, local governments, other groups, and individuals to achieve common goals;
- Promote transparency, fairness, accountability, and the highest ethical standards while maintaining performance goals.

Major Regulatory Areas

DOI bureaus implement legislatively mandated programs through their regulations. Some of these regulatory activities include:

- Developing onshore and offshore energy, including renewable, minerals, oil and gas, and other energy resources;
- Managing migratory birds and preserving marine mammals and endangered species;
- Managing dedicated lands, such as national parks, wildlife refuges, National Landscape Conservation System lands, and American Indian trust lands;
- Managing public lands open to multiple use;
- Managing revenues from American Indian and Federal minerals;
- Fulfilling trust and other responsibilities pertaining to American Indians;
- Managing natural resource damage assessments; and
- Managing assistance programs.

Regulatory Policy

How DOI regulatory priorities support the President's energy, resource management, environmental sustainability, and economic recovery goals.

DOI's regulatory programs seek to operate programs transparently, efficiently, and cooperatively while maximizing protection of our land, resources, and environment in a fiscally responsible way by:

(1) Protecting Natural, Cultural, and Heritage Resources.

The Department's mission includes protecting and providing access to our Nation's natural and cultural heritage and honoring our trust responsibilities to tribes. We are committed to this mission and to applying laws and regulations fairly and effectively. Our priorities include protecting public health and safety, restoring and maintaining public lands, protecting threatened and endangered species, ameliorating land- and resource-management problems on public lands, and ensuring accountability and compliance with Federal laws and regulations.

The Bureau of Land Management (BLM) Wildlife Program continues to focus on maintaining and managing wildlife habitat to ensure self-sustaining populations and a natural abundance and diversity of wildlife resources on public lands. BLM-managed lands are vital to game species and hundreds of species of non-game mammals, reptiles, and amphibians. In order to provide for long-term protection of wildlife resources, especially given other mandated land use requirements, the Wildlife Program supports aggressive habitat conservation and restoration activities, many funded by partnerships with Federal, State, and non-governmental organizations. For instance, the Wildlife Program is restoring wildlife habitat across a multi-State region to support species that depend upon sagebrush vegetation. Projects are tailored to address regional issues such as fire (as in the western portion of the sagebrush biome) or habitat degradation and loss (as in the eastern portion of the sagebrush biome). Additionally, BLM undertakes habitat improvement projects in partnership with a variety of stakeholders and consistent with State fish and game wildlife action plans and local working group plans.

The National Park Service (NPS) is working with BLM and the U.S. Fish and Wildlife Service to finalize a rule implementing Public Law 106-206, which directs the Secretary to establish a system of location fees for commercial filming and still photography activities on public lands. While commercial filming and still photography are generally allowed on Federal lands, managing this activity through a permitting process will minimize damage to cultural or natural resources and interference with other visitors to the area. This regulation would standardize location fee rates and collection for all DOI agencies.

The Park Service is developing a new winter use regulation for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This regulation will replace an interim rule expiring at the end of the 2010 to 2011 winter season. It will establish an average daily entrance limit on the number of snowmobiles and snow coaches that may enter the park, and will continue the limit of 10 snowmobiles for groups and guided tours. As the first steps toward developing this new rule, NPS will publish a proposed rule in the spring of 2011.

In 2008, in consultation with an interagency work group, NPS began developing a proposed rule to provide more efficient and cost-effective management of federally owned archaeological collections. At present,

there is no legal procedure to deaccession items in Federal collections that are of ''insufficient archaeological interest;'' i.e., they are of no further value to the science of archaeology or to the integrity of the collection in which they are contained. This rule would free up space in collections and allow custodians to allocate more time and effort to care of remaining items while ensuring proper disposition of those archaeological items.

The rule also requires assigning a specific individual to be accountable for proper disposition. This complicated rule is now undergoing final review and should be ready for publication in early 2011.

(2) Sustainably Using Energy, Water, and Natural Resources.

The Bureau of Land Management has identified a total of approximately 20.6 million acres of public land with wind energy potential in the 11 western states and approximately 29.5 million acres with solar energy potential in the six southwestern states. There are over 140 million acres of public land in western states and Alaska with geothermal resource potential. There is also significant wind and wave potential in our offshore waters. The National Renewable Energy Lab, a Department of Energy national laboratory, has identified more than 1,000 gigawatts of wind potential off the Atlantic coast—roughly equivalent to the Nation's existing installed electric generating capacity—and more than 900 gigawatts of wind potential off the Pacific Coast. Because public lands are extensive and widely distributed, the Department has an important role, in consultation with Federal, State, regional, and local authorities, in siting new transmission lines needed to bring renewable energy assets to load centers.

Since the beginning of the Obama Administration, the Department has focused on renewable energy issues and has established priorities for environmentally responsible development of renewable energy on our public lands and the outer continental shelf. Industry has started to respond by investing in development of wind farms off the Atlantic seacoast and solar, wind, and geothermal energy facilities throughout the west. Power generation from these new energy sources produces virtually no greenhouse gases, and when done in an environmentally sensitive manner, harnesses with minimum impact abundant, renewable energy that nature itself provides. The Department will continue its intra- and inter-departmental efforts to move forward with the environmentally responsible review and permitting of renewable energy projects on public lands.

On March 11, 2009, the Secretary issued his first Secretarial Order that made facilitating production, development, and delivery of renewable energy on public lands and the OCS top priorities at the Department. In accomplishing these goals, the Department will protect our signature landscapes, natural resources, wildlife, and cultural resources and will collaborate with relevant Federal, State, tribal, and other agencies. The Secretarial Order also established an energy and climate change task force that draws from the leadership of each of the bureaus and is responsible for:

- Quantifying potential contributions of renewable energy resources on our public lands and the OCS; and
- Identifying and prioritizing specific areas on public lands where the Department can facilitate a rapid and responsible increase in production of renewable energy.

On April 29, 2009, the former Minerals Management Service published a final rule to establish a program to grant leases, easements, and rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). These regulations will ensure the orderly, safe, and environmentally responsible development of renewable energy sources on the OCS.

(3) Empowering People and Communities.

The Department encourages public participation in the regulatory process by seeking public input on a variety of regulatory issues. For example, every year the Fish and Wildlife Service (FWS) establishes migratory bird hunting seasons in partnership with flyway councils composed of State fish and wildlife agencies. FWS also holds a series of public meetings to give other interested parties, including hunters and other groups, opportunities to participate in establishing the upcoming season's regulations.

Similarly, the Bureau of Land Management uses Resource Advisory Councils made up of affected parties to help prepare land management plans and regulations that it issues.

The National Park Service (NPS) has begun revising its rules on non-Federal development of gas and oil in units of the National Park System. Of the approximately 700 gas and oil wells in 13 NPS units, 55 per cent, or 385 wells, are exempt from current regulations. NPS is revising the regulations to improve protection of NPS resources and bring those 385 wells under the regulatory umbrella. NPS actively sought public input into designing the rule and published an Advance Notice of Proposed Rulemaking with a comment period from November 15, 2009, through January 25, 2010. Interested members of the public were able to make suggestions on the content of the regulation, which NPS will consider in writing the proposed rule. After developing a proposed rule, NPS will solicit further public comment. NPS expects to publish a proposed rule in mid 2011.

Accountability and Sustainability Through Regulatory Efficiency

We are using the regulatory process to improve results while easing regulatory burdens. For instance, the Endangered Species Act (ESA) allows for delisting threatened and endangered species if they no longer need the protection of the ESA. We are working to identify species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate.

The Fish and Wildlife Service has found that making listing decisions under the Endangered Species Act in Hawaii on a traditional, species-by-species basis is inefficient, since very similar information and analysis would be repeated in each rule. To improve efficiency, FWS is making listing decisions for 48 species on the island of Kauai in one regulatory package. This allows the Service to address the existing backlog of candidate species more quickly.

Most candidate species on the Hawaiian Islands face nearly identical threats and are only found in the few remaining native-dominated ecological communities. The impacts of these threats are well understood at the community level, while their impacts to the individual candidate species are relatively less studied. Because this ecological community approach focuses on conserving the key physical and biological components of native communities and ecosystems, it may preclude the need to list additional species found in the same ecological communities. Recovery plans developed in response to the Kauai listing will focus conservation efforts on protection and restoration of ecosystem processes, allowing us to more efficiently address

common threats in the most important areas.

DOI bureaus work to make our regulations easier to comply with and understand. Our regulatory process ensures that bureaus share ideas on how to reduce regulatory burdens while meeting the requirements of the laws they enforce and improving their stewardship of the environment and resources. Results include:

- Effective stewardship of our Nation's resources in a way that is responsive to the needs of small businesses;
- Increased benefits per dollars spent by carefully evaluating the economic effects of planned rules; and
- Improved compliance and transparency by use of plain language in our regulations and guidance documents.

Bureaus and Offices Within DOI

The following brief descriptions summarize the regulatory functions of DOI's major regulatory bureaus and offices.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) administers and manages 56 million acres of land held in trust by the United States for Indians and Indian tribes, providing services to approximately 1.9 million Indians and Alaska Natives, and maintaining a government-to-government relationship with the 565 federally recognized Indian tribes. BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives, as well as to provide quality education opportunities to students in Indian schools.

In the coming year, BIA will continue its regulatory focus on improved management of trust responsibilities and promotion of economic development in Indian communities. In addition, we will focus on updating Indian education regulations and on other regulatory changes to increase transparency in support of the President's Open Government Initiative.

With the input of tribal leaders, individual Indian beneficiaries, and other subject matter experts, BIA has been examining ways to better serve its beneficiaries. The American Indian Probate Reform Act of 2004 (AIPRA) made clear that regulatory changes were necessary to update the manner in which we meet our trust management responsibilities. We have promulgated regulations implementing the probate-related provisions of AIPRA and will now focus on regulations to implement other AIPRA provisions related to managing Indian land.

The focus on promoting economic development in Indian communities is a core component of BIA's mission. Economic development initiatives can attract businesses to Indian communities and fund services that support the health and well-being of tribal members.By providing the tools necessary to promote economic development, economic development can enable tribes to attain self-sufficiency, strengthen their governments, and reduce crime.

Indian education is a top priority of the Assistant Secretary—Indian Affairs. For this reason, we will review Indian education regulations to ensure that they adequately support efforts to provide students of BIA-funded schools with the best education possible.

Finally, BIA's regulatory focus on increasing transparency implements the President's Open Government Initiative. We will ensure that all regulations that we draft or revise meet high standards of readability and accurately and clearly describe BIA processes.

BIA's regulatory priorities are to:

- Develop regulations to meet the Indian trust reform goals for land consolidation and land use management.

  BIA is developing amendments to regulations in the areas of land title and records, conveyances of trust or restricted land, leasing, grazing, trespass, rights-of-way, and energy and minerals. Together, these regulatory changes will provide the Department with the tools it needs to better serve beneficiaries and will standardize procedures for consistent execution of fiduciary responsibilities across the BIA.

- Revise loan guaranty regulations to promote private investment in Indian Country.

  BIA plans to propose a rule that would address the chronic lack of business lending faced by Indian communities. While BIA currently operates a successful loan guaranty, insurance, and interest subsidy program, the program's current regulations are best suited to assisting for-profit businesses to secure loans in the $250,000 to $10 million range. Revisions to the rule would:
  - Promote financing for smaller loans (under $250,000), which are important for sparking economic development, by allowing community development financial institutions to obtain program guarantees and insurance and by using fiscal transfer agents to encourage financing for small loans.
  - Obtain funding for higher cost projects (above $10 million)-including infrastructure projects, energy projects, and other large projects requiring a longer repayment horizon-by offering a Federal Government guarantee for taxable tribal bonds. The guarantee would help ensure bond placement, decrease market rates charged for bonds, and help tribes become established in the bond market.
  - Extend eligibility for the program to non-profit borrowers who make a significant economic contribution to the Indian reservation or tribal service area.

  These changes are authorized by the Indian Financing Act, as amended by the Native American Technical Corrections Act of 2006.

- Identify and develop regulatory changes necessary for improved Indian education.

  BIA is currently reviewing regulations addressing grants to tribally controlled community colleges and other Indian education regulations. The review will identify provisions that need to be updated to comply with applicable statutes and ensure that the proper regulatory framework is in place to support students of Bureau-funded schools.

- Develop regulatory changes to reform the process for Federal acknowledgment of Indian tribes.

  Over the years, BIA has received significant comments from American Indian groups and members of Congress on the Federal acknowledgment process established by 25 CFR part 83. Most of these comments claim that the current process is cumbersome and overly restrictive. BIA is reviewing the current Federal acknowledgment regulation and will develop any necessary regulatory changes.

- Revise regulations governing administrative appeals and other processes to increase transparency.

  BIA is making a concentrated effort to improve the readability and precision of its regulations. Because trust beneficiaries often turn to the regulations for guidance on how a given BIA process works, BIA is

ensuring that each revised regulation is written as clearly as possible and accurately reflects the current organization of the Bureau. A few of the regulations BIA will be focusing this effort on include the regulation governing administrative appeals (25 CFR part 2), the land use management regulations mentioned above, and regulations addressing various Indian services.

The Bureau of Land Management

The Bureau of Land Management (BLM) manages the 245-million-acre National System of Public Lands, located primarily in the western States, including Alaska, and the 700-million-acre subsurface mineral estate located throughout the Nation. BLM's complex multiple-use mission affects the lives of a great number of Americans, including those who live near and visit the public lands, as well as millions of Americans who benefit from commodities, such as minerals, energy, or timber, produced from the lands' rich resources.

BLM's multiple-use mission conserves the lands' natural and cultural resources and sustains the health and productivity of the public lands for the use and enjoyment of present and future generations. BLM manages such varied uses as energy and mineral development, outdoor recreation, livestock grazing, and forestry and woodlands products. This year, BLM has celebrated the 10th anniversary of the National Landscape Conservation System (NLCS), created in 2000 to highlight the conservation side of the Agency's multiple-use mandate. Last year, Congress, through the passage of the Omnibus Public Land Management Act (Pub. L. 111-11), affirmed its support of BLM-managed NLCS in statute and added 929,000 acres of wilderness, one national monument, four national conservation areas, 363 miles of wild and scenic rivers, and 40 miles of national scenic and historic trails to the NLCS. More than 880 NLCS treasured landscapes now span the Nation from Florida to Alaska.

BLM is analyzing proposals for increasing renewable energy development on public lands. The quality of life that Americans enjoy today depends largely upon a stable and abundant supply of affordable energy. Because BLM manages more Federal land than any other agency—more than 245 million surface acres and 700 million subsurface acres of mineral estate—it plays a key role in ensuring that the Nation's energy needs are met by managing both Federal renewable and non-renewable sources of energy. This is accomplished in an environmentally and fiscally sound way that protects our natural resources and critical wildlife habitat for such species as the sage-grouse and lynx. Although renewable energy can help reduce greenhouse gases, its development is not without environmental impacts. Large, commercial-scale solar energy plants, for example, can have long-term environmental impacts and may override other uses of the land.

Another BLM priority is siting and authorizing transmission corridors to assist the national effort to move renewable energy from production sites to market. BLM has already accomplished a significant step in this direction by designating more than 5,000 miles of energy transport corridors for the West-wide Energy Corridors. Development of actual transmission lines is done by authorizing rights-of-way across public lands.

In an effort to prioritize its complex, multiple-use responsibilities, BLM has identified several emphasis areas to help explain its regulatory priorities. The following describes these programs and initiatives and reflects their interrelationship with the following priorities of the Secretary of the Interior:

- Energy independence
- Treasured landscapes
- Native American Nations

Treasured landscapes

Protecting the landscapes of the National System of Public Lands involves numerous BLM programs as the Agency moves toward a holistic, landscape-level approach to managing multiple public land uses. BLM also engages partners interested in working on a broader scale across jurisdictional lines to achieve a common landscape vision. For the past several years, BLM, which manages the largest amount and the greatest diversity of fish and wildlife habitat of any Federal agency, has focused on restoring healthy landscapes in a number of ways, including:

- Reducing the number of wild horses and burros on public lands, particularly in areas most affected by drought and wildfire. Maintaining the wild horse and burro population at appropriate management levels is critical in the effort to conserve forage resources that also sustain native wildlife and livestock.
- Restoring habitat for sensitive, rare, threatened, and endangered species, such as sage-grouse, desert tortoise, and salmon.
- Supporting greater biodiversity through noxious weed and invasive species treatments to bring back native plants.
- Improving water quality by restoring riparian areas and protecting watersheds. Enhanced water quality aids in the restoration of habitat for fish and other aquatic and riparian species.
- Conducting post-fire recovery efforts to promote healthy landscapes and discourage the spread of invasive species.

Native American Nations

BLM consults with Indian tribes on a government-to-government basis under multiple authorities and is continually working to assess and improve its tribal consultation practices. BLM held listening sessions throughout the West on this important issue in 2009 and 2010 and received many valuable comments. BLM has continued its efforts to improve its tribal consultation practices by participating with the Department in multiple listening sessions with tribes throughout the country.

The Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, associated funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. The statute and implementing regulations represent a careful balance between the legitimate interests of lineal descendants, Indian tribes, and Native Hawaiian organizations to control the remains of their ancestors and cultural property and the legitimate public interests in scientific and educational information associated with the human remains and cultural items.

BLM is complying with the new NAGPRA regulations, including inventorying and repatriating human remains and other cultural items that are in BLM museum collections. BLM also consults with Indian tribes on implementing appropriate actions when human remains and other cultural items subject to NAGPRA are inadvertently discovered or intentionally excavated on the public lands.

Additionally, BLM, in cooperation with the Bureau of Indian Affairs, helps tribes and individual Indian allottees

develop their solid and fluid mineral resources. BLM is responsible for development, product measurement, and inspection and enforcement of extracting operations of the mineral estate on trust properties.

BLM's regulatory priorities

BLM's regulatory focus is directed primarily by the priorities of the President and Congress, which include:

- Facilitating domestic production of various sources of energy, including biomass, wind, solar, and other alternative sources.
- Providing for a wide variety of public uses while maintaining the long-term health and diversity of the land.
- Preserving significant natural, cultural, and historic resource values.
- Understanding the arid, semi-arid, arctic, and other ecosystems that BLM manages.
- Using the best scientific and technical information to make resource management decisions.
- Understanding the needs of the people who use and enjoy BLM-managed public lands and providing them with quality service.
- Securing the recovery of a fair return for using publicly owned resources and avoiding the creation of long-term liabilities for American taxpayers.
- Resolving problems and implementing decisions in cooperation with other agencies, States, tribal governments, and the public.

In developing regulations, BLM recognizes the need to ensure communication, coordination, and consultation with the public, including affected interests, tribes, and other stakeholders. BLM also works to draft regulations that are easy for the public to understand and that provide clarity to those most affected by them.

BLM's specific regulatory priorities include:

Revising onshore oil and gas operating standards

BLM expects to publish rules to revise several existing onshore oil and gas operating orders and propose one new onshore order. Onshore orders establish requirements and minimum standards and provide standard operating procedures. The orders are binding on operating rights owners and operators of Federal and Indian (except the Osage Nation) oil and gas leases and on all wells and facilities on State or private lands committed to Federal agreements. BLM is responsible for ensuring that oil or gas produced and sold from Federal or Indian leases is accurately measured for quantity and quality. The volume and quality of oil or gas sold from leases is key to determining the proper royalty to be paid by the lessee to the Office of Natural Resources Revenue. Existing Onshore Orders Number 3, 4, and 5 would be revised to use new industry standards so that they reflect current operating procedures and to require that proper verification and accounting practices are used consistently. New Onshore Order Number 9 would cover waste prevention and beneficial use. The revisions would ensure that proper royalties are paid on oil and gas removed from Federal and Trust lands.

Revising coal-management regulations

BLM plans to publish a proposed rule to amend the coal-management regulations that pertain to the administration of Federal coal leases and logical mining units. The rule would primarily implement provisions of the Energy Policy Act of 2005 that pertain to administering coal leases. The rule also would clarify the royalty rate applicable to continuous highwall mining, a new coal-mining method in use on some Federal coal leases.

Publishing rules on paleontological resources preservation

The 2009 omnibus public lands law included provisions on permitting for the collection of paleontological resources. BLM and the National Park Service are co-leads of a team with the U. S. Forest Service that will be drafting a paleontological resources rule. The rule would address the protection of paleontological resources and how BLM would permit the collection of these resources. The rule would also address other issues such as administering permits, casual collection of rocks and minerals, hobby collection of common invertebrate plants and fossils, and civil and criminal penalties for violation of these rules.

Revising the timber sale contract extension regulations

BLM regulations currently allow timber sale contract extensions under very limited circumstances and specifically do not allow extensions for ''market fluctuations.'' Nor do the regulations allow any reduction of contract value due to declines in the lumber market. BLM plans to publish a rule that would amend the forest product disposal regulations that pertain to the administration of forest product contracts. The recent decline in the housing industry has resulted in a more severe decline in the timber market than historically experienced, leaving many purchasers of BLM timber sale contracts without a reasonable market in which to sell harvested timber. The revised rule would allow BLM to extend contracts under specified circumstances. Regulatory changes would provide BLM more options to help maintain the logging and sawmilling infrastructure needed to manage the 66 million acres of timber and woodland resources on the public lands.

The Bureau of Ocean Energy Management, Regulation and Enforcement

On April 20, 2010, an explosion and fire erupted on an offshore drilling rig in the Gulf of Mexico called the *Deepwater Horizon.* As a result, the Secretary recommended a series of steps to immediately improve the safety of offshore oil and gas drilling operations in Federal waters and a suspension of certain permitting and drilling activities until the safety measures can be implemented and further analysis completed. Recommended actions include prescriptive near-term requirements, longer-term performance-based safety measures, and one or more Department-led working groups to evaluate longer-term safety issues.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM) replaced the former Minerals Management Service (MMS) and will strengthen oversight and policing of offshore oil and gas development. The program is national in scope and has two major program offices:

1) The Bureau of Ocean Energy Management will function as the resource manager for the conventional and renewable energy and mineral resources on the outer continental shelf (OCS). It will foster environmentally responsible and appropriate development of the OCS for both conventional and renewable energy and mineral resources in an efficient and effective manner that ensures fair market value for the rights conveyed.

2) The Bureau of Safety and Environmental Enforcement will apply independent regulation, oversight, and enforcement powers to promote and enforce safety in offshore energy exploration and production operations and ensure that potentially negative environmental impacts on marine ecosystems and coastal

communities are appropriately considered and mitigated.

In 2009, MMS completed a major milestone by developing and codifying the regulatory framework for renewable energy projects on the OCS. We are continuing to implement the regulatory provisions for developing the Nation's offshore wind, wave, and ocean current resources in a safe and environmentally sound manner.

Our regulatory focus for fiscal year 2011 is directed by Presidential and legislative priorities that emphasize contributing to America's energy supply, protecting the environment, and ensuring a fair return for taxpayers for energy production from Federal and Indian lands.

Our regulatory priorities are to:

- Establish New Requirements for Safety Measures for Oil and Gas Operations.

  This interim final rule published on October 15, 2010 (74 FR 63610). It implements certain safety measures outlined in a Safety Measures Report to the President dated May 27, 2010, which was prepared in response to the Deepwater Horizon event. The recommendations implemented in this interim rule revise regulations related to subsea and surface blowout preventers, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, well completion, and well plugging.

- Develop a Comprehensive Safety and Environmental Management Program for Offshore Operations and Facilities.

  Promulgate a final rule for all OCS oil and gas operations and facilities under BOEM's jurisdiction including, but not limited to, drilling, production, construction, well workover, well completion, pipelines, fixed and floating facilities, mobile offshore drilling units, and lifting activities. This rule adds requirements for recordkeeping and documentation, hazards analysis, and job safety analysis for activities identified or discussed in the Safety and Environmental Management System program. It published on October 14, 2010 (74 FR 63346).

- Develop additional rules and regulations as a result of ongoing reviews of BOEMRE's offshore regulatory regime.

  Several investigations and reviews of BOEMRE are being conducted by various agencies and entities—including the Safety Oversight Board, the Office of Inspector General, the President's Deepwater Horizon Commission, the National Academy of Engineering, and the joint BOEMRE/USCG investigation of Deepwater Horizon. Some of these investigations and reviews focus narrowly on the Deepwater Horizon explosion; others are broader in focus and include many aspects of BOEMRE's current regulatory system. We expect that recommendations for regulatory changes—both substantive and procedural—will be generated by these investigations and reviews, and will need to be reviewed, analyzed, and potentially incorporated in new or modified regulations.

- Determine the proper value of coal for advanced royalty purposes.

  Implementing requirements in the Energy Policy Act of 2005, these regulations will provide clarification by re-designating and amending a BLM coal valuation directive. The rule will provide a needed alternative method to determine the value of coal for advanced royalty purposes.

Office of Natural Resource Revenue

The revenue responsibilities of the former MMS will now be located in the Office of Natural Resource Revenue (ONRR), which will continue to collect, account for, and disburse more than $13 billion per year in revenues from Federal offshore energy and mineral leases and from onshore mineral leases on Federal and Indian lands. The program will operate Nationwide and will be primarily responsible for timely and accurate collection, distribution, and accounting for revenues associated with mineral and energy production. The regulatory program of ONRR will seek to:

- Simplify valuation regulations.

  ONRR plans to simplify the regulations at 30 CFR part 206 for establishing the value for royalty purposes of oil, natural gas, coal, and geothermal produced from Federal and Indian leases. Additionally, the proposed rule would consolidate sections of the regulations common to all minerals such as definitions and instructions regarding how a payor should request a valuation determination.

- Finalize debt collection regulations.

  ONRR is preparing regulations governing collection of delinquent royalties, rentals, bonuses, and other amounts due under Federal and Indian oil, gas, and other mineral leases. The regulations would include provisions for administrative offset and would clarify and codify the provisions of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

- Continue to meet Indian trust responsibilities.

  ONRR has a trust responsibility to accurately collect and disburse oil and gas royalties on Indian lands. ONRR will increase royalty certainty by addressing oil valuation for Indian lands through a rulemaking process involving key stakeholders.

U.S. Fish and Wildlife Service

The mission of the U.S. Fish and Wildlife Service (FWS) is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. FWS also helps ensure a healthy environment for people by providing opportunities for Americans to enjoy the outdoors and our shared natural heritage.

FWS fulfills its responsibilities through a diverse array of programs that:

- Protect and recover threatened and endangered species;
- Monitor and manage migratory birds;
- Restore native aquatic populations and nationally significant fisheries;
- Enforce Federal wildlife laws and regulate international trade;
- Conserve and restore wildlife habitat such as wetlands;
- Help foreign governments conserve wildlife through international conservation efforts;
- Distribute Federal funds to States, territories, and tribes for fish and wildlife conservation projects; and
- Manage the 96-million-acre National Wildlife Refuge System, which protects and conserves fish and wildlife and their habitats and allows the public to engage in outdoor recreational activities.

Critical challenges to the work of FWS include global climate change; shortages of clean water suitable for wildlife; invasive species that are harmful to our fish, wildlife, and plant resources and their habitats; and the alienation of children and adults from the natural world. To address these challenges, FWS has identified six priorities:

- The National Wildlife Refuge System—conserving our lands and resources;
- Landscape conservation—working with others;

- Migratory birds—conservation and management;
- Threatened and endangered species—achieving recovery and preventing extinction;
- Connecting people with nature—ensuring the future of conservation; and
- Aquatic species—the National Fish Habitat Action Plan (a plan that brings public and private partners together to restore U.S. waterways to sustainable health).

To carry out these priorities, FWS has a large regulatory agenda that will, among other things:

- List, delist, and reclassify species on the Lists of Endangered and Threatened Wildlife and Plants and designate critical habitat for certain listed species;
- Update our regulations to carry out the Convention on International Trade in Wild Fauna and Flora;
- Manage migratory bird populations;
- Administer the subsistence program for harvest of fish and wildlife in Alaska;
- Update our regulations governing the Wildlife and Sport Fish Restoration Program; and
- Set forth hunting and sport fishing regulations for the National Wildlife Refuge System.

National Park Service

In November 2006, the National Park Service completed a nearly 10-year public process to develop a management plan for the Colorado River in Grand Canyon National Park. The Service is now implementing the plan by developing regulations that: Implement permit requirements for commercial river trips below a specified location in the canyon; update visitor use restrictions and camping closures; and eliminate unnecessary provisions in the current regulation. The proposed rule was published in the **Federal Register** on July13, 2009, and the public comment period ended on September 11, 2009. The Service hopes to complete and publish a final rule by the end of 2010.

The National Park Service is working with the Bureau of Land Management and the Fish and Wildlife Service to finalize rules implementing Public Law 106-206, which directs the Secretary to establish a reasonable fee system (location fees) for commercial filming and still photography activities on public lands. Although commercial filming and still photography are generally allowed on Federal lands, it is in the public's interest to manage these activities through a permitting process. This will minimize the possibility of damage to the cultural or natural resources or interference with other visitors to the area. This regulation would standardize the collection of location fees by DOI agencies.

Bureau of Reclamation

The Bureau of Reclamation's mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, we employ management, engineering, and science to achieve effective and environmentally sensitive solutions.

Reclamation projects provide: Irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses. We have continued to focus on increased security at our facilities.

Our regulatory program focus in fiscal year 2011 is to ensure that our mission and laws that require regulatory actions are carried out expeditiously, efficiently, and with an emphasis on cooperative problem solving by implementing two newly authorized programs:

- Title I of Public Law 109-451 authorizes establishment of a rural water supply program to enable the Bureau of Reclamation to coordinate with rural communities throughout the Western United States to identify their potable water supply needs and evaluate options for meeting those needs. Under the Act, we are finalizing a rule that will define how we will identify and work with eligible rural communities. We published an interim final rule on November 17, 2008, and expect to publish a final rule in 2011.
- Title II of Public Law 109-451 authorizes the Secretary of the Interior, through the Bureau of Reclamation, to issue loan guarantees to assist in financing: (a) rural water supply projects, (b) extraordinary maintenance and rehabilitation of Reclamation project facilities, and (c) improvements to infrastructure directly related to Reclamation projects. This new program will provide an additional funding option to help western communities and water managers to cost effectively meet their water supply and maintenance needs. Under the Act, we are working with the Office of Management and Budget to publish a rule that will establish criteria for administering the loan guarantee program. We published a proposed rule on October 6, 2008, and expect to publish a final rule in 2011.

BILLING CODE 4310–RK–S

DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The Department of Justice's highest priority is to protect America against acts of terrorism, both foreign and domestic, within the letter and spirit of the Constitution. While vigorously pursuing the fight against terrorism, the Department is also reinvigorating its traditional missions by embracing its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place. The Department is working to achieve the fair and impartial administration of justice for all Americans, to assist its State and local partners, and to defend the Nation's interests according to the law. In addition to using investigative, prosecutorial, and other law enforcement activities, the Department is also using the regulatory process to better carry out the Department's wide-ranging law enforcement missions.

The Department of Justice's key regulatory priorities include regulatory initiatives in the area of civil rights, criminal justice, and immigration. These are summarized below. However, in addition to these initiatives, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not separately discussed in this overview of the regulatory priorities, those components have key roles in implementing the Department's anti-terrorism and law enforcement priorities.

Civil Rights

In September 2010, the Department published its final rules amending its regulations implementing title II of the Americans with Disabilities Act (ADA), which prohibits discrimination by public entities, and title III of the ADA, which prohibits discrimination by public accommodations and certain testing entities and requires commercial facilities to be constructed or altered in compliance with the ADA accessibility standards. These key regulations adopt revised ADA Standards for Accessible Design and address certain key policy issues. During the course of this rulemaking project, the Department became aware of the need to provide guidance on four additional subject matter areas—use of accessible web sites, movie captions and video descriptions, the accessibility of emergency call centers (Next Generation 9-1-1), and accessible equipment and furniture. On July 26, 2010, the Department published an advance notice of proposed rulemaking (ANPRM) for each of these subject areas. These rules will be the focus of the Civil Rights Division's regulatory activities for FY 2011. The Department also plans to propose amendments to its ADA regulations to implement the ADA Amendments Act of 2008, which took effect on January 1, 2009.

The four ANPRMs published on July 26, 2010, include:

NG 9-1-1. This ANPRM seeks information on possible revisions to the Department's regulation to ensure direct access to NG 9-1-1 services for individuals with disabilities. In 1991, the Department of Justice published a regulation to implement title II of the Americans with Disabilities Act of 1990 (ADA). That regulation requires public safety answering points (PSAPs) to provide direct access to persons with disabilities who use analog telecommunication devices for the deaf (TTYs) 28 CFR 35.162. Since that rule was published, there have been major changes in the types of communications technology used by the general public and by people who have disabilities that affect their hearing or speech. Many individuals with disabilities now use the Internet and wireless text devices as their primary modes of telecommunications. At the same time, PSAPs are planning to shift from analog telecommunications technology to new Internet-Protocol (IP)-enabled Next Generation 9-1-1 services (NG 9-1-1) that will provide voice and data (such as text, pictures, and video) capabilities. As PSAPs transition from the analog systems to the new technologies, it is essential that their plans ensure that people with communication disabilities will be able to use the new systems. Therefore, the Department published this ANPRM to begin to develop appropriate guidance for PSAPs that are making this transition.

Movie captioning and video description. Title III of the ADA requires public accommodations to take ''such steps as may be necessary to ensure that no individual with a disability is treated differently because of the absence of auxiliary aids and services, unless the covered entity can demonstrate that taking such steps would cause a fundamental alteration or would result in an undue burden.'' 42 U.S.C. section 12182(b)(2)(A)(iii). Both open and closed captioning and audio recordings are examples of auxiliary aids and services that should be provided by places of public accommodations, 28 CFR section 36.303(b)(1)-(2). The Department stated in the preamble to its 1991 rule that ''[m]ovie theaters are not required * * * to present open-captioned films,'' 28 CFR part 36, app. B, but it was silent regarding closed captioning and video description in movie theaters.

Since 1991, there have been many technological advances in the area of closed captioning and video description for first-run movies. In June 2008, the Department issued a Notice of Proposed Rulemaking (NPRM) to revise the ADA title III regulation, 73 FR 34466, in which the Department stated that it was considering options for requiring that movie theater owners or operators exhibit movies that are captioned or that provide video (narrative) description. The Department received numerous comments urging the Department to issue captioning and video description regulations. The Department is persuaded that such regulations are appropriate. However, the Department decided to issue an ANPRM to obtain more information regarding issues raised by commenters; to seek comment on technical questions that arose from the Department's research; and to learn more about the status of digital conversion. In addition, the Department sought information regarding whether other technologies or areas of interest (e.g., 3D) have developed or are in the process of development that either would replace or augment digital cinema or make any regulatory requirements for captioning and video description more difficult or expensive to implement. Responses to these questions will inform the Department's decisions about the scope of a proposed rule.

Web Site Accessibility. The Internet as it is known today did not exist when Congress enacted the ADA, yet today the World Wide Web plays a critical role in the daily personal, professional, civic, and business life of Americans. The ADA's expansive nondiscrimination mandate reaches goods and services provided by public accommodations and public entities using Internet websites. Being unable to access websites puts individuals at a great disadvantage in today's society, which is driven by a dynamic electronic marketplace and unprecedented access to information. On the economic front, electronic commerce, or ''e-commerce,'' often offers consumers a wider selection and lower prices than traditional, ''brick-and-mortar'' storefronts, with the added convenience of not having to leave one's home to obtain goods and services. For individuals with

disabilities who experience barriers to their ability to travel or to leave their homes, the Internet may be their only way to access certain goods and services. Beyond goods and services, information available on the Internet has become a gateway to education, socializing, and entertainment.

The Internet is also dramatically changing the way that governmental entities serve the public. Public entities are increasingly providing their constituents access to government services and programs through their websites. Through government websites, the public can obtain information or correspond with local officials without having to wait in line or be placed on hold. They can also pay fines, apply for benefits, renew State-issued identification, register to vote, file taxes, request copies of vital records, and complete numerous other everyday tasks. The availability of these services and information online not only makes life easier for the public, but also enables governmental entities to operate more efficiently and at a lower cost.

The ADA's promise to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of American civic and economic life will be achieved in today's technologically advanced society only if it is clear to State and local governments, businesses, educators, and other public accommodations that their websites must be accessible. Consequently, the Department is considering amending its regulations implementing title II and title III of the ADA to require public entities and public accommodations that provide products or services to the public through Internet websites make their sites accessible to and usable by individuals with disabilities.

Equipment and Furniture. Both title II and title III of the ADA require covered entities to make reasonable modifications in their programs or services to facilitate participation by persons with disabilities. In addition, covered entities are required to ensure that people are not excluded from participation because facilities are inaccessible or because the entity has failed to provide auxiliary aids. The use of accessible equipment and furniture is often critical to an entity's ability to provide a person with a disability equal access to its services. Changes in technology have resulted in the development and improved availability of accessible equipment and furniture that benefit individuals with disabilities. Consequently, it is easier now to specify appropriate accessibility standards for such equipment and furniture, as the 2010 ADA Standards will do for several types of fixed equipment and furniture, including ATMs, washing machines, dryers, tables, benches, and vending machines. To the extent that ADA standards apply requirements for fixed equipment and furniture, the Department will look to those standards for guidance on accessibility standards for equipment and furniture that are not fixed. The ANPRM seeks information about other categories of equipment—particularly medical equipment and exercise equipment. The public is invited to suggest other types of equipment that should be addressed.

Prison Rape Elimination

Pursuant to the Prison Rape Elimination Act of 2003 (PREA or the ''Act''), the Department is drafting regulations to adopt national standards for the detection, reduction, and punishment of prison rape. PREA established the National Prison Rape Elimination Commission for the purpose of studying prison rape. The Commission issued a report that provided recommended national standards for reducing prison rape, which in turn, are to be reviewed by the Justice Department. Specifically, PREA mandates that national standards issued pursuant to PREA ''shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission... and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' The Act further provides that the Department ''shall not establish a national standard... that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.''

The Department is reviewing the Commission's recommendations and is drafting proposed regulations. In addition, the Department is reviewing a study by an independent contractor commissioned by the Department's Office of Justice Programs to analyze the costs of the Commission's proposed recommendations. The Department is also reviewing extensive public comments on the Commission's proposed recommendations pursuant to an ANPRM that the Department issued while awaiting the completion of the cost analysis.

Federal Habeas Corpus Review Procedures in Capital Cases

Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, on December 11, 2008, the Department promulgated a final rule to implement certification procedures for States seeking to qualify for the expedited Federal habeas corpus review procedures in capital cases under chapter 154 of title 28 of the United States Code. On February 5, 2009, the Department published in the **Federal Register** a notice soliciting further public comment on all aspects of the December 2008 final rule. As the Department reviewed the comments submitted in response to the February 2009 notice, it considered further the statutory requirements governing the regulatory implementation of the chapter 154 certification procedures. The Attorney General has determined that chapter 154 reasonably could be construed to allow the Attorney General greater discretion in making certification determinations than the December 2008 regulations allowed. Accordingly, a new rulemaking, and the removal of the entire December 2008 final rule, is warranted in order to articulate the standards the Attorney General will apply in making chapter 154 certification decisions and to obtain public input concerning the formulation of such standards. As the first step of this process, the Department published a notice in the **Federal Register** on May 25, 2010, proposing to remove the December 2008 regulations pending the completion of a new rulemaking process. The May 2010 rule will be finalized by a final rule to be published in the fall of 2010. The next step in the process will be the publication of a new proposed rule proposing new chapter 154 certification standards and seeking public input concerning the formulation of such standards.

Criminal Law Enforcement

For the most part, the Department's criminal law enforcement components do not rely on the rulemaking process to carry out their assigned missions. The Federal Bureau of Investigation (FBI), for example, is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to Federal, State, municipal, and international agencies and partners. Only in very limited contexts does the FBI rely on rulemaking. For example, the FBI is currently updating its National Instant

Criminal Background Check System regulations to allow criminal justice agencies to conduct background checks prior to the return of firearms.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of firearms and explosives. ATF's mission and regulations are designed to:

- Curb illegal traffic in, and criminal use of, firearms, and to assist State, local, and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the firearms and explosives industries, including systems for licenses and permits;
- Assure the collection of all National Firearms Act (NFA) firearms taxes and obtain a high level of voluntary compliance with all laws governing the firearms industry; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes and alcohol in avoidance of Federal and State taxes.

ATF will continue, as a priority during fiscal year 2011, to seek modifications to its regulations governing commerce in firearms and explosives. ATF plans to issue final regulations implementing the provisions of the Safe Explosives Act, title XI, subtitle C, of Public Law 107-296, the Homeland Security Act of 2002 (enacted Nov. 25, 2002).

Electronic Prescriptions for Controlled Substances. Combating the proliferation of methamphetamine and preventing the diversion of prescription drugs for illicit purposes are among the Attorney General's top drug enforcement priorities. The Drug Enforcement Administration (DEA) is responsible for enforcing the Controlled Substances Act and its implementing regulations to prevent the diversion of controlled substances, while ensuring adequate supplies for legitimate medical, scientific, and industrial purposes. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances, and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA continues to develop and enhance regulatory controls relating to the diversion control requirements for controlled substances.

One of DEA's key regulatory initiatives is its Interim Final Rule with Request for Comment ''Electronic Prescriptions for Controlled Substances'' [RIN 1117-AA61]. This regulation provides practitioners with the option of writing prescriptions for controlled substances electronically and permits pharmacies to receive, dispense, and archive electronic prescriptions for controlled substances. This regulation provides pharmacies, hospitals, and practitioners with the ability to use modern technology for controlled substance prescriptions while maintaining the closed system of controls on controlled substances.

Bureau of Prisons Initiatives. The Federal Bureau of Prisons issues regulations to enforce the Federal laws relating to its mission: To protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. During the next 12 months, in addition to other regulatory objectives aimed at accomplishing its mission, the Bureau will continue its ongoing efforts to: Streamline regulations, eliminating unnecessary language and improving readability; improve disciplinary procedures through a revision of the subpart relating to the disciplinary process; reduce the introduction of contraband through various means, such as clarifying drug and alcohol surveillance testing programs; protect the public from continuing criminal activity committed within prison; and enhance the Bureau's ability to more closely monitor the communications of high-risk inmates.

Immigration Matters

On March 1, 2003, pursuant to the Homeland Security Act of 2002 (HSA), the responsibility for immigration enforcement and for providing immigration-related services and benefits such as naturalization and work authorization was transferred from the Justice Department's Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). However, the immigration judges and the Board of Immigration Appeals in the Executive Office for Immigration Review (EOIR)) remain part of the Department of Justice. The immigration judges adjudicate approximately 300,000 cases each year to determine whether the aliens should be ordered removed or should be granted some form of relief from removal, and the Board has jurisdiction over appeals from those decisions, as well as other matters. Accordingly, the Attorney General has a continuing role in the conduct of removal hearings, the granting of relief from removal, and the detention or release of aliens pending completion of removal proceedings. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

In several pending rulemaking actions, the Department is working to revise and update the regulations relating to removal proceedings in order to improve the efficiency and effectiveness of the hearings in resolving issues relating to removal of aliens and the granting of relief from removal.

On June 3, 2009, the Attorney General announced his intention to initiate a new rulemaking proceeding for regulations to govern claims of ineffective assistance of counsel in immigration proceedings. The Department is currently drafting regulations to further this goal. The Department is also drafting regulations pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to take into account the specialized needs of unaccompanied alien children in removal proceedings.

DOJ—Legal Activities (LA)

PROPOSED RULE STAGE

93. NATIONAL STANDARDS TO PREVENT, DETECT, AND RESPOND TO PRISON RAPE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

5 USC 301; 28 USC 509; 28 USC 510; 42 USC 15601

CFR Citation:

28 CFR 115

Legal Deadline:

Final, Statutory, June 23, 2010.

Abstract:

The Department of Justice has under review national standards for enhancing the prevention, detection, and response to sexual abuse in confinement settings that were prepared by the National Commission on Prison Rape Elimination pursuant to the Prison Rape Elimination Act of 2003 (PREA) and recommended by the Commission to the Attorney General. Through an Advance Notice of Proposed Rulemaking (ANPRM), the Department received public input on the Commission's proposed national standards and information useful to the Department in publishing a final rule adopting national standards for the detection, prevention, reduction and punishment of prison rape, as mandated by PREA.

Statement of Need:

Rape is violent, destructive, and a crime—no less so when the victim is incarcerated. Tolerance of sexual abuse of prisoners in the government's custody is incompatible with American values. Congress affirmed the duty to protect incarcerated individuals from sexual abuse by enacting the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. section 15601 et seq.

Summary of Legal Basis:

PREA requires the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, and punishment of prison rape. PREA established the Commission to carry out a comprehensive legal and factual study of a penological, physical, mental, medical, social, and economic impacts of prison rape in the United States, and to recommend to the Attorney General national standard for the detection, prevention, reduction and punishment of prison rape. The Commission released its recommended national standards in a report dated June 23, 2009. Pursuant to PREA the final rule adopting national standards ''shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission. . .and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' 42 U.S.C. section 24607(a)(2). PREA expressly mandates that the Department shall not establish a national standard ''that would impose substantial additional costs compared to the costs presently expended by the Federal, State, and local prison authorities.'' 42 U.S.C. section 24607(a)(3).

Alternatives:

Given the specific direction of Congress, the Department is obligated to issue a rule that promulgates regulations establishing national standards to combat prison rape. As discussed in the rule and in the Regulatory Impact Analysis (RIA) the Department has received input from numerous stakeholders concerning the development of these regulations and, as part of the development process, considered a wide range of proposals in developing the content of such standards.

Anticipated Cost and Benefits:

In directing the Attorney General to promulgate national standards for enhancing the prevention, detection, reduction, and punishment of prison rape. Congress understood that such standards were likely to require federal, state, and local agencies (as well as private entities) that operate inmate confinement facilities to incur costs in implementing and complying with those standards. Given the statue's aspiration to ''eliminate'' prison rape in the United states, Congress recognized that costs would need to be expended. Indeed, the statute's findings (42 U.S.C. section 15601) suggest an assessment by Congress that the benefits to society of eliminating prison rape are likely to outweigh any anticipated costs of achieving that goal.

The Department's full discussion of the anticipated costs and benefits of this rule is included in the rule's Initial Regulatory Impact Assessment.

Risks:

These regulations are intended to carry out the intent of Congress to eliminate prison rape. The risks from the failure to promulgate these regulations are primarily that inmates in Federal, State, and local facilities would be at higher risk of sexual assault than they would be if these regulations are promulgated.

Timetable:

Action	Date	FR Cite
ANPRM	03/10/10	75 FR 11077
ANPRM Comment Period End	05/10/10	
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1105–AB34

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DEPARTMENT OF LABOR (DOL)

U.S. DEPARTMENT OF LABOR

Fall 2010 Statement of Regulatory Priorities

Secretary Solis has consistently stated that all of the work of the Department of Labor is focused on achieving *Good Jobs for Everyone.* The Labor Department's vision of a ''good job'' includes jobs that:

• increase workers' incomes and narrow wage and income inequality;

• assure workers are paid their wages and overtime;

• increase workers' incomes and narrow wage and income inequality;

• assure workers are paid their wages and overtime;

• are in safe and healthy workplaces, and fair and diverse workplaces;

• provide workplace flexibility for family and personal care-giving;

• improve health benefits and retirement security for all workers; and

• assure workers have a voice in the workplace.

To achieve this goal, the Department is using every tool in its toolbox, including increased enforcement actions, increased education and outreach, and targeted regulatory actions. Because the Department cannot be in every workplace every day, our targeted regulatory actions are centered on two broad themes—Plan/Prevent/Protect, and Openness and Transparency. These unifying themes seek to foster a new calculus that strengthens protections for workers and results in significantly increased compliance. Employers and other regulated entities must take full ownership over their adherence to Department regulations. The Department also hopes that with greater openness and transparency, workers will be in a better position to judge whether their workplace is one that values health and safety, work-life balance, and diversity.

Plan/Prevent/Protect Compliance Strategy

In the fall 2010 regulatory agenda, the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), and the Wage and Hour Division (WHD) will all propose regulatory actions that would require employers to develop programs to address specific compliance issues within each agency's portfolio. Although the specifics will vary by law, industry, and regulated enterprise, the Plan/Prevent/Protect strategy seeks to remind employers and other regulated entities that they are responsible for full compliance with the law every day, not just when Department inspectors come calling. As announced with the spring 2010 regulatory agenda, the strategy will require employers and other regulated entities to:

• ''**Plan**'': Create a plan for identifying and remediating risks of legal violations and other risks to workers—for example, a plan to inspect their workplaces for safety hazards that might injure or kill workers. Workers will be given opportunities to participate in the creation of the plans. In addition, the plans would be made available to workers so they can fully understand them and help to monitor their implementation.

• **''Prevent''**: Thoroughly and completely implement the plan in a manner that prevents legal violations. The plan cannot be a mere paper process. This will not be an exercise in drafting a plan only to put it on a shelf. The plan must be fully implemented.

• **''Protect''**: Verify on a regular basis that the plan's objectives are being met. The plan must actually protect workers from health and safety risks and other violations of their workplace rights.

Employers and other regulated entities who fail to take these steps to comprehensively address the risks, hazards, and inequities in their workplaces will be considered out of compliance with the law and, depending upon the agency and the substantive law it is enforcing, subject to remedial action. But employers, unions, and others who follow the Department's Plan/Prevent/Protect strategy will assure compliance with employment laws before Labor Department enforcement personnel arrive at their doorsteps. Most important, they will assure that workers get the safe, healthy, diverse, family-friendly, and fair workplaces they deserve.

Openness and Transparency: Tools for Achieving Compliance

Greater openness and transparency continues to be central to the Department's compliance and regulatory strategies. The fall 2010 regulatory plan demonstrates the Department's continued commitment to conducting the people's business with openness and transparency, not only as good government and stakeholder engagement strategies, but as important means to achieve compliance with the employment laws administered and enforced by the Department. Openness and transparency will not only enhance agencies' enforcement actions but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. When employers, unions, workers, advocates, and members of the public have greater access to information concerning workplace conditions and expectations, then we all become partners in the endeavor to create Good Jobs for Everyone.

Worker Protection Responsiveness

The Department believes Plan/Prevent/Protect and increased Openness and Transparency will result in gradual improvements to worker health and safety. However, when the Department identifies specific hazards and risks to worker health, safety, security or fairness, we will utilize our regulatory powers to limit the risk to workers. The fall 2010 regulatory plan includes examples of such regulatory initiatives to address such specific concerns.

MSHA is planning several regulatory initiatives to respond to specific health and safety needs of workers: (1) MSHA plans to issue an emergency temporary standard (ETS) covering the Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines, (2) MSHA advanced the publication date for the proposed rule covering Examinations of Work Areas in Underground Coal Mines from March 2011 to October 2010, and (3) MSHA decided not to publish a request for information on Safety and Health Management Programs for Mines and is instead planning to hold a series of public meetings in October 2010 followed by the publication of a proposed rule in June 2011.

OSHA plans to issue a proposed rule that will update fatality and catastrophe reporting requirements so the Agency receives more timely information on a broader range of catastrophic events, which will help OSHA conduct more responsive investigations.

Crystalline silica exposure is one of the most serious hazards workers face. OSHA and MSHA are both proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard.

Occupational Safety and Health Administration (OSHA)

OSHA's regulatory program is designed to help workers and employers identify hazards in the workplace, prevent the occurrence of injuries and adverse health effects, and communicate with the regulated community regarding hazards and how to effectively control them. Long-recognized health hazards such as silica, beryllium, and emerging hazards such as food flavorings containing diacetyl place American workers at risk of serious disease and death and are initiatives on OSHA's regulatory agenda. In addition to targeting specific hazards, OSHA is focusing on systematic processes that will modernize the culture of safety in America's workplaces.

Plan/Prevent/Protect

Infectious Diseases

OSHA is considering the need for regulatory action to address the risk to workers exposed to infectious diseases in healthcare and other related high-risk environments. The Agency is considering an approach that would combine elements of the Department's Plan/Prevent/Protect strategy with established infection control practices. The Agency received strong stakeholder participation in response to its May 2010 request for information on infectious diseases and is currently reviewing the docket.

In 2007, the healthcare and social assistance sector as a whole had 16.5 million employees. Healthcare workplaces can range from small, private practices of physicians to hospitals that employ thousands of workers. In addition, healthcare is increasingly being provided in other settings such as nursing homes, free-standing surgical and outpatient centers, emergency care clinics, patients' homes, and pre-hospitalization emergency care settings. OSHA is interested in all routes of infectious disease transmission in healthcare settings not already covered by its bloodborne pathogens standard (e.g., contact, droplet, and airborne). The Agency is particularly concerned by studies that indicate that transmission of infectious diseases to both patients and healthcare workers may be occurring as a result of incomplete adherence to recognized, but voluntary, infection control measures. Another concern is the movement of healthcare delivery from the traditional hospital setting, with its greater infrastructure and resources to effectively implement infection control measures, into more diverse and smaller workplace setting with less infrastructure and fewer resources, but with an expanding worker population.

Injury and illness Prevention Program (12P2)

OSHA's I2P2 program is the prototype for the Department's Plan/Prevent/Protect strategy. OSHA's first step in this important rulemaking was to hold stakeholder meetings. Stakeholder meetings were held in East Brunswick, NJ; Dallas, Texas; Washington, DC; and Sacramento, California, beginning in June 2010 and ending in August 2010. More than 200 stakeholders participated in these meetings, and in addition, nearly 300 stakeholders attended as observers. The proposed rule will explore requiring employers to provide their employees with opportunities to participate in the development and implementation of an injury and illness prevention program, including a systematic process to proactively and continuously address workplace safety and health hazards. This rule will involve planning, implementing, evaluating, and improving processes and activities that promote worker safety and health, and address the needs of special categories of workers (such as youth, aging, and immigrant workers). OSHA's efforts to protect workers under the age of 18 will be undertaken in cooperation with the Department's Wage and Hour Division, which has responsibility for enforcing the child labor provisions of the Fair Labor Standards Act. OSHA has substantial evidence showing that employers that have implemented similar injury and illness prevention programs have significantly reduced injuries and illnesses in their workplaces. The new rule would build on OSHA's existing Safety and Health Program Management Guidelines and lessons learned from successful approaches and best practices that have been applied by companies participating in OSHA's Voluntary Protection Program and Safety and Health Achievement Recognition Program, and similar industry and international initiatives.

Addressing Targeted Hazards

Silica

In order to target one of the most serious hazards workers face, OSHA is proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard. Exposure to silica causes silicosis, a debilitating respiratory disease, and may cause cancer, other chronic respiratory diseases, and renal and autoimmune disease as well. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries and workers are often exposed to levels that exceed current OSHA permissible limits, especially in the construction industry where workers are exposed at levels that exceed current limits by several fold. It has been estimated that between 3,500 and 7,000 new cases of silicosis arise each year in the U.S., and that 1,746 workers died of silicosis between 1996 and 2005. Reducing these hazardous exposures through promulgation and enforcement of a comprehensive health standard will contribute to OSHA's goal of reducing occupational fatalities and illnesses. As a part of the Secretary's strategy for securing safe and healthy workplaces, MSHA will also utilize information provided by OSHA to undertake regulatory action related to silica exposure in mines.

Backing Operations

In order to target one of most serious hazards that construction workers face, OSHA is proposing to address worker exposures to the dangers inherent in backing operations through the promulgation and enforcement of a revised construction standard. NIOSH reports that half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause 500 deaths and 15,000 injuries per year. Emerging technologies in the field of backing operations include after market devices, such as camera, radar, and sonar, to help monitor the presence of workers on foot in blind areas, and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers. OSHA is developing this proposal in consultation with MSHA, which will issue an Emergency Temporary Standard concerning Proximity Detection.

Openness and Transparency

Hazard Communication

Hearings on OSHA's proposal to modify its Hazard Communication standard have helped the agency to promote transparency in the communication of chemical hazard information. These hearings gathered information to assist OSHA in creating consistency between its current Hazard Communication standard (HCS) and the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This rulemaking

involves changing the criteria for classifying health and physical hazards to require information regarding the severity of the hazard, a standardized order of information for safety data sheets, and adopting standardized labeling requirements that would be understandable for low-literacy workers or those who do not speak English. The HCS covers over 945,000 hazardous chemical products in 7 million American workplaces and gives workers the ''right to know'' about chemical hazards to which they are exposed. OSHA and other Federal agencies have participated in long-term international negotiations to develop the GHS. Revising the HCS to be consistent with the GHS is expected to significantly improve the communication of hazards to workers in American workplaces, reducing exposures to hazardous chemicals, and reducing occupational illnesses and fatalities.

Modernizing Recordkeeping

In the first half of this year, OSHA held informal meetings to gather information from experts and stakeholders regarding the modification of its current injury and illness data collection system that will help the agency, employers, employees, researchers, and the public prevent workplace injuries and illnesses, as well as support President Obama's Open Government Initiative. Under the proposed rule, OSFIA will explore increasing its legal authority to require employers to electronically submit to the Agency any data required by part 1904 (Recording and Reporting Occupational Injuries). In addition it will set ongoing electronic submission requirements of data for a defined set of establishments. This two-part rule will give OSHA the flexibility to define the scope and frequency of data collection without having to undertake additional rulemakings. With OMB approval, OSHA will be able to conduct data collections ranging from the annual collection of data from a handful of employers to the real-time collection of all part 1904 data from all covered employers. In addition, OSHA will be able to request additional data elements that employers are not required to maintain, such as data on race and ethnicity, as a non-mandatory component of a given data collection. OSHA learned from stakeholders that most large employers already maintain their part 1904 data electronically; as a result, electronic submission will constitute a minimal burden on these employers, while providing a wealth of data to help OSHA, employers, employees, researchers, and the public prevent workplace injuries and illnesses.

Mine Safety and Health Administration (MSHA)

The Mine Safety and Health Administration is the worker protection agency focused on the prevention of death, disease, and injury from mining and the promotion of safe and healthful workplaces for the Nation's miners. The Department believes that every worker has a right to a safe and healthy workplace. Workers should never have to sacrifice their lives for their livelihood, and all workers deserve to come home to their families at the end of their shift safe and whole. MSHA's approach to reducing workplace fatalities and injuries includes promulgating and enforcing mandatory health and safety standards.

Plan/Prevent/Protect

Safety and Health Management Programs for Mines

Year after year, many mines experience low injury and illness rates and low violation rates. For these mine operators, preventing harm to their miners is more than compliance with safety and health requirements; it reflects the embodiment of a culture of safety—from the CEO to the miner. This culture of safety derives from a commitment to an effective, comprehensive safety and health management program. Since compliance with safety and health standards is the responsibility of mine operators, MSHA plans to publish a proposed rule to require mine operators to develop comprehensive Safety and Health Management Programs for Mines. MSHA believes that operators with effective safety and health management programs would identify and correct hazards in a more timely manner, resulting in fewer accidents, injuries and illnesses. To help develop the proposal, MSHA held public meetings and gathered information from worker organizations, industry, academia, government, and safety and health professionals about model safety and health programs.

Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

To complement the safety and health management programs proposed rule, MSHA also plans to issue a proposed rule to address section 303(d) of the Federal Mine Safety and Health Act that requires mine operators to conduct examinations, in areas where miners work or travel, for violations of mandatory health or safety standards. The proposal would assure that underground coal mine operators find and fix violations of mandatory health or safety standards, thereby improving health and safety for miners.

Pattern of Violations

MSHA has determined that the existing pattern criteria and procedures contained in 30 CFR part 104 do not reflect the statutory intent for section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The legislative history of the Mine Act explains that Congress intended the pattern of violations to be an enforcement tool for operators who have demonstrated a disregard for the health and safety of miners. These mine operators, who have a chronic history of persistent significant and substantial (S&S) violations, needlessly expose miners to the same hazards again and again. This indicates a serious safety and health management problem at a mine. The goal of the pattern of violations proposed rule is to compel operators to manage health and safety conditions so that the root causes of S&S violations are found and fixed before they become a hazard to miners. The proposal would reflect statutory intent, simplify the pattern of violations criteria, and improve consistency in applying the pattern of violations criteria.

Addressing Targeted Hazards

Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines

To help prevent explosion hazards, MSHA issued an emergency temporary standard (ETS) in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. MSHA concluded from investigations of mine explosions and other reports that immediate action was necessary to protect miners. Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, accumulations can propagate, increasing the severity of explosions. The ETS requires mine operators to increase the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground bituminous coal mines. The ETS strengthens the protections for miners by reducing both the potential for and the severity of coal mine explosions.

Regulating Crystalline Silica Exposure

The Agency's regulatory actions also exemplify a commitment to protecting the most vulnerable populations while assuring broad-based compliance. Health hazards are pervasive in both coal and metal/nonmetal mines (including surface and underground mines) and large and small mines. As mentioned previously, as part of the Secretary's strategy for securing safe and healthy workplaces, both MSHA and OSHA will be undertaking regulatory actions related to silica. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. In its proposed rule, MSHA plans to follow the recommendation of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, National Institute for Occupational Safety and Health (NIOSH), and other groups to address the exposure limit for respirable crystalline silica. As another example of intra-departmental collaboration, MSHA intends to consider OSHA's work on the health effects of occupational exposure to silica and OSHA's risk assessment in developing the appropriate standard for the mining industry.

Lowering Miners' Exposure to Coal Mine Dust, including Continuous Personal Dust Monitors

MSHA will continue its regulatory action related to preventing Black Lung disease. Data from the NIOSH indicate increased prevalence of coal workers pneumoconiosis (CWP) ''clusters'' in several geographical areas, particularly in the Southern Appalachian Region. MSHA published a notice of proposed rulemaking to address continued risk to coal miners from exposure to respirable coal mine dust. This regulatory action is part of MSHA's Comprehensive Black Lung Reduction Strategy for reducing miners' exposure to respirable dust. This strategy includes enhanced enforcement, education and training, and health outreach and collaboration. The major provisions of the proposal would lower the existing exposure limit from 2.0 mg/m3 to 1.0 mg/m3 over a 2-year phase-in period, provide for single full-shift compliance sampling under both mine operator and MSHA inspector sampling programs, and establish sampling requirements for use of the continuous personal dust monitors.

Proximity Detection Systems

MSHA will issue an emergency temporary standard (ETS) to address the grave danger that miners face when working near mobile equipment in underground mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that immediate action is necessary to protect miners. To date, in 2010, there have been 5 fatalities resulting from crushing and pinning accidents. Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. Proximity detection systems can be installed on mining machinery to detect the presence of personnel or equipment within a certain distance of the machine. The ETS would strengthen the protection for underground miners by reducing the potential of pinning, crushing or striking hazards associated with working close to mobile equipment. As a part of the Secretary's strategy for securing safe and healthy workplaces, OSHA will also undertake regulatory action related to reducing injuries and fatalities to workers in close proximity to moving equipment and vehicles.

Wage and Hour Division (WHD)

The Wage and Hour Division is responsible for administering and enforcing a number of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment.

Plan/Prevent/Protect

Right To Know Under the Fair Labor Standards Act

WHD intends to publish a proposed rule updating the recordkeeping regulation issued under the Fair Labor Standards Act (FLSA) to assist employers in planning to protect workers' entitlement to wages that they have earned and bring greater transparency and openness to the workplace. The proposed rule would address notification of workers' status as employees or some other status such as independent contractors, and whether that worker is entitled to the protections of the FLSA. The proposed rulemaking would also explore requiring employers to provide a wage statement each pay period to their employees. This greater transparency will provide workers with essential information about their employment status and earnings, consistent with the Secretary's strategic vision. This greater transparency will in turn better ensure compliance by regulated entities and assist the Department with its enforcement efforts. This initiative contributes to the Department's efforts to prevent misclassification that denies workers employment law protections to which they are entitled.

As part of this Departmentwide initiative, OSHA's Injury and Illness Prevention Program NPRM and OFCCP's NPRM on Construction Contractor Affirmative Action Requirements, propose to also address employer analyses and worker notification as to whether an individual is an employee or is an independent business, volunteer, or trainee.

Office of Federal Contract Compliance Programs (OFCCP)

Through the work of the Office of Federal Contract Compliance Programs, DOL ensures that the contractors and sub-contractors doing business at over 200,000 establishments provide equal employment opportunities—a fair and diverse workplace. OFCCP ensures workers are recruited, hired, trained, promoted, terminated, and compensated in a non-discriminatory manner by Federal contractors and helps workers in the Federal contractor sector by strengthening affirmative action and by combating discrimination on the basis of race, color, religion, sex, national origin, disability, or status as a protected veteran.

Construction Contractor Affirmative Action Requirements

OFCCP will publish a proposed rule that would enhance the effectiveness of the affirmative action program requirements for Federal and federally assisted construction contractors and subcontractors. The proposed rule would strengthen the regulations that set forth the actions construction contractors are required to take to implement their affirmative action programs particularly in the areas of recruitment, training, and apprenticeships. OFCCP is coordinating with the Employment and Training Administration (ETA), which is developing a proposed regulation revising the equal opportunity regulatory framework under the National Apprenticeship Act.

Employee Benefits Security Administration (EBSA)

The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting and disclosure, and health coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). This includes recent amendments and additions to ERISA enacted in the

Pension Protection Act of 2006, as well as new health coverage provisions under the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act). EBSA's regulatory plan initiatives are intended to improve health benefits and retirement security for workers in every type of job at every income level. EBSA is charged with protecting approximately 150 million Americans covered by an estimated 708,000 private retirement plans, 2.6 million health plans, and similar numbers of other welfare benefit plans which together hold $5.2 trillion in assets.

EBSA will continue to issue guidance implementing the health reform provisions of the Affordable Care Act and other laws, such as the Mental Health Parity and Addiction Equity Act, to help provide better quality health care for American workers and their families. EBSA's regulations reduce discrimination in health coverage, promote better access to quality coverage, and protect the ability of individuals and businesses to keep their current health coverage. Many regulations are joint rulemakings with the Departments of Health and Human Services and the Treasury.

Using regulatory changes to produce greater openness and transparency is an integral part of EBSA's contribution to a Departmentwide compliance strategy. These efforts will not only enhance EBSA's enforcement toolbox but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. Several proposals from the EBSA agenda expand disclosure requirements, substantially enhancing the availability of information to employee benefit plan participants and beneficiaries and employers, and strengthening the retirement security of America's workers.

Health Reform Implementation

These regulations require better disclosure to participants and beneficiaries regarding their health plan coverage. These disclosures must now provide new and better descriptions regarding:

Certain enrollment opportunities and access to health coverage; rights to internal claims and appeals, and external review of health plan denials; access to providers; and a group health plan's status as a grandfathered health plan, which affects consumer protections under the Patient Protection and Affordable Care Act.

Enhancing participant protections

EBSA recently proposed amendments to its regulations to clarify the circumstances under which a person will be considered a ''fiduciary'' when providing investment advice to employee benefit plans and their participants and beneficiaries of such plans. The amendments would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice. This initiative is intended to assure retirement security for workers in all jobs regardless of income level by ensuring that financial advisers and similar persons are required to meet ERISA's strict standards of fiduciary responsibility.

Lifetime Income Options

In February 2010, EBSA published a request for information concerning steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefits distribution options for participants and beneficiaries of defined contribution plans. EBSA recently held a hearing with the Department of the Treasury and Internal Revenue Service to further explore these possibilities during the fall 2010 regulatory cycle. This initiative is intended to assure retirement security for workers in all jobs regardless of income level by helping to ensure that participants and beneficiaries have the benefit of their plan savings throughout retirement.

Promoting Openness and Transparency

In addition to its health care reform and participant protection initiatives, EBSA is pursuing a regulatory program that, as reflected in the Unified Agenda, is designed to encourage, foster, and promote openness, transparency, and communication with respect to the management and operations of pension plans, as well as participant rights and benefits under such plans. Among other things, EBSA will be issuing a final rule that will ensure that the participants and beneficiaries in participant-directed individual account plans are provided the information they need, including information about plan and investment-related fees and expenses, to make informed decisions about the management of their individual accounts and the investment of their retirement savings (RIN 1210-AB07); EBSA also will be issuing a proposed rule addressing the requirement that administrators of defined benefit pension plans annually disclose the funding status of their plan to the plan's participants and beneficiaries (RIN l210-AB18). EBSA's Unified Agenda also includes the publication of a proposed rule requiring the automatic furnishing of a statement to pension plan participants informing them of their accrued and vested pension benefits, as well as other information pertinent to their retirement security (RIN 1210-AB20). In addition, EBSA will be amending the disclosure requirements applicable to plan investment options, including Qualified Default Investment Alternatives, to better ensure that participants understand the operations and risks associated with investments in target date funds (RIN 1210-AB38). A complete listing of EBSA's regulatory initiatives (both Plan and non-Plan items) is provided in the Unified Agenda portion of this document.

Office of Labor-Management Standards (OLMS)

The Office of Labor-Management Standards (OLMS) administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA promotes labor-management transparency by requiring unions, employers, labor-relations consultants, and others to file reports that are publicly available. The LMRDA includes provisions protecting union member rights to participate in their union's governance, to run for office and fully exercise their union citizenship, as well as procedural safeguards to ensure free and fair union elections. Besides enforcing these provisions, OLMS also ensures the financial accountability of unions, their officers and employees, through enforcement and voluntary compliance efforts. Because of these activities, OLMS better ensures that workers have a more effective voice in the governance of their unions, which in turn affords them a more effective voice in their workplaces. OLMS also administers certain provisions of Executive Order 13496 that require Federal contractors to notify their employees concerning their rights under Federal labor laws.

Openness and Transparency

Persuader Agreements: Employer and Labor Consultant Reporting under the LMRDA

OLMS is proposing a regulatory initiative to provide workers with information critical to their effective participation in the workplace, both as union members and as employees. OLMS intends to propose regulations to better implement the public disclosure objectives of the LMRDA in situations where an employer engages a consultant

in order to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a consultant to persuade employees concerning their rights to organize and collectively bargain, or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant is also required to report such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. The Department is reconsidering the current policy concerning the scope of the ''advice exception.'' When workers have the necessary information about arrangements that have been made by their employer to persuade them whether or not to form, join or assist a union, they are better able to make a more informed choice about representation.

Employment and Training Administration (ETA)

The Employment and Training Administration (ETA) administers and oversees programs that prepare workers for good jobs at good wages by providing high quality job training, employment, labor market information, and income maintenance services through its national network of One-Stop centers. The programs within ETA promote pathways to economic independence for individuals and families. Through several laws, ETA is charged with administering numerous employment and training programs designed to assist the American worker in developing the knowledge, skills, and abilities that are sought after in the 21st century's economy.

Openness and Transparency

Temporary Non Agricultural Employment of H-2B Aliens in the United States

As part of the Department's labor certification responsibilities, ETA certifies whether U.S. workers capable of performing the jobs for which employers are seeking foreign workers are available and whether the employment of foreign workers will adversely affect the wages and working conditions of U.S. workers similarly employed. Through the Wage and Hour Division (WHD), the Department enforces compliance with the conditions of an H-2B petition and Department of Labor-approved temporary labor certification.

The proposed rule seeks to ensure that only those employers who demonstrate a real temporary need for foreign workers will have access to the H-2B program. The proposed rule also will seek to provide U.S. workers with greater access to the jobs employers wish to fill with temporary H-2B workers through more robust recruitment by employers to demonstrate the unavailability of U.S. workers and through the creation of a national, electronic job registry. In addition, the Department is reviewing the current wage determination methodology to ensure that wages are not being adversely affected across industries and occupations. The proposed rule will explore strengthening existing worker protections, establishing new protections, and enhancing ETA program integrity measures and WHD enforcement to ensure adequate protections for both U.S. and H-2B workers. The proposal will include greater transparency and openness to provide U.S. workers with greater information and access to the job opportunities.

Addressing Targeted Concerns of Workers

Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations

The revision of the National Apprenticeship Act Equal Opportunity in Apprenticeship and Training (EEO) regulations is a critical element in the Department's vision to promote and expand registered apprenticeship opportunities in the 21st Century while safeguarding the welfare and safety of all apprentices. In October 2008, ETA issued a final rule updating 29 CFR part 29, the regulatory framework for registration of apprenticeship programs and apprentices, and administration of the National Apprenticeship System. The companion EEO regulations, 29 CFR part 30, have not been amended since 1978. ETA proposes to update part 30 EEO in the Apprenticeship and Training regulations to ensure that they act in concert with the 2008 revised part 29 rule. The proposed EEO regulations also will further Secretary Solis' vision of good jobs for everyone by ensuring that apprenticeship program sponsors develop and fully implement affirmative action efforts that provide equal opportunity for all applicants to apprenticeship and apprentices, regardless of race, gender, national origin, or disability. ETA is coordinating with OFCCP, which is developing a proposed regulation that would enhance the effectiveness of the affirmative action program requirements for Federal and federally assisted construction contractors and subcontractors.

DOL—Office of Federal Contract Compliance Programs (OFCCP)

PROPOSED RULE STAGE

94. CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION REQUIREMENTS

Priority:

Other Significant

Legal Authority:

sec 201, 202, 205, 211, 301, 302, and 303 of EO 11246, as amended; 30 FR 12319; 32 FR 14303, as amended by EO 12086

CFR Citation:

41 CFR 60–1; 41 CFR 60–4

Legal Deadline:

None

Abstract:

This Notice of Proposed Rulemaking (NPRM) would revise the regulations in 41 CFR part 60-4 implementing the affirmative action requirements of Executive Order 11246 that are applicable to Federal and federally assisted construction contractors. The NPRM will strengthen and enhance the effectiveness of the affirmative action program requirements for Federal and federally-assisted construction contractors and subcontractors, particularly in the area of recruitment and job training.

Statement of Need:

The regulations implementing construction contractor affirmative action obligations under Executive Order 11246, as amended, were last revised in 1980. Recent data show that disparities in the representation of women and racial minorities continue to exist in on-site construction occupations in the construction industry. The NPRM would remove outdated regulatory provisions, propose a new method for establishing affirmative action goals, and propose

other revisions to the affirmative action requirements that reflect the realities of the labor market and employment practices in the construction industry today.

Summary of Legal Basis:

This action is not required by statute or court order. Legal Authority: Sections 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319: 32 FR 14303, as amended by E.O. 12086.

Alternatives:

Regulatory alternatives will be addressed as the NPRM is developed

Anticipated Cost and Benefits:

There may be some additional costs to contractors as a result of the increased scope of required actions. The benefits would likely include increased diversity in construction workplaces and increased opportunities for women and minorities to get on-site construction jobs. More detailed cost and benefit analyses will be made as the NPRM is developed.

Risks:

Failure to provide updated regulations may impede the equal opportunity rights of some workers in protected classes.

Timetable:

Action	Date	FR Cite
NPRM	07/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Federalism:

Undetermined

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Related RIN: Previously reported as 1215–AB81

RIN: 1250–AA01

DOL—Office of Labor-Management Standards (OLMS)

PROPOSED RULE STAGE

95. PERSUADER AGREEMENTS: EMPLOYER AND LABOR RELATIONS CONSULTANT REPORTING UNDER THE LMRDA

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

29 USC 433; 29 USC 438

CFR Citation:

29 CFR 405; 29 CFR 406

Legal Deadline:

None

Abstract:

The Department intends to publish notice and comment rulemaking seeking consideration of a revised interpretation of section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA). That statutory provision creates an ''advice'' exemption from reporting requirements that apply to employers and other persons in connection with persuading employees about the right to organize and bargain collectively. A proposed revised interpretation would narrow the scope of the advice exemption.

Statement of Need:

The Department of Labor is proposing a regulatory initiative to better implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act (LMRDA) regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant also is required to report concerning such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. The Department believes that its current policy concerning the scope of the ''advice exception'' is overbroad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace.

Summary of Legal Basis:

This proposed rulemaking is authorized under U.S.C. sections 433 and 438 and applies to regulations at 29 CFR part 405 and 29 CFR part 406.

Alternatives:

Alternatives will be developed and considered in the course of notice and comment rulemaking.

Anticipated Cost and Benefits:

Anticipated costs and benefits of this proposed regulatory initiative have not been assessed and will be determined at a later date, as appropriate.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.olms.dol.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Previously reported as 1215–AB79

RIN: 1245–AA03

DOL—Wage and Hour Division (WHD)

PROPOSED RULE STAGE

96. RIGHT TO KNOW UNDER THE FAIR LABOR STANDARDS ACT

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

29 USC 211(c)

CFR Citation:

29 CFR 516

Legal Deadline:

None

Abstract:

The Department of Labor proposes to update the recordkeeping regulations under the Fair Labor Standards Act in order to enhance the transparency and disclosure to workers of their status as the employer's employee or some other status, such as an independent contractor, and if an employee, how their pay is computed. The Department also proposes to clarify that the mandatory manual preparation of ''homeworker'' handbooks applies only to employers of employees performing homework in the restricted industries. The title of this proposed rule has changed to better reflect the purpose of this action.

Statement of Need:

The recordkeeping regulation issued under the Fair Labor Standards Act (FLSA), 29 CFR part 516, specifies the scope and manner of records covered employers must keep that demonstrate compliance with minimum wage, overtime, and child labor requirements under the FLSA, or the records to be kept that confirm particular exemptions from some of the Act's requirements may apply. This proposal intends to update the recordkeeping requirements to foster more openness and transparency in demonstrating employers' compliance with applicable requirements to their workers, to better ensure compliance by regulated entities, and to assist in enforcement. In addition, the proposal intends to update the requirements for live-in domestic employees and, to clarify that the mandatory manual preparation of ''homeworker'' handbooks applies only to employers of employees performing homework in the restricted industries.

Summary of Legal Basis:

These regulations are authorized by section 11 of the Fair Labor Standards Act, 29 U.S.C. 211.

Alternatives:

Alternatives will be developed in considering proposed revisions to the current recordkeeping requirements. The public will be invited to provide comments on the proposed revisions and possible alternatives.

Anticipated Cost and Benefits:

The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local, State, Tribal

Federalism:

Undetermined

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Related RIN: Previously reported as 1215–AB78

RIN: 1235–AA04

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

97. LABOR CERTIFICATION PROCESS AND ENFORCEMENT FOR TEMPORARY EMPLOYMENT IN OCCUPATIONS OTHER THAN AGRICULTURE OR REGISTERED NURSING IN THE UNITED STATES (H–2B WORKERS)

Priority:

Other Significant

Legal Authority:

8 USC 1101(a)(15)(H)(ii)(B)); 8 USC 1184(c)(1); 8 CFR 214.2(h)

CFR Citation:

20 CFR 655

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) regulations require employers to apply for a temporary labor certification from the Department of Labor before H-2B visas may be approved. DOL certifies that there are not sufficient U.S. worker(s) who are capable of performing the temporary services or labor at the time of an application for a visa, and that the employment of the H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. This regulation proposes to re-engineer the H-2B program in order to enhance transparency and strengthen program integrity and protections of both U.S. workers and H-2B workers.

Statement of Need:

The Department has determined that a new rulemaking effort is necessary for

the H-2B program. The policy underpinnings of the current regulation, e.g., streamlining the H-2B process to defer many determinations of program compliance until after an application has been adjudicated, do not provide an adequate level of protection for either U.S. or foreign workers. The proposed rule seeks to enhance worker protections and increase the availability of job opportunities to qualified U.S. workers.

Summary of Legal Basis:

The Department of Labor's authority to revise these regulations derives from 8 U.S.C. 1101(a)(15)(H)(ii)(B) and 8 U.S.C. 1184(c)(1) and 8 CFR 214.2(h).

Alternatives:

The public will be afforded an opportunity to provide comments on the proposed regulatory changes when the Department publishes the NPRM in the Federal Register. A final rule will be issued after analysis of, and response to, public comments.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action are under development. The Department of Labor is seeking information on potential additional or actual costs from employers and other interested parties through the NPRM in order to better assess the costs and benefits of the proposed provisions of the program. The proposed changes are thought to raise ''novel legal or policy issues'' but are not economically significant within the context of Executive Order 12866 and are not a ''major rule'' under section 804 for the Small Business Regulatory Enforcement Fairness Act.

Risks:

This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State

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RIN: 1205–AB58

DOL—ETA

98. EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING, AMENDMENT OF REGULATIONS

Priority:

Other Significant

Legal Authority:

sec 1, 50 Stat 664, as amended (29 USC 50; 40 USC 276c; 5 USC 301); Reorganization Plan No 14 of 1950, 64 Stat 1267 (5 USC app p 534)

CFR Citation:

29 CFR 30 (Revision)

Legal Deadline:

None

Abstract:

Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department's vision to promote and expand Registered Apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices. In October 2008, the Agency issued a Final Rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. These regulations, codified at title 29 Code of Federal Regulations (CFR) part 29, had not been updated since 1977. The companion regulations, 29 CFR part 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training, have not been amended since 1978.

The Agency now proposes to update 29 CFR part 30 to ensure that the National Registered Apprenticeship System is consistent and in alignment with EEO law, as it has developed since 1978, and recent revisions to title 29 CFR part 29. This second phase of regulatory updates will ensure that Registered Apprenticeship is positioned to continue to provide economic opportunity for millions of Americans while keeping pace with these new requirements.

Statement of Need:

Federal regulations for Equal Employment Opportunity (EEO) in Apprenticeship and Training have not been updated since 1978. Updates to these regulations are necessary to ensure that DOL regulatory requirements governing the National Registered Apprenticeship System are consistent with the current state of EEO law, the ADA, and recent revisions to title 29 CFR part 29.

Summary of Legal Basis:

These regulations are authorized by the National Apprenticeship Act of 1937 (29 U.S.C. 50) and the Copeland Act (40 U.S.C. 276c). These regulations will set forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or in State Apprenticeship Agencies recognized by the U.S. Department of Labor.

Alternatives:

The public will be afforded an opportunity to provide comments on the proposed amendment to Apprenticeship EEO regulations when the Department publishes a Notice of Proposed Rulemaking (NPRM) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NRPM.

Anticipated Cost and Benefits:

The proposed changes are thought to raise ''novel legal or policy issue'' but are not economically significant within the context of Executive Order 12866 and are not a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act.

Risks:

This action does not affect the public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1205–AB59

DOL—Employee Benefits Security Administration (EBSA)

PRERULE STAGE

99. LIFETIME INCOME OPTIONS FOR PARTICIPANTS AND BENEFICIARIES IN RETIREMENT PLANS

Priority:

Other Significant

Legal Authority:

29 USC 1135; ERISA sec 505

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This initiative will explore what steps, if any, that the Department could or should take, by regulation or otherwise, to enhance the retirement security of American workers by facilitating access to and use of lifetime income or income arrangements designed to provide a stream of income after retirement.

Statement of Need:

With a continuing trend away from defined benefit plans to defined contribution plans, employees are not only increasingly responsible for the adequacy of their retirement savings, but also for ensuring that their savings last throughout their retirement. Employees may benefit from access to and use of lifetime income or other arrangements that will reduce the risk of running out of funds during the retirement years. However, both access to and use of such arrangements in defined contribution plans is limited. The Department, taking into consideration recommendations of the ERISA Advisory Council and others, intends to explore what steps, if any, it could or should take, by regulation or otherwise, to enhance the retirement security of workers by increasing access to and use of such arrangements.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
RFI	02/02/10	75 FR 5253
RFI Comment Period End	05/03/10	
Public Hearing Notice	08/10/10	75 FR 48367
Public Hearing	09/14/10	
Review Public Record	04/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1210–AB33

DOL—EBSA

PROPOSED RULE STAGE

100. DEFINITION OF ''FIDUCIARY''

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 1002; ERISA sec 3(21); 29 USC 1135; ERISA sec 505

CFR Citation:

29 CFR 2510.3–21(c)

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulatory definition of the term ''fiduciary'' set forth at 29 CFR 2510.3-21 (c) to more broadly define as employee benefit plan fiduciaries persons who render investment advice to plans for a fee within the meaning of section 3(21) of ERISA. The amendment would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice.

Statement of Need:

This rulemaking is needed to bring the definition of ''fiduciary'' into line with investment advice practices and to recast the current regulation to better reflect relationships between investment advisers and their employee benefit plan clients. The current regulation may inappropriately limit the types of investment advice relationships that should give rise to fiduciary duties on the part of the investment adviser.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2510.3-21(c) defines the term fiduciary for certain purposes under section 3(21) of ERISA.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Timetable:

Action	Date	FR Cite
NPRM	10/22/10	75 FR 65263
NPRM Comment Period End	01/20/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1210–AB32

DOL—Mine Safety and Health Administration (MSHA)

PROPOSED RULE STAGE

101. RESPIRABLE CRYSTALLINE SILICA STANDARD

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813

CFR Citation:

30 CFR 56 to 57; 30 CFR 70 to 72; 30 CFR 90

Legal Deadline:

None

Abstract:

Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10 mg/m3 divided by the percentage of quartz where the quartz percent is greater than 5 percent calculated as an MRE equivalent concentration. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m3 divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. Both formulas are designed to limit exposures to 0.1 mg/m3 (100 ug) of silica. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH recommends a 50 ug/m3 exposure limit for respirable crystalline silica. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica.

Statement of Need:

MSHA standards are outdated; current regulations may not protect workers from developing silicosis. Evidence indicates that miners continue to develop silicosis. MSHA's proposed regulatory action exemplifies the agency's commitment to protecting the most vulnerable populations while assuring broad-based compliance. MSHA will regulate based on sound science to eliminate or reduce the hazards with the broadest and most serious consequences. MSHA intends to use OSHA's work on the health effects and risk assessment, adapting it as necessary for the mining industry.

Summary of Legal Basis:

Promulgation of this standard is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

This rulemaking would improve health protection from that afforded by the existing standards. MSHA will consider alternative methods of addressing miners' exposures based on the capabilities of the sampling and analytical methods.

Anticipated Cost and Benefits:

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

For over 70 years, toxicology information and epidemiological studies have shown that exposure to respirable crystalline silica presents potential health risks to miners. These potential adverse health effects include simple silicosis and progressive massive fibrosis (lung scarring). Evidence indicates that exposure to silica may cause cancer. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to respirable crystalline silica.

Timetable:

Action	Date	FR Cite
NPRM	07/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Local, State

URL For More Information:

www.msha.gov/regsinfo.htm

URL For Public Comments:

www.regulations.gov

Agency Contact:

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RIN: 1219–AB36

DOL—MSHA

102. LOWERING MINERS' EXPOSURE TO COAL MINE DUST, INCLUDING CONTINUOUS PERSONAL DUST MONITORS

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813(h)

CFR Citation:

30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90

Legal Deadline:

None

Abstract:

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust

standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis (CWP) or (black lung) and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). In September 1995, NIOSH issued a Criteria Document in which it recommended that the respirable coal mine dust permissible exposure limit (PEL) be cut in half. In February 1996, the Secretary of Labor convened a Federal Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners (Advisory Committee) to assess the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee represented the labor, industry and academic communities. The Committee submitted its report to the Secretary of Labor in November 1996, with the majority of the recommendations unanimously supported by the Committee members. The Committee recommended a number of actions to reduce miners' exposure to respirable coal mine dust. This proposed rule is an important element in MSHA's Comprehensive Black Lung Reduction Strategy (Strategy) to ''End Black Lung Now'' and combines the following rulemaking actions: (1) ''Occupational Exposure to Coal Mine Dust (Lowering Exposure),'' RIN 1219-AB64; (2) ''Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust,'' RIN 1219-AB14; (3) ''Determination of Concentration of Respirable Coal Mine Dust,'' RIN 1219-AB18; and (4) ''Respirable Coal Mine Dust: Continuous Personal Dust Monitor (CPDM),'' RIN 1219-AB48.

Statement of Need:

Comprehensive respirable dust standards for coal mines were designed to reduce the incidence, and eventually eliminate, CWP and silicosis. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners remain at risk of developing occupational lung disease, according to NIOSH. Recent NIOSH data indicates increased prevalence of CWP ''clusters'' in several geographical areas, particularly in the Southern Appalachian Region.

Summary of Legal Basis:

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

Alternatives:

MSHA is considering amendments, revisions, and additions to existing standards.

Anticipated Cost and Benefits:

MSHA developed a preliminary regulatory economic analysis to accompany the proposed rule.

Risks:

Respirable coal dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause coal workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. MSHA is pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure. MSHA developed a risk assessment to accompany the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/19/10	75 FR 64412
Hearings	11/15/10	75 FR 69617
NPRM Comment Period End	02/28/11	
NPRM–Rescheduling of Public Hearings; Correction	11/30/10	75 FR 73995
Post Hearing Comment Period End	02/28/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

http://www.msha.gov/S&HINFO/BlackLung/homepage2009.asp

URL For Public Comments:

http://www.regulations.gov

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RIN: 1219–AB64

DOL—MSHA

103. SAFETY AND HEALTH MANAGEMENT PROGRAMS FOR MINES

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

30 USC 811 and 812

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

MSHA held public meetings and gathered information and suggestions from the mining community on effective, comprehensive safety and health management programs, including programs used in the mining industry. MSHA will use all information received to develop a proposed rule for safety and health management programs to eliminate hazards and prevent injuries and illnesses at mines.

Statement of Need:

Mining is one of the most hazardous industries in this country. Yet year after year, many mines experience low injury and illness rates and low violation rates. For these mine operators, preventing harm to their miners is more than compliance with safety and health requirements; it reflects an embodiment of a culture of safety—from CEO to the miner to the contractor. This culture of safety derives from a commitment to a systematic, effective, comprehensive management of safety and health at mines with full participation of all miners.

MSHA believes requiring effective safety and health management

programs in mining will create a sustained industry-wide effort to eliminate hazards and will result in the prevention of injuries and illnesses.

Summary of Legal Basis:

Promulgation of this standard is authorized by section 101 of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

Alternatives:

No reasonable alternatives to this regulation would be as comprehensive or as effective in eliminating hazards and preventing injuries and illnesses.

Anticipated Cost and Benefits:

MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

Risks:

The lack of a comprehensive safety and health management program contributes to a higher incidence of injury and illness rates and higher violation rates.

Timetable:

Action	Date	FR Cite
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1219–AB71

DOL—MSHA

104. PATTERN OF VIOLATIONS

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

30 USC 814(e); 30 USC 957

CFR Citation:

30 CFR 104

Legal Deadline:

None

Abstract:

MSHA is preparing a proposed rule to revise the Agency's existing regulation for pattern of violations contained in 30 CFR part 104. MSHA has determined that the existing pattern criteria and procedures do not reflect the statutory intent for section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that operators manage health and safety conditions at mines so that the root causes of significant and substantial (S&S) violations are addressed before they become a hazard to the health and safety of miners. The legislative history of the Mine Act explains that Congress intended the pattern of violations tool be used for operators who have demonstrated a disregard for the health and safety of miners. The proposal would reflect statutory intent, simplify the pattern of violations criteria, and improve consistency in applying the patterns of violations criteria.

Statement of Need:

The pattern of violations provision was a new enforcement tool in the Mine Act. The Mine Act places the ultimate responsibility for ensuring the safety and health of miners on mine operators. The goal of the pattern of violations proposed rule is to compel operators to manage health and safety conditions so that the root causes of S&S violations are found and fixed before they become a hazard to miners. MSHA's existing regulation is not consistent with the language, purpose, and legislative history of the Mine Act and hinders the Agency's use of pattern of violations to identify chronic violators who thumb their noses at the law by a continuing cycle of citation and abatement.

Summary of Legal Basis:

Promulgation of this standard is authorized by sections 104(e) and 957 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

MSHA will consider alternative criteria for determining when a pattern of significant and substantial violations exists in order to improve health and safety conditions in mines and provide protection for miners. Congress provided the Secretary with broad discretion in determining criteria, recognizing that MSHA may need to modify the criteria as Agency experience dictates.

Anticipated Cost and Benefits:

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

Risks:

Mine operators with a chronic history of persistent serious violations needlessly expose miners to the same hazards again and again. These operators demonstrate a disregard for the safety and health of miners; this indicates a serious safety and health management problem at the mine. The existing regulation has not been effective in reducing repeated risks to miners at these mines.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

http://www.msha.gov/regsinfo.htm

URL For Public Comments:

http://www.regulations.gov

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RIN: 1219–AB73

DOL—MSHA

105. • MAINTENANCE OF INCOMBUSTIBLE CONTENT OF ROCK DUST IN UNDERGROUND COAL MINES

Priority:

Other Significant

Legal Authority:

30 USC 811, 864

CFR Citation:

30 CFR sec 75.403

Legal Deadline:

None

Abstract:

The Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. MSHA concluded from investigations of mine explosions and other reports that immediate action was necessary to protect miners.

Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, it can propagate, increasing the severity of the explosion. The ETS requires mine operators to increase the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground areas of bituminous mines. The ETS further requires that the incombustible content of such combined dust be raised 0.4 percent for each 0.1 percent of methane present. The ETS strengthens the protection for miners by reducing the potential for a coal mine explosion.

Statement of Need:

MSHA determined that a revised standard for ''Maintenance of Incombustible Content of Rock Dust'' is necessary to immediately protect underground coal miners from hazards of coal dust explosions. This determination is based on: (1) MSHA's accident investigation reports of mine explosions in intake air courses that involved coal dust (Dubaniewicz 2009); (2) the National Institute for Occupational Safety and Health's Report of Investigations 9679 (Cashdollar et al. 2010), ''Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways''; and (3) MSHA's experience and data.

Summary of Legal Basis:

Promulgation of this standard is authorized by section 101(b) of the Federal Mine Safety and Health Act of 1977.

Alternatives:

MSHA will consider revisions to the ETS, based on public comments received during the rulemaking process.

Anticipated Cost and Benefits:

MSHA estimates that the ETS would result in approximately $22.0 million in yearly costs for the underground bituminous coal mining industry. The ETS provides additional safety protection for miners in underground bituminous coal mines from the explosion hazard of coal and other dusts. MSHA estimates that, on average, the ETS would prevent approximately 1.5 deaths every year and would prevent one additional injury about every 4 years.

Risks:

Based on NIOSH's data and recommendations, and MSHA's data and experience, the Secretary determined that miners are exposed to grave danger in areas of underground bituminous coal mines that are not properly and sufficiently rock dusted in accordance with the requirements in this ETS.

Timetable:

Action	Date	FR Cite
Emergency Temporary Standard	09/23/10	75 FR 57849
Hearing	10/26/10	
Hearing	10/28/10	
Hearing	11/16/10	
Hearing	11/18/10	
Comment Period End	12/20/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.msha.gov/regsinfo.htm

URL For Public Comments:

www.regulations.gov

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RIN: 1219–AB76

DOL—MSHA

FINAL RULE STAGE

106. PROXIMITY DETECTION SYSTEMS FOR UNDERGROUND MINES

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Mine Safety and Health Administration (MSHA) will issue an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners face when working near mobile equipment in underground mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that immediate action is necessary to protect miners. To date, in 2010, there have been five fatalities resulting from crushing and pinning accidents.

Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. The ETS would strengthen the protection for underground miners by reducing the potential of pinning, crushing or striking hazards associated with working close to mobile equipment. As a part of the Secretary's strategy for securing safe and healthy workplaces, the Mine Safety and Health Administration will undertake regulatory action related to reducing

injuries and fatalities to workers in close proximity to moving equipment and vehicles.

Statement of Need:

Mining is one of the most hazardous industries in this country. Miners continue to be injured or killed resulting from pinning, crushing, or striking accidents involving mobile equipment. Equipment is available to help prevent accidents that cause debilitating injuries and accidental death.

Summary of Legal Basis:

Promulgation of this standard is authorized by section 101(b) of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

Alternatives:

No reasonable alternatives to this regulation would be as comprehensive or as effective in eliminating hazards and preventing injuries.

Anticipated Cost and Benefits:

MSHA will develop a regulatory economic analysis to accompany the ETS.

Risks:

The lack of proximity detection systems on mobile equipment in underground mines contributes to a higher incidence of debilitating injuries and accidental deaths.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	02/01/10	75 FR 5009
Comment Period Ended	04/02/10	
Emergency Temporary Standard	03/00/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

107. INFECTIOUS DISEASES

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

5 USC 533; 29 USC 657 and 658; 29 USC 660; 29 USC 666; 29 USC 669; 29 USC 673; . . .

CFR Citation:

29 CFR 1910

Legal Deadline:

None

Abstract:

Employees in health care and other high-risk environments face long-standing infectious diseases hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles (rubeola), as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Health care workers and workers in related occupations or who are exposed in other high-risk environments are at increased risk of contracting TB, SARS, MRSA, and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is concerned about the ability of employees to continue to provide health care and other critical services without unreasonably jeopardizing their health.

OSHA is considering the need for a standard to ensure that employers establish a comprehensive infection control program and control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

OSHA published an RFI on May 6, 2010, the comment period closed on August 4, 2010. OSHA is currently analyzing the comments submitted by stakeholders.

Statement of Need:

In 2007, the healthcare and social assistance sector as a whole had 16.5 million employees. Healthcare workplaces can range from small private practices of physicians to hospitals that employ thousands of workers. In addition, healthcare is increasingly being provided in other settings such as nursing homes, free-standing surgical and outpatient centers, emergency care clinics, patients' homes, and prehospitalization emergency care settings. The Agency is particularly concerned by studies that indicate that transmission of infectious diseases to both patients and healthcare workers may be occurring as a result of incomplete adherence to recognized, but voluntary, infection control measures. Another concern is the movement of healthcare delivery from the traditional hospital setting, with its greater infrastructure and resources to effectively implement infection control measures, into more diverse and smaller workplace setting with less infrastructure and fewer resources, but with an expanding worker population.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	05/06/10	75 FR 24835
RFI Comment Period End	08/04/10	
Analyze Comments	12/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—OSHA

108. INJURY AND ILLNESS PREVENTION PROGRAM

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 653; 29 USC 655(b); 29 USC 657

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

OSHA is developing a rule requiring employers to implement an Injury and Illness Prevention Program. It involves planning, implementing, evaluating, and improving processes and activities that protect employee safety and health. OSHA has substantial data on reductions in injuries and illnesses from employers who have implemented similar effective processes. The Agency currently has voluntary Safety and Health Program Management Guidelines (54 FR 3904-3916), published in 1989. An injury and illness prevention rule would build on these guidelines as well as lessons learned from successful approaches and best practices under OSHA's Voluntary Protection Program Safety and Health Achievement Recognition Program and similar industry and international initiatives such as American National Standards Institute/American Industrial Hygiene Association Z10 and Occupational Health and Safety Assessment Series 18001. Twelve States have similar rules.

Statement of Need:

There are approximately 5,000 workplace fatalities and approximately 3.5 million serious workplace injuries every year. There are also many workplace illnesses caused by exposure to common chemical, physical, and biological agents. OSHA believes that an injury and illness prevention program is a universal intervention that can be used in a wide spectrum of workplaces to dramatically reduce the number and severity of workplace injuries. Such programs have been shown to be effective in many workplaces in the United States and internationally.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives:

The alternatives to this rulemaking would be to issue guidance, recognition programs, or allow for the states to develop individual regulations. OSHA has used voluntary approaches to address the need, including publishing Safety and Health Program Management Guidelines in 1989. In addition, OSHA has two recognition programs, the Voluntary Protection Program (known as VPP), and the Safety and Health Achievement Recognition Program (known as SHARP). These programs recognize workplaces with effective safety and health programs. Several States have issued regulations that require employers to establish effective safety and health programs.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking and the costs and benefits are still under development for this regulatory action.

Risks:

A detailed risk analysis is underway.

Timetable:

Action	Date	FR Cite
Stakeholder Meetings	06/03/10	
Initiate SBREFA	06/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—OSHA

109. • BACKING OPERATIONS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655(b)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

NIOSH reports that half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause 500 deaths and 15,000 injuries per year. Emerging technologies in the field of backing operations include after market devices, such as camera, radar, and sonar, to help monitor the presence of workers on foot in blind areas, and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers.

Statement of Need:

A study by the Census of Fatal Occupational Injuries found that the most common primary sources of injury to be trucks (45%), road grading and surfacing machinery (15%), and cars (15%). That same study showed that of the 465 vehicle and equipment-related fatalities within work zones, 318 workers on foot were struck by a vehicle. Incidents involving backing vehicles were prominent among the worker-on-foot fatalities that occurred (51%). The primary injury sources of fatalities of workers on foot struck by a construction vehicle were trucks (61%) and construction machines (30%). OSHA believes that regulatory action is necessary to address risks associated with backup operations.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
RFI	05/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—OSHA

PROPOSED RULE STAGE

110. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments.

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline:

None

Abstract:

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula proposed by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1968 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and shipyards (derived from ACGIH's 1970 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50μg/m3 and 25μg/m3 exposure limits, respectively, for respirable crystalline silica.Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials has published recommended standards for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance. OSHA is currently developing a NPRM.

Statement of Need:

Workers are exposed to crystalline silica dust in general industry, construction, and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: Foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur. In 2005, the most recent year for which data is available, silicosis was identified on 161 death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer has designated crystalline silica as carcinogenic to humans, and the National Toxicology Program has concluded that respirable crystalline silica is a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune diseases. Exposure studies and OSHA enforcement data indicate that some

workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and shipyard workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

Alternatives:

Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

Risks:

A detailed risk analysis is under way.

Timetable:

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Initiated Peer Review of Health Effects and Risk Assessment	05/22/09	
Completed Peer Review	01/24/10	
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

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DOL—OSHA

111. OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS—MODERNIZING OSHA'S REPORTING SYSTEM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 657

CFR Citation:

29 CFR 1904

Legal Deadline:

None

Abstract:

OSHA is proposing changes to its reporting system for occupational injuries and illnesses. An updated and modernized reporting system would enable a more efficient and timely collection of data and would improve the accuracy and availability of the relevant records and statistics. This proposal involves modification to 29 CFR part 1904.41 to expand OSHA's legal authority to collect and make available injury and illness information required under part 1904.

Statement of Need:

The collection of establishment specific injury and illness data in electronic format on a timely basis is needed to help OSHA, employers, employees, researchers, and the public more effectively prevent workplace injuries and illnesses, as well as support President Obama's Open Government Initiative to increase the ability of the public to easily find, download, and use the resulting dataset generated and held by the Federal Government.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics (29 U.S.C. 673).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

Analysis of risks is still under development.

Timetable:

Action	Date	FR Cite
Stakeholder Meetings	05/25/10	75 FR 24505
Comment Period End	06/18/10	
NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—OSHA

FINAL RULE STAGE

112. HAZARD COMMUNICATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

Legal Deadline:

None

Abstract:

OSHA's Hazard Communication Standard (HCS) requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and prepare labels and material safety data sheets to convey the hazards and associated protective measures to users of the chemicals. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, material safety data sheets (MSDS), and training for employees. Within the United States (U.S.), there are other Federal agencies that also have requirements for classification and labeling of chemicals at different stages of the life cycle. Internationally, there are a number of countries that have developed similar laws that require information about chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of substances covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for MSDSs), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be used for the same product when it is marketed in different nations.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information. Labels and safety data sheets may include symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Development of multiple sets of labels and safety data sheets is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses may have particular difficulty in coping with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a long-standing effort to harmonize these requirements and develop a system that can be used around the world. In 2003, the United Nations adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Countries are now adopting the GHS into their national regulatory systems.

Statement of Need:

Multiple sets of requirements for labels and safety data sheets present a compliance burden for U.S. manufacturers, distributors, and transports involved in international trade. The comprehensibility of hazard information and worker safety will be enhanced as the GHS will: (1) Provide consistent information and definitions for hazardous chemicals; (2) address stakeholder concerns regarding the need for a standardized format for material safety data sheets; and (3) increase understanding by using standardized pictograms and harmonized hazard statements. The increase in comprehensibility and consistency will reduce confusion and thus improve worker safety and health. In addition, the adoption of the GHS would facilitate international trade in chemicals, reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade. Several nations, including the European Union, have adopted the GHS with an implementation schedule through 2015. U.S. manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not in compliance with the GHS.

Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

Risks:

OSHA's risk analysis is under development.

Timetable:

Action	Date	FR Cite
ANPRM	09/12/06	71 FR 53617
ANPRM Comment Period End	11/13/06	
Complete Peer Review of Economic Analysis	11/19/07	
NPRM	09/30/09	74 FR 50279
NPRM Comment Period End	12/29/09	
Hearing	03/02/10	
Hearing	03/31/10	
Post Hearing Comment Period End	06/01/10	
Final Action	08/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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BILLING CODE 4510–23–S

DEPARTMENT OF TRANSPORTATION (DOT)

Introduction: Department Overview and Summary of Regulatory Priorities

The Department of Transportation (DOT) consists of 10 operating administrations and the Office of the Secretary, each of which has statutory responsibility for a wide range of regulations. DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, and pipeline transportation areas. DOT also regulates aviation consumer and economic issues and provides financial assistance for programs involving highways, airports, public transportation, the maritime industry, railroads, and motor vehicle safety. The Department writes regulations to carry out a variety of statutes ranging from the Americans with Disabilities Act to the Uniform Time Act. Finally, DOT develops and implements a wide range of regulations that govern internal programs such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the use of aircraft and vehicles.

The Department's Regulatory Priorities

The Department's regulatory priorities respond to the challenges and opportunities we face. Our mission generally is as follows:

The national objectives of general welfare, economic growth and stability, and the security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

To help us achieve our mission, we have five strategic goals:

- Safety: Improve public health and safety by reducing transportation-related fatalities and injuries.
- State of Good Repair: Ensure the U.S. proactively maintains its critical transportation infrastructure in a state of good repair.
- Economic Competitiveness: Promote transportation policies and investments that bring lasting and equitable economic benefits to the Nation and its citizens.
- Livable Communities: Foster livable communities through place-based policies and investments that increase transportation choices and access to transportation services.
- Environmental Sustainability: Advance environmentally sustainable policies and investments that reduce carbon and other harmful emissions from transportation sources.

In identifying our regulatory priorities for the next year, the Department considered its mission and goals and focused on a number of factors, including the following:

- The relative risk being addressed
- Requirements imposed by statute or other law
- Actions on the National Transportation Safety Board ''Most Wanted List''
- The costs and benefits of the regulations
- The advantages to non-regulatory alternatives
- Opportunities for deregulatory action
- The enforceability of any rule, including the effect on agency resources

This regulatory plan identifies the Department's regulatory priorities—the 17 pending rulemakings chosen from among the dozens of significant rulemakings listed in the Department's broader regulatory agenda that the Department believes will merit special attention in the upcoming year. The rules included in the regulatory plan embody the Department's focus on our strategic goals.

The regulatory plan reflects the Department's primary focus on safety—a focus that extends across several modes of transportation. For example:

- The Federal Aviation Administration (FAA) will continue to enhance the safety of our airways by its initiative to revise rest requirements for commercial pilots.
- The Federal Motor Carrier Safety Administration (FMCSA) has initiated rulemakings to strengthen the requirements for Electronic On-Board Recorders.
- Both FMCSA and the Federal Railroad Administration (FRA) are working to improve safety by regulating the maximum amount of time commercial drivers and conductors can operate their vehicles.
- National Highway Traffic Safety Administration (NHTSA) will continue its rulemaking to reduce death and injury resulting from incidents involving vehicle drivers backing over people.
- FMCSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) are focusing on important rulemaking initiatives for address distracted driving from the use of electronic devices.

We are taking actions to address other important issues. For example:

- NHTSA is engaged in two major rulemakings to address fuel economy standards for both light and heavy duty vehicles.
- Office of the Secretary of Transportation (OST) is focused on its second major aviation consumer rulemaking designed to further safeguard the interests of consumers flying the Nation's skies.

Each of the rulemakings in the regulatory plan is described below in detail. In order to place them in context, we first review the Department's regulatory philosophy and our initiatives to educate and inform the public about transportation safety issues. We then describe the role in the Department's regulatory process and other important regulatory initiatives of OST and of each of the Department's components. Since each transportation ''mode'' within the Department has its own area of focus, we summarize the regulatory priorities of each mode and of OST, which supervises and coordinates modal initiatives and has its own regulatory responsibilities, such as consumer protection in the aviation industry.

The Department's Regulatory Philosophy and Initiatives

The Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: DOT regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. It will assess the risks addressed by the rules and their costs and benefits, including the cumulative effects. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that regulation does not impose unreasonable mandates.

The Department stresses the importance of conducting high quality rulemakings in a timely manner and reducing the number of old rulemakings. To implement this, the Department has required the following actions: (1) Regular meetings of senior DOT officials to ensure effective policy leadership and timely decisions, (2) effective tracking and coordination of rulemakings, (3) regular reporting, (4) early briefings of interested officials, (5) regular training of staff, and (6) adequate allocations of resources. The Department has achieved significant success because of this effort. It allows the Department to use its resources more effectively and efficiently.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. A few examples include: The Department's development of regulatory process and related training courses for its employees; its use of an electronic, Internet-accessible docket that can also be used to submit comments electronically; a ''list serve'' that allows the public to sign up for e-mail notification when the Department issues a rulemaking document; creation of an electronic rulemaking tracking and coordination system; the use of direct final rulemaking; the use of regulatory negotiation; an expanded Internet page that provides important regulatory information, including ''effects'' reports and status reports (http://regs.dot.gov/); and the use of Internet blogs and other Web 2.0 technology to increase and enhance public participation in its rulemaking process.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

The Department is also actively engaged in the review of existing rules to determine whether they need to be revised or revoked. These reviews are in accordance with section 610 of the Regulatory Flexibility Act, Executive Order 12866, and the Department's Regulatory Policies and Procedures. This includes determining whether the rules would be more understandable if they were written using a plain language approach. Appendix D to our regulatory agenda highlights our efforts in this area.

The Department will also continue its efforts to use advances in technology to improve its rulemaking management process. For example, the Department created an effective tracking system for significant rulemakings to ensure that either rules are completed in a timely manner or delays are identified and fixed. Through this tracking system, a monthly status report is generated. To make its efforts more transparent, the Department has made this report Internet accessible. By doing this, the Department is providing valuable information concerning our rulemaking activity and is providing information necessary for the public to evaluate the Department's progress in meeting its commitment to completing quality rulemakings in a timely manner.

The Department will continue to place great emphasis on the need to complete high quality rulemakings by involving senior departmental officials in regular meetings to resolve issues expeditiously.

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Order 12866 (Regulatory Planning and Review), DOT's Regulatory Policies and Procedures, and other legal and policy requirements affecting rulemaking. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of projects concerning aviation economic rules and other rules that affect multiple elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for use by personnel throughout the Department. OST also plays an instrumental role in the Department's efforts to improve our economic analyses; risk assessments; regulatory flexibility analyses; other related analyses; and data quality, including peer reviews.

OST also leads and coordinates the Department's response to the Office of Management and Budget's (OMB) intergovernmental review of other agencies' significant rulemaking documents and to Administration and congressional proposals that concern the regulatory process. The General Counsel's Office works closely with representatives of other agencies, OMB, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

During fiscal year 2011, OST will continue to focus its efforts on enhancing airline passenger protections by requiring carriers to adopt various consumer service practices (2105-AD92).

OST will also continue its efforts to help coordinate the activities of several operating administrations that advance various departmental efforts that support the Administration's initiatives on promoting safety; stimulating the economy and creating jobs; sustaining and building America's transportation infrastructure; and improving livability for the people and communities who use transportation systems subject to the Department's policies.

Federal Aviation Administration (FAA)

The Federal Aviation Administration is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. It is guided by its Flight Plan goals: Increased Safety, Greater Capacity, International Leadership, and Organizational Excellence. It issues regulations to provide a safe and efficient global aviation system for civil aircraft, while being sensitive to not imposing undue regulatory burdens and costs on small businesses.

FAA Activities that may lead to rulemaking in fiscal year 2011 include:

- Promotion and expansion of safety information sharing efforts, such as FAA-industry partnerships and data-driven safety programs that prioritize and address risks before they lead to accidents. Specifically, FAA will continue implementing Commercial Aviation Safety Team projects related to controlled flight into terrain, loss of control of an aircraft, uncontained engine failures, runway incursions, weather, pilot decisionmaking, and cabin safety. Some of these projects may result in rulemaking and guidance materials.

- Continuing to work cooperatively to harmonize the U.S. aviation regulations with those of other countries, without compromising rigorous safety standards. The differences worldwide in certification standards, practice and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators, some of which are small businesses. Standardization should help the U.S. aerospace industry remain internationally competitive. The FAA continues to publish regulations based on recommendations of Aviation Rulemaking Committees that are the result of cooperative rulemaking between the U.S. and other countries.
- In addition to the regulatory priorities specified below, additional priorities will come from the Airline Safety and Federal Aviation Administration Extension Act of 2010, signed by the President on August 1, 2010.

FAA top regulatory priorities for 2010 to 2011 include:

- Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (2120-AJ00)
- Helicopter Air Ambulance and Commercial Helicopter Safety Initiatives and Miscellaneous Amendments (2120-AJ53)
- Flight and Duty Time Limitations and Rest Requirements (2120-AJ58)

The Crewmember and Aircraft Dispatcher Training rulemaking would include proposals to:

- Reduce human error and improve performance among flight crewmembers, flight attendants, and aircraft dispatchers;
- Enhance traditional training programs through the use of flight simulation training devices for flight crewmembers; and
- Include additional training in areas critical to safety.

The Air Ambulance and Commercial Helicopter rulemaking would include proposals to:

- Codify current agency guidance and address National Transportation Safety Board recommendations;
- Provide certificate holders and pilots with tools and procedures that will aid in reducing accidents;
- Require additional equipment on board helicopters or air ambulances; and
- Amend all part 135 commercial helicopter operations regulations to include equipment requirements, pilot training, and alternate airport weather minimums.

The Flight and Duty Time Limitations and Rest Requirements rulemaking would include proposals to:

- Address fatigue mitigation and use existing fatigue science to establish minimum rest periods, flight time limitations, and duty period limits for flight crewmembers;
- Incorporate the use of Fatigue Risk Management Systems as an option to provide operator flexibility for specific operations; and
- Reduce human error attributed to fatigue among flight crewmembers.

Federal Highway Administration (FHWA)

The Federal Highway Administration (FHWA) carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. The FHWA's mission is to improve continually the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, the FHWA will continue:

- With ongoing regulatory initiatives in support of its surface transportation programs;
- To implement legislation in the least burdensome and restrictive way possible; and
- To pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

FHWA's top regulatory priority for the fiscal year is to address the remaining congressionally directed rulemaking (Real-Time System Management Information Program (2125-AF19)) resulting from the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Additionally, the FHWA is in the process of reviewing all FHWA regulations to ensure that they are consistent with SAFETEA-LU and will update those regulations that are not consistent with this legislation.

Federal Motor Carrier Safety Administration (FMCSA)

The mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. A strong regulatory program is a cornerstone of FMCSA's compliance and enforcement efforts to advance this safety mission. FMCSA develops new and more effective safety regulations based on three core priorities: Raising the bar for entry, maintaining high standards, and removing high-risk behavior. In addition to Agency-directed regulations, FMCSA develops regulations mandated by Congress, such as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). FMCSA regulations establish standards for motor carriers, drivers, vehicles, and State agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA's regulatory plan for FY 2011 includes completion of a number of rulemakings that are high priorities for the Agency because they would have a positive impact on safety. Among the rulemakings included in the plan are: (1) Drivers Of Commercial Vehicles: Restricting The Use Of Cellular Phones (RIN 2126-AB29), (2) Hours of Service (RIN 2126-AB26), (3) Carrier Safety Fitness Determination (RIN 2126-AB11), (4) Electronic On-Board Recorders (EOBRs) and Hours of Service Supporting Documents (RIN 2126-AB20), and (5) National Registry of Certified Medical Examiners (RIN 2126-AA97).

Together these priority rules could help to substantially improve commercial motor vehicle (CMV) safety on our Nation's highways by improving FMCSA's ability to provide safety oversight of motor carriers and drivers. For example, the Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones rulemaking (RIN 2126-AB29) would place restrictions on mobile phone usage while operating a CMV.

A major undertaking by FMCSA, which began in FY 2010, was to initiate a new rulemaking on Hours of Service (RIN 2126-AB26) as the result of a settlement agreement reached on October 26, 2009. Under terms of the settlement, FMCSA submitted a notice of proposed rulemaking to the Office of Management and Budget within 9

months, and must issue a final rule within 21 months of the settlement.

In FY 2011, FMCSA will continue its work on the Comprehensive Safety Analysis 2010 (CSA). The CSA initiative will improve the way FMCSA identifies and conducts carrier compliance and enforcement operations over the coming years. CSA's goal is to improve large truck and bus safety by assessing a wider range of safety performance data from a larger segment of the motor carrier industry through an array of progressive compliance interventions. FMCSA anticipates that the impacts of CSA and its associated rulemaking to put into place a new safety fitness standard will enable the Agency to prohibit ''unfit'' carriers from operating on the Nation's highways (the Carrier Safety Fitness Determination(RIN 2126-AB11)) and will contribute further to the Agency's overall goal of decreasing CMV-related fatalities and injuries.

In FY 2011, FMCSA plans to issue a proposed rule on Electronic On-Board Recorders and Hours of Service Supporting Documents (RIN 2126-AB20) to expand the number of carriers required to install and operate EOBRs and clarify the supporting document requirements beyond the population covered by the Agency's April 5, 2010, final rule.

Also in FY 2011, FMCSA plans to issue a final rule on the National Registry of Certified Medical Examiners (RIN 2126-AA97) to establish training and testing requirements for healthcare professionals who issue medical certificates to CMV drivers.

In order to manage its rulemaking agenda, FMCSA continues to involve senior agency leaders at the earliest stages of its rulemakings, and continues to refine its regulatory development process. The Agency also holds senior executives accountable for meeting deadlines for completing rulemakings.

National Highway Traffic Safety Administration

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) relating to motor vehicles include reducing the number of, and mitigating the effects of, motor vehicle crashes and related fatalities and injuries; providing safety performance information to aid prospective purchasers of vehicles, child restraints, and tires; and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of non-regulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

NHTSA continues to pursue the high priority vehicle safety issue of occupant protection in rollover events and will issue a final rule establishing performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions in fiscal year 2011. NHTSA will continue to work towards a final rule to require the installation of lap/shoulder belts in newly manufactured motorcoaches in accordance with NHTSA's 2007 Motorcoach Safety Plan and DOT's 2009 Departmental Motorcoach Safety Action Plan. NHTSA also plans to publish a final rule on Rearview Visibility in 2011; this action will expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons.

NHTSA will continue its efforts to reduce domestic dependency on foreign oil in accordance with the Energy Independence and Security Act (EISA) of 2007 by publishing in conjunction with EPA a joint notice of proposed rulemaking setting, for the first time, the corporate average fuel economy (CAFE) standards for both medium- and heavy-duty trucks. NHTSA will also publish a notice of proposed rulemaking that would propose CAFE standards for light trucks and passenger cars for model years 2017 and beyond in fiscal year 2011.

In addition to numerous programs that focus on the safe performance of motor vehicles, the Agency is engaged in a variety of programs to improve driver and occupant behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. NHTSA has identified two high priority areas: Safety belt use and impaired driving. To address these issue areas, the Agency is focusing especially on three strategies—conducting highly visible, well-publicized enforcement; supporting prosecutors who handle impaired driving cases and expanding the use of DWI/Drug Courts, which hold offenders accountable for receiving and completing treatment for alcohol abuse and dependency; and adopting alcohol screening and brief intervention by medical and health care professionals. Other behavioral efforts encourage child safety-seat use; combat excessive speed and aggressive driving; improve motorcycle, bicycle, and pedestrian safety; and provide consumer information to the public.

Federal Railroad Administration (FRA)

FRA's current regulatory program contains numerous mandates resulting from the Rail Safety Improvement Act of 2008 (RSIA08), as well as actions supporting the Department's High-Speed Rail Strategic Plan. RSIA08 alone has resulted in at least 18 rulemaking actions, which are competing for limited resources to meet statutory deadlines. FRA has prioritized these rulemakings according to the greatest effect on safety, as well as expressed congressional interest, and will work to complete as many rulemakings as possible prior to their statutory deadlines. Revised timelines for completion of unfinished regulations will be forwarded to Congress for consideration.

Through the Railroad Safety Advisory Committee (RSAC), FRA is working to complete RSIA08 actions that include developing requirements for train conductor certification, roadway worker protection, hours of service for employees of intercity and commuter passenger rail service, and training for railroad employees. Specifically, with regard to passenger hours of service, FRA is developing a notice of proposed rulemaking that would include proposals to establish hours of service limitations for train employees of commuter and intercity passenger railroads. The regulation will also address fatigue issues. RSAC-supported actions that advance high-speed passenger rail include proposed revisions to the Track Safety Standards dealing with vehicle-track interaction. FRA is also initiating a rulemaking related to the development of railroad risk reduction and system safety programs. This activity will be a multi-year effort due to the underlying statutory requirements that must be undertaken prior to the issuance of any final rule.

Federal Transit Administration (FTA)

FTA helps communities support public transportation by making grants of Federal funding for transit vehicles, construction of transit facilities, and

planning and operation of transit and other transit-related purposes. FTA regulatory activity focuses implementing the laws that apply to recipients' uses of federal funding and the terms and conditions of FTA grant awards. FTA policy regarding regulations is to:

- Provide maximum benefit to the mobility of the nation's citizens and the connectivity of transportation infrastructure;
- Provide maximum local discretion;
- Ensure the most productive use of limited Federal resources;
- Protect taxpayer investments in public transportation;
- Incorporate principles of sound management into the grant management process.

As the needs for public transportation have changed over the years, the Federal transit programs have grown in number and complexity. FTA's regulatory priorities for the coming year will reflect the mandates of the Agency's authorization statute, including, most notable, the Major Capital Investments ''New Starts'' program and the State Safety Oversight (SSO) program. The New Starts program is the main source of discretionary Federal funding for construction of rapid rail, light rail, commuter rail, and other forms of transit infrastructure. The SSO program addressed the safety of rapid rail systems and other forms of rail transit not otherwise regulated by the Federal Railroad Administration. FTA also anticipates amending its regulations governing recipients' management of major capital projects and its Bus Testing rule.

Maritime Administration (MARAD)

The Maritime Administration (MARAD) administers Federal laws and programs to promote and strengthen the U.S. merchant marine to meet the economic and security needs of the Nation. To that end, MARAD's efforts are focused upon ensuring a strong American presence in the domestic and international trades and to expanding maritime opportunities for American businesses and workers.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility for ensuring the availability of a U.S. merchant marine that can provide water transportation services for American shippers and consumers and, in times of war or national emergency, for the U.S. armed forces. Major program areas include: The Maritime Security Program; the Voluntary Intermodal Sealift Agreement program; the National Defense Reserve Fleet and the Ready Reserve Force; the Maritime Guaranteed Loan financing program; the United States Merchant Marine Academy, and mariner education and training support programs; the Deepwater Port Licensing program; and monitoring and enforcement of U.S. cargo preference laws. In April 2010, the Secretary announced MARAD's newest program, the ''America's Marine Highway Program.''

MARAD's primary regulatory activities in fiscal year 2011 will be to assess existing cargo preference-related regulations, and to propose updates or new regulations where appropriate.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, PHMSA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Through the Associate Administrator for Pipeline Safety, PHMSA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue to work toward the elimination of deaths and injuries associated with the transportation of hazardous materials by all transportation modes, including pipeline. We will concentrate on the prevention of high-risk incidents identified through the evaluation of transportation incident data and findings of the National Transportation Safety Board. PHMSA will use all available agency tools to assess data; evaluate alternative safety strategies, including regulatory strategies as necessary and appropriate; target enforcement efforts; and enhance outreach, public education, and training to promote safety outcomes.

PHMSA will continue to focus its safety efforts on the resolution of highest priority risks. PHMSA will consider regulatory changes to combat the dangers practice of distracted driving. In an effort to understand and mitigate crashes associated with driver distraction, the DOT has been studying the distracted driving issue with respect to both behavioral and vehicle safety countermeasures. As part of the DOT's overall strategy to this problem, PHMSA plans to address the practice of text messaging (2137-AE63) and mobile phone (2137-AE65) use while driving. PHMSA's rules would apply to commercial motor vehicle drivers transporting a quantity of hazardous material requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

PHMSA is also considering whether changes are needed to the regulations covering hazardous liquid onshore pipelines. In particular, PHMSA is considering whether it should extend regulation to certain pipelines currently exempt from regulation; whether other areas along a pipeline should either be identified for extra protection or be included as additional high consequence areas (HCAs) for Integrity Management (IM) protection; whether to establish and/or adopt standards and procedures for minimum lead detection requirements for all pipelines; whether to require the installation of emergency flow restricting devices (EFRDs) in certain areas; whether revised valve spacing requirements are needed on new construction or existing pipelines; whether repair timeframes should be specified for pipeline segments in areas outside the HCAs that are assessed as part of the IM; and whether to establish and/or adopt standards and procedures for improving the methods of preventing, detecting, assessing and remediating stress corrosion cracking (SCC) in hazardous liquid pipeline systems.

Research and Innovative Technology Administration (RITA)

The Research and Innovative Technology Administration (RITA) seeks to identify and facilitate solutions to the challenges and opportunities facing America's transportation system through:

- Coordination, facilitation, and review of the Department's research and development programs and activities;
- Providing multi-modal expertise in transportation and logistics research, analysis, strategic planning, systems engineering and training;
- Advancement, and research and development, of innovative technologies, including intelligent transportation systems;
- Comprehensive transportation statistics research, analysis, and reporting;

- Managing education and training in transportation and national transportation-related fields; and
- Managing the activities of the John A. Volpe National Transportation Systems Center.

Through its Bureau of Transportation Statistics, Office of Airline Information, RITA collects, compiles, analyzes, and makes accessible information on the Nation's air transportation system. RITA collects airline financial, traffic, and operating statistical data, including on-time flight performance data that highlight long tarmac times and chronically late flights. This information gives the Government consistent and comprehensive economic and market data on airline operations that are used in supporting policy initiatives and administering the Department's mandated aviation responsibilities, including negotiating international bilateral aviation agreements, awarding international route authorities, performing airline and industry status evaluations, supporting air service to small communities, setting Alaskan Bush Mail rates, and meeting international treaty obligations.

Through its Intelligent Transportation Systems Joint Program Office (ITS/JPO), RITA conducts research and demonstrations and, as appropriate, may develop new regulations, in coordination with OST and other DOT operating administrations, to enable deployment of ITS research and technology results. This office collects and disseminates benefits and costs information resulting from ITS-related research along with direct measurement of the deployment of ITS nationwide. These efforts support market assessments for emerging market sectors that would be cost-prohibitive for industry to absorb alone. Such information is widely consumed by the community of stakeholders to determine their deployment needs.

The ITS Architecture and Standards Programs develop and maintain a National ITS Architecture; develop open, non-proprietary interface standards to facilitate rapid and economical adoption of nationally interoperable ITS technologies; and cooperate to harmonize ITS standards internationally. These standards are incorporated into DOT operating administration regulatory activities when appropriate.

Through its Volpe National Transportation Systems Center, RITA provides a comprehensive range of engineering expertise, and qualitative and quantitative assessment services, focused on applying, maintaining and increasing the technical body of knowledge to support DOT operating administration regulatory activities.

Through its Transportation Safety Institute, RITA designs, develops, conducts, and evaluates training and technical assistance programs in transportation safety and security to support DOT operating administration regulatory implementation and enforcement activities.

RITA's regulatory priorities are to assist OST and all DOT operating administrations in updating existing regulations by applying research, technology, and analytical results; to provide reliable information to transportation system decisionmakers; and to provide safety regulation implementation and enforcement training.

QUANTIFIABLE COSTS AND BENEFITS OF RULEMAKINGS ON THE 2010 to 2011 DOT REGULATORY PLAN

(This chart does not account for non-quantifiable benefits, which are often substantial.)

Agency/RIN Number	Title	Stage	Quantifiable Costs Discounted 2007 $ (Millions)	Quantifiable Benefits Discounted 2007 $ (Millions)
OST				
2105–AD92	Enhancing Airline Passenger Protections — Part 2	FR 05/11	87.6	26.0
Total for OST			**87.6**	**26.0**
FAA				
2120–AJ00	Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers	SNPRM 01/11	TBD	TBD
2120–AJ53	Helicopter Air Ambulance and Commercial Helicopter Safety Initiatives and Miscellaneous Amendments	FR 10/11	TBD	TBD
2120–AJ58	Flight and Duty Time Limitations and Rest Requirements	FR 07/11	TBD	TBD
Total for FAA			**0**	**0**
FMCSA				
2126–AA97	National Registry of Certified Medical Examiners	FR 4/11	587	1,034
2126–AB11	Carrier Safety Fitness Determination	NPRM 4/11	TBD	TBD
2126–AB20	Electronic On–Board Recorders and Hours of service Supporting Documents	TBD	TBD	TBD
2126–AB26	Hours of Service	NPRM 11/10	TBD	TBD
2126–AB29	Drivers of Commercial Vehicles: Restricting the Use Of Cellular Phones	NPRM 12/10	TBD	TBD

Agency/RIN Number	Title	Stage	Quantifiable Costs Discounted 2007 $ (Millions)	Quantifiable Benefits Discounted 2007 $ (Millions)
Total for FMCSA			**587**	**1,034**
NHTSA				
2127–AK23	Ejection Mitigation	FR 01/11	583	1,741 – 2,188
2127–AK43	Rearview Mirrors	NPRM 12/10	1,861 – 1,933	619 – 778
2127–AK74	Heavy Duty Truck Fuel Economy Emissions	NPRM 12/10	7,753	49,340
2127–AK79	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2017 and Beyond	Supplemental Notice of Intent 12/10	TBD	TBD
Total for NHTSA			**10,197 – 10,269**	**51,700 – 52,306**
FRA				
2130–AC15	Hours of Service: Passenger Train Employees	NPRM 05/11	TBD	TBD
Total for FRA			**0**	**0**
FTA				
2132–AB02	Major Capital Investment Projects	NPRM 06/11	TBD	TBD
Total for FRA			**0**	**0**
PHMSA				
2137–AE63	Hazardous Materials: Limiting the Use of Electronic Devices by Highway	FR 03/11	TBD	TBD
2137–AE65	Hazardous Materials: Limiting the Use of Mobile Telephones by Highway	NPRM 01/11	TBD	TBD
Total for PHMSA			**0**	**0**
TOTAL FOR DOT			**10,871.6 – 10,943.6**	**52,760 – 53,366**

Notes:
Costs and benefits discounted at a 7 percent discount rate over the lifetime of the model years involved (5 model years for fuel economy, 1 model year for the other standards).
Costs and benefits of rulemakings may be forecast over varying periods. Although the forecast periods will be the same for any given rulemaking, comparisons between proceedings should be made cautiously.
The Department of Transportation generally assumes that there are economic benefits to avoiding a fatality of $6 million. That economic value is included as part of the benefits estimates shown in the chart. As noted above, we have not included the non-quantifiable benefits.

DOT—Office of the Secretary (OST)

FINAL RULE STAGE

113. +ENHANCING AIRLINE PASSENGER PROTECTIONS—PART 2

Priority:

Other Significant

Legal Authority:

49 USC 41712; 49 USC 40101; 49 USC 41702

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rulemaking would enhance airline passenger protections by addressing the following areas: (1) Contingency plans for lengthy tarmac delays; (2) reporting of tarmac delay data; (3) customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions (e.g. travel insurance); (8) contract of carriage provisions; (9) baggage fees disclosure; and (10) full fare advertising.

Statement of Need:

This rule is needed to improve the air travel environment for passengers.

Summary of Legal Basis:

The Department has authority and responsibility under 49 U.S.C. 41712, in concert with 49 U.S.C. 40101 and 49 U.S.C. 41702, to protect consumers from unfair and deceptive practices and to ensure safe and adequate service in air transportation.

Alternatives:

The main alternative would be to take no regulatory action.

Anticipated Cost and Benefits:

To be determined.

Risks:

The risk of not taking regulatory action would be a continuation of the dissatisfaction and frustration passengers have with the air travel environment.

Timetable:

Action	Date	FR Cite
NPRM	06/08/10	75 FR 32318
Clarification to NPRM	06/25/10	75 FR 36300
NPRM Comment Period Extended	08/03/10	75 FR 45562
NPRM Comment Period End	08/09/10	
Extended Comment Period End	09/23/10	
Final Rule	04/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

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Related RIN: Related to 2105–AD72

RIN: 2105–AD92

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

114. +QUALIFICATION, SERVICE, AND USE OF CREWMEMBERS AND AIRCRAFT DISPATCHERS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44912; 49 USC 46105

CFR Citation:

14 CFR 119; 14 CFR 121; 14 CFR 135; 14 CFR 142; 14 CFR 65

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations. The rulemaking would enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. The rulemaking would also reorganize and revise the qualification and training requirements. The changes are intended to contribute significantly to reducing aviation accidents.

Statement of Need:

This rulemaking is part of the FAA's efforts to reduce fatal accidents in which human error was a major contributing cause. The changes would reduce human error and improve performance among flight crewmembers, flight attendants, and aircraft dispatchers. National Transportation Safety Board (NTSB) investigations identified several areas of inadequate training that were the probable cause of an accident. This rulemaking contains changes to address the causes and factors identified by the NTSB.

Summary of Legal Basis:

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Alternatives:

During the Notice of Proposed Rulemaking (NPRM) phase, the FAA did not find any significant alternatives in accordance with 5 U.S.C. section 603(d). The FAA will again review alternatives at the final rule phase.

Anticipated Cost and Benefits:

The FAA is developing the costs and benefits of this rulemaking.

Risks:

The FAA will review specific risks associated with this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	01/12/09	74 FR 1280
Notice of public meeting	03/12/09	74 FR 10689
NPRM Comment Period Extended	04/20/09	74 FR 17910
NPRM Comment Period End	05/12/09	
NPRM Extended Comment Period End	08/10/09	
Supplemental NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

For flight crewmember information contact Edward Cook, for flight attendant information contact Nancy Lauck Claussen, and for aircraft dispatcher information contact Leo Hollis, Air Carrier Training Branch (AFS-210), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267 8166.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

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RIN: 2120–AJ00

DOT—FAA

115. +AIR AMBULANCE AND COMMERCIAL HELICOPTER OPERATIONS; SAFETY INITIATIVES AND MISCELLANEOUS AMENDMENTS

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 1155; 49 USC 40101 to 40103; 49 USC 40120; 49 USC 41706; 49 USC 41721; 49 USC 44101; 49 USC 44106; 49 USC 44111; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation:

14 CFR 1; 14 CFR 135

Legal Deadline:

None

Abstract:

This rulemaking would change equipment and operating requirements for commercial helicopter operations, including many specifically for helicopter air ambulance operations. This rulemaking is necessary to increase crew, passenger, and patient safety. The intended effect is to implement the National Transportation Safety Board, Aviation Rulemaking Committee, and internal FAA recommendations.

Statement of Need:

Since 2002, there has been an increase in fatal helicopter air ambulance accidents. The FAA has undertaken initiatives to address common factors that contribute to helicopter air ambulance accidents including issuing notices, handbook bulletins, operations specifications, and advisory circulars (ACs). This rule would codify many of those initiatives, as well as several NTSB and part 125/135 Aviation Rulemaking Committee recommendations. In addition, the House of Representatives and the Senate introduced legislation in the 111th Congress and in earlier sessions that would address several of the issues raised in this rulemaking.

Summary of Legal Basis:

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(4), which requires the Administrator to promulgate regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Alternatives:

Alternative One: The alternative would change the compliance date from three years to four years after the effective rule date to install all required pieces of equipment. This would help small business owners cope with the burden of the expenses because they would be able to integrate these pieces of equipment over a longer period of time. This alternative is not preferred because it would delay safety enhancements.

Alternative Two: The alternative would exclude the HTAWS unit from this proposal. Although this alternative would reduce annualized costs to small air ambulance operators by approximately 12 percent and the ratio of annualized cost to annual revenue would decrease from a range of between 1.76 percent and 1.88 percent to a range of between 1.55 percent and 1.65 percent, the annualized cost would still be significant for all 35 small air ambulance operators. The alternative not only does not eliminate the problem for a substantial number of small entities, but also would reduce safety. The HTAWS is an outstanding tool for situational awareness in all aspects of flying including day, night, and instrument meteorological conditions. Therefore the FAA believes that this equipment is a significant enhancement for safety.

Alternative Three: The alternative would increase the requirement of certificate holders from 10 to 15 helicopters or more that are engaged in helicopter air ambulance operations to have an Operations Control Center. The FAA believes that operators with 10 or more helicopters engaged in air ambulance operations would cover 66 percent of the total population of the air ambulance fleet in the U.S. The FAA believes that operators with 15 or more helicopters would decrease the coverage of the population to 50 percent. Furthermore, complexity issues arise and considerably increase with operators of more than 10 helicopters.

All alternatives above are not considered to be acceptable by the FAA in accordance with 5 U.S.C. 603(c).

Anticipated Cost and Benefits:

The FAA is currently developing costs and benefits.

Risks:

Helicopter air ambulance operations have several characteristics that make them unique, including that they are not limited to airport locations for picking up and dropping off patients, but may pick up a person at a roadside accident scene and transport him or her directly to a hospital. Helicopter air ambulance operations are also often time-sensitive. A helicopter air ambulance flight may be crucial to getting a donor organ or critically ill or injured patient to a medical facility as efficiently as possible. Additionally, patients generally are not able to choose the helicopter air ambulance company that provides them with transportation. Despite the fact that there are unique aspects to helicopter air ambulance operations, they remain, at their core, air transportation. Accordingly, the FAA has the responsibility for ensuring the safety of these operations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2120–AJ53

DOT—FAA

FINAL RULE STAGE

116. +FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101;

49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44705; 49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 45101; 49 USC 45102; 49 USC 45103; 49 USC 45104; 49 USC 45105; 49 USC 46105

CFR Citation:

14 CFR 121; 14 CFR 135

Legal Deadline:

None

Abstract:

This rulemaking would establish one set of flight time limitations, duty period limits, and rest requirements for pilots. The rulemaking is necessary to ensure that pilots have the opportunity to obtain sufficient rest to perform their duties. The objective of the rule is to contribute to and to improve aviation safety. This rulemaking is related to the following: An NPRM (RIN 2120-AF63), and a Withdrawal (RIN 2120-AI93).

Statement of Need:

The FAA recognizes that the effects of pilot fatigue are universal, and the profiles of different types of operations are similar enough that the same fatigue mitigations should be applied across all types of operations.

In June 2009, the FAA established the Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee (ARC) whose membership includes labor, industry, and FAA representatives. The ARC reviewed current approaches to mitigating fatigue and in September 2009 made recommendations to the Associate Administrator for Aviation Safety on how to address this issue in FAA regulations.

The ARC considered:

* An approach to fatigue that consolidates and replaces existing regulatory requirements;

* Current fatigue science, data, and information;

* How current international standards address fatigue; and

* The use of Fatigue Risk Management Systems.

Based on ARC recommendations, the FAA is developing new regulations on crewmember flight, duty and rest requirements.

Summary of Legal Basis:

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Alternatives:

The FAA is currently reviewing alternatives to rulemaking.

Anticipated Cost and Benefits:

The proposed rule is designated as ''significant regulatory action'' as designated in section 3(f) of Executive Order 12866. In addition, the proposed rule would have a significant economic impact on a substantial number of small entities. Quantifiable costs and benefits to be determined.

Risks:

The FAA will review specific risks associated with this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/14/10	75 55852
NPRM Comment Period End	11/15/10	
Final Action	07/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2120–AF63, Related to 2120–AI93

RIN: 2120–AJ58

DOT—Federal Motor Carrier Safety Administration (FMCSA)

PROPOSED RULE STAGE

117. +CARRIER SAFETY FITNESS DETERMINATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

sec 4009 of TEA–21

CFR Citation:

49 CFR 385

Legal Deadline:

None

Abstract:

This rulemaking would revise 49 CFR part 385, Safety Fitness Procedures, in accordance with the Agency's major new initiative, Comprehensive Safety Analysis (CSA) 2010. CSA 2010 is a new operational model FMCSA plans to implement that is designed to help the Agency carry out its compliance and enforcement programs more efficiently and effectively. Currently, the safety fitness rating of a motor carrier is determined based on the results of a very labor intensive compliance review conducted at the carrier's place of business. Aside from roadside inspections and new audits, the compliance review is the Agency's primary intervention. Under CSA 2010, FMCSA would propose to implement a broader array of progressive interventions, some of which allow FMCSA to make contact with more carriers. Through this rulemaking FMCSA would establish safety fitness determinations based on safety data consisting of crashes, inspections, and violation history rather than the standard compliance review. This will enable the Agency to assess the safety performance of a greater segment of the motor carrier industry with the goal of further reducing large truck and bus crashes and fatalities.

Statement of Need:

Because of the time and expense associated with the on-site compliance review, only a small fraction of carriers (approximately 12,000) receive a safety fitness determination each year. Since the current safety fitness determination

process is based exclusively on the results of an on site compliance review, the great majority of carriers subject to FMCSA jurisdiction do not receive a timely determination of their safety fitness.

The proposed methodology for determining motor carrier safety fitness should correct the deficiencies of the current process. In correcting these deficiencies, FMCSA has made a concerted effort to develop a ''transparent'' method for the SFD that would allow each motor carrier to understand fully how FMCSA established that carrier's specific SFD.

Summary of Legal Basis:

This rule is based primarily on the authority of 49 U.S.C. 31144, which directs the Secretary of Transportation to ''determine whether an owner or operator is fit to operate a commercial motor vehicle'' and to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' This statute was first enacted as part of the Motor Carrier Safety Act of 1984, section 215, Public Law 98-554, 98 Stat. 2844 (Oct. 30, 1984).

The proposed rule also relies on the provisions of 49 U.S.C. 31133, which gives the Secretary ''broad administrative powers to assist in the implementation'' of the provisions of the Motor Carrier Safety Act now found in chapter 311 of title 49, U.S.C. These powers include, among others, authority to conduct inspections and investigations, compile statistics, require production of records and property, prescribe recordkeeping and reporting requirements and to perform other acts considered appropriate. These powers are used to obtain the data used by the Safety Management System and by the proposed new methodology for safety fitness determinations.

Under 49 CFR 1.73(g), the Secretary has delegated the authority to carry out the functions in subchapters I, III, and IV of chapter 311, title 49, U.S.C., to the FMCSA Administrator. Sections 31133 and 31144 are part of subchapter III of chapter 311.

Alternatives:

The Agency has been considering only two alternatives: The no-action alternative and the proposal.

Anticipated Cost and Benefits:

The Agency continues to estimate the crash-reduction benefit at this time.

Risks:

A risk of incorrectly identifying a compliant carrier as non-compliant—and consequently subjecting the carrier to unnecessary expenses—has been analyzed and has been found to be negligible under the process being proposed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AB11

DOT—FMCSA

118. +ELECTRONIC ON–BOARD RECORDERS AND HOURS OF SERVICE SUPPORTING DOCUMENTS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 31502; 31136(a); PL 103.311; 49 USC 31137(a)

CFR Citation:

49 CFR 350; 49 CFR 385; 49 CFR 396; 49 CFR 395

Legal Deadline:

None

Abstract:

This rulemaking will consider revisions to RIN 2126-AA89 (Electronic On-Board Recorders for Hours of Service Drivers) to expand the number of motor carriers required to install and operate Electronic On-Board Recorders (EOBRs). FMCSA is consolidating this follow-up to the EOBR rule with the Hours Of Service Of Drivers: Supporting Documents rulemaking for development of a single NPRM in RIN 2126-AB20. In addressing Hours of Service Supporting Documents requirements in this new rulemaking, FMCSA will consider reducing or eliminating current paperwork burdens associated with supporting documents in favor of expanded EOBR use. On January 15, 2010, the American Trucking Associations (ATA) filed a Petition for a Writ of Mandamus in the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 10-1009). ATA petitioned the court to direct FMCSA to issue an NPRM on ''supporting documents'' in conformance with the requirements set forth in section 113 of mandamus on September 30, 2010, ordering FMCSA to issue an NPRM on the supporting document regulations by December 30, 2010.

Statement of Need:

This rulemaking proposes to improve safety on the Nation's highways by increasing compliance with the Hours of Service regulations. This rulemaking proposes to require the use of Electronic On-Board Recorders by an expanded population, and to clarify and specify requirements related to supporting documents.

Summary of Legal Basis:

Section 31502 of title 49 of the United States Code provides that ''[t]he Secretary of Transportation may prescribe requirements for: (1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This rulemaking addresses ''safety of operation and equipment'' of motor carriers and ''standards of equipment'' of motor private carriers and, as such, is well within the authority of 49 U.S.C. 31502. The rulemaking would allow motor carriers to use EOBRs to document drivers? compliance with the HOS requirements; require some

noncompliant carriers to install, use, and maintain EOBRs for this purpose; and update existing performance standards for on-board recording devices.

Section 31136 of title 49 of the United States Code provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.''

Alternatives:

To be determined.

Anticipated Cost and Benefits:

FMCSA has not yet fully assessed the costs and benefits that might be associated with this activity.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

None

Additional Information:

The Agency previously published an NPRM on this subject under RIN 2126-AA76, ''Hours of Service of Drivers; Supporting Documents'' (63 FR 19457, Apr. 20, 1998) and an SNPRM, ''Hours of Service of Drivers; Supporting Documents'' (69 FR 63997, Nov. 3, 2004). The Agency withdrew the SNPRM on October 25, 2007, 72 FR 60614. The previous proceeding can be found in docket No. FMCSA-1998-3706.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2126–AA89, Related to 2126–AA76

RIN: 2126–AB20

DOT—FMCSA

119. +HOURS OF SERVICE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

49 USC 31502(b)

CFR Citation:

49 CFR 395

Legal Deadline:

NPRM, Judicial, July 26, 2010, NPRM to OMB.

Final, Judicial, July 26, 2011.

Abstract:

On October 26, 2009, Public Citizen, et al. (Petitioners), and FMCSA entered into a settlement agreement under which Petitioners' petition for judicial review of the November 19, 2008, Final Rule on drivers' hours of service will be held in abeyance pending the publication of an NPRM reevaluating the Hours of Service rule.

Statement of Need:

The goals of this hours of service (HOS) proposed rule are to improve safety while ensuring that the requirements would not have an adverse impact on driver health. The proposed rule would also provide drivers with the flexibility to obtain rest when they need it and to adjust their schedules to account for unanticipated delays. FMCSA has also attempted to make the proposed rule easy to understand (though not at the expense of safety) and readily enforceable. The impact of HOS rules on commercial motor vehicle (CMV) safety is difficult to separate from the many other factors that affect heavy-vehicle crashes. The 2008 FMCSA final rule on HOS noted that ''FMCSA has consistently been cautious about inferring causal relationships between the HOS requirements and trends in overall motor carrier safety. The Agency believes that the data show no decline in highway safety since the implementation of the 2003 rule and its re-adoption in the 2005 rule and the 2007 [interim final rule]'' (73 FR 69567, 69572, November 19, 2008). While that statement remains correct, the total number of crashes, though declining, is still unacceptably high. FMCSA believes that the modified HOS rules proposed, coupled with the Agency's many other safety initiatives and assisted by the actions of an increasingly safety-conscious motor carrier industry, would result in continued reductions in fatigue-related CMV crashes and fatalities. Furthermore, this proposed rule is intended to protect drivers from the serious health problems associated with excessively long work hours, without significantly compromising their ability to do their jobs and earn a living.

Summary of Legal Basis:

The HOS regulations proposed today concern the ''maximum hours of service of employees of . . . a motor carrier'' (49 U.S.C. 31502(b)(1)) and the ''maximum hours of service of employees of . . . a motor private carrier'' (49 U.S.C. 31502(b)(2)). The adoption and enforcement of such rules were specifically authorized by the Motor Carrier Act of 1935.

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' Although this authority is very broad, the 1984 Act also includes specific requirements: ''At a minimum, the regulations shall ensure that (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the

physical condition of the operators'' (49 U.S.C. 31136(a)).

Alternatives:

FMCSA considered and assessed the consequences of four potential regulatory options. Option 1 is the no-action alternative, which would leave the existing rule in place. Options 2, 3, and 4 each would adopt several revisions to the rule.

Anticipated Cost and Benefits:

The Agency's analysis shows an annualized cost for the various alternatives of about $1 billion, with against annual safety and health benefits estimated to range from below $300 million to more than $2 billion under different assumptions.

Risks:

The level of fatigue involvement in truck crashes is uncertain.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

Docket FMCSA-2004-19608

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AB26

DOT—FMCSA

120. +DRIVERS OF COMMERCIAL VEHICLES: RESTRICTING THE USE OF CELLULAR PHONES (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

PL 98–554

CFR Citation:

49 CFR 383; 49 CFR 384; 49 CFR 390; 49 CFR 391; 49 CFR 392

Legal Deadline:

None

Abstract:

This rulemaking would restrict the use of mobile telephones while operating a commercial motor vehicle. This rulemaking is in response to Federal Motor Carrier Safety Administration-sponsored studies that analyzed safety incidents and distracted drivers. This rulemaking addresses an item on the National Transportation Safety Board's ''Most Wanted List'' of safety recommendations.

Statement of Need:

This rulemaking stems from the Distracted Driver Summit on September 30 and October 1, 2009. This proposed rule would restrict the use of mobile telephones by all commercial motor vehicle drivers (CMV). This NPRM addresses the NTSB ''most wanted'' item associated with a 2004 crash in Alexandria, Virginia. Furthermore, it would addresses recent crashes in Kentucky and North Carolina that according to media reports may have involved cell phone use. This rulemaking would improve safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of CMVs.

Summary of Legal Basis:

Motor Carrier Safety Act of 1984 (1984 Act), 49 U.S.C. chapter 311, and the Commercial Motor Vehicle Safety Act of 1986 (1986 Act), 49 U.S.C. chapter 313.

Alternatives:

FMCSA considered several options for restricting mobile telephone use and provided analysis of their safety and economic or environmental impacts.

Anticipated Cost and Benefits:

The Agency is currently finalizing several options to provide an accurate statement of costs and benefits.

Risks:

FMCSA is continuing its analysis of the risk that might be associated with mobile telephone use.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Federalism:

This action may have federalism implications as defined in EO 13132.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2126–AB22

RIN: 2126–AB29

DOT—FMCSA

FINAL RULE STAGE

121. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 109–59 (2005), sec 4116

CFR Citation:

49 CFR 390; 49 CFR 391

Legal Deadline:

Final, Statutory, August 10, 2006.

Abstract:

This rulemaking would establish training, testing and certification

standards for medical examiners responsible for certifying that interstate commercial motor vehicle drivers meet established physical qualifications standards; provide a database (or National Registry) of medical examiners that meet the prescribed standards for use by motor carriers, drivers, and Federal and State enforcement personnel in determining whether a medical examiner is qualified to conduct examinations of interstate truck and bus drivers; and require medical examiners to transmit electronically to FMCSA the name of the driver and a numerical identifier for each driver that is examined. The rulemaking would also establish the process by which medical examiners that fail to meet or maintain the minimum standards would be removed from the National Registry. This action is in response to section 4116 of Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users.

Statement of Need:

In enacting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, August 10, 2005], Congress recognized the need to improve the quality of the medical certification of drivers. SAFETEA-LU addresses the requirement for medical examiners to receive training in physical examination standards and be listed on a national registry of medical examiners as one step toward improving the quality of the commercial motor vehicle (CMV) driver physical examination process and the medical fitness of CMV drivers to operate CMVs. The safety impact will result from ensuring that medical examiners have completed training and testing to demonstrate that they fully understand FMCSA's physical qualifications standards and are capable of applying those standards consistently, thereby decreasing the likelihood that a medically unqualified driver may obtain a medical certificate.

Summary of Legal Basis:

The fundamental legal basis for the NRCME program comes from 49 U.S.C. 31149(d), which requires FMCSA to establish and maintain a current national registry of medical examiners that are qualified to perform examinations of CMV drivers and to issue medical certificates. FMCSA is required to remove from the registry any medical examiner who fails to meet or maintain qualifications established by FMCSA. In addition, in developing its regulations, FMCSA must consider both the effect of driver health on the safety of CMV operations and the effect of such operations on driver health, 49 U.S.C. 31136(a).

Alternatives:

The rulemaking is statutorily mandated. Thus, the Agency must establish the National Registry.

Anticipated Cost and Benefits:

FMCSA continues to finalize the costs and benefits associated with this rulemaking based on comments received to the NPRM.

Risks:

FMCSA has not yet fully assessed the risks that might be associated with this activity.

Timetable:

Action	Date	FR Cite
NPRM	12/01/08	73 FR 73129
NPRM Comment Period End	01/30/09	
Final Rule	07/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2126–AA97

DOT—National Highway Traffic Safety Administration (NHTSA)

PRERULE STAGE

122. ● +PASSENGER CAR AND LIGHT TRUCK CORPORATE AVERAGE FUEL ECONOMY STANDARDS MYS 2017 AND BEYOND

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 32902; delegation of authority at 49 CFR 1.50

CFR Citation:

49 CFR 533

Legal Deadline:

Final, Statutory, April 1, 2015.

Abstract:

This rulemaking would establish Corporate Average Fuel Economy (CAFE) standards for light trucks and passenger cars for model years 2017 and beyond. This rulemaking would respond to requirements of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act of 2007. The statute requires that CAFE standards be prescribed separately for passenger automobiles and non-passenger automobiles to achieve a combined fleet fuel economy of at least 35 mpg by model year 2020. For model years 2021 and beyond, the statute requires that the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles be the maximum feasible for each model year. The law requires the standards be set at least 18 months prior to the start of the model year. On May 21, 2010, President Obama issued a memorandum directing NHTSA and EPA to conduct a joint rulemaking (NHTSA regulating fuel economy and EPA regulating greenhouse gas emissions) and to issue a Notice of Intent to Issue a Proposed Rule (NOI) by September 30, 2010.

Statement of Need:

This rulemaking would respond to requirements of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act

of 2007. The statute requires that corporate average fuel economy standards be prescribed separately for passenger automobiles and non-passenger automobiles to achieve a combined fleet fuel economy of at least 35 mpg by model year 2020. For model years 2021 and beyond, the statute requires that the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles be the maximum feasible for each model year. The law requires the standards be set at least 18 months prior to the start of the model year, and for model year 2017, standards must be set by April 1, 2015. On May 21, 2010, President Obama issued a memorandum directing NHTSA and EPA conduct joint rulemaking (NHTSA regulating fuel economy and EPA regulating greenhouse gas emissions) and to issue a Notice of Intent to Issue a Proposed Rule (NOI) by September 30, 2010.

Summary of Legal Basis:

Section 32910(d) of title 49 of the United States Code provides that the Administrator may prescribe regulations necessary to carry out his duties under Chapter 329, Automobile fuel economy.

Alternatives:

The agency is not pursuing any alternatives.

Anticipated Cost and Benefits:

The costs and benefits of the potential changes addressed in this action have not yet been assessed.

Risks:

Depending upon how manufacturers use weight reduction to meet the fuel economy standards, there is a potential impact on motor vehicle safety. The 2010 NHTSA analysis shows that a 100 pound reduction in weight, while keeping footprint constant, decreases the fatality rate for light trucks over 3,870 lbs. but increases the fatality rate for light trucks less than 3,870 lbs. and for all passenger cars. An interagency team from DOT, EPA, and DOE are further examining this issue.

Timetable:

Action	Date	FR Cite
Notice of Intent (NOI)	10/13/10	75 FR 62739
NOI Comment Period End	10/31/10	
Supplemental NOI	12/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Federalism:

This action may have federalism implications as defined in EO 13132.

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2127–AK79

DOT—NHTSA

PROPOSED RULE STAGE

123. +FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 111, REARVIEW MIRRORS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; delegation of authority at 49 CFR 1.50

CFR Citation:

49 CFR 571.111

Legal Deadline:

Other, Statutory, February 28, 2009, Initiate rulemaking.

Final, Statutory, February 28, 2011.

Abstract:

This rulemaking would amend Federal Motor Vehicle Standard No. 111; Rearview Mirrors, to reflect requirements contained in the Cameron Gulbransen Kids Transportation Safety Act of 2007. The Act requires that NHTSA expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. According to the Act, such a standard may be met by the provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view.

Statement of Need:

Vehicles that are backing up have a potential to create a danger to pedestrians and pedicyclists. NHTSA estimates that backover crashes involving light vehicles account for an estimated 228 fatalities and 17,000 injuries annually. In analyzing the data further, we found that many of these incidents occur off public roadways, in areas such as driveways and parking lots and that they involve parents (or caregivers) accidentally backing over children. We have also found that children represent approximately 44 percent of the fatalities, which we believe to be unique to this safety problem.

Summary of Legal Basis:

Section 3011, title 49, of the U.S.C., states that the Secretary shall prescribe motor vehicle safety standards.

Alternatives:

NHTSA is evaluating additional mirrors, sensors, cameras, and other technology to address this safety problem.

Anticipated Cost and Benefits:

Costs: $723M to $2.4B

Benefit: Reduction of 95 to 112 fatalities and 7.072 to 8.374 injuries.

Risks:

The Agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/09	74 FR 9477
ANPRM Comment Period End	05/04/09	
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2127–AK43

DOT—NHTSA

124. ● +COMMERCIAL MEDIUM– AND HEAVY–DUTY ON–HIGHWAY VEHICLES AND WORK TRUCK FUEL EFFICIENCY STANDARDS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 32902; delegation of authority at 49 CFR 1.50

CFR Citation:

49 CFR 523, 534, 535

Legal Deadline:

Other, Statutory, September 30, 2010, NHTSA Study.

Final, Statutory, September 28, 2012.

Abstract:

This rulemaking would respond to requirements of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act of 2007. The statute requires that rulemaking begin with a report by the National Academy of Sciences evaluating medium-duty and heavy-duty truck fuel economy standards. The National Academy provided Congress and the NHTSA with this report on March 18, 2010. EISA then requires that NHTSA complete a study that examines the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles and work trucks and determines the appropriate test procedures and methodologies for measuring the fuel efficiency of such vehicles, the appropriate metric for measuring the fuel efficiency of such vehicles, the range of factors that affect the fuel efficiency of these vehicles, and other factors that could impact a program to improve the fuel efficiency of these vehicles.

The NHTSA study was issued October 25, 2010. Once that study is completed, NHTSA has 24 months to complete a final rule establishing a fuel efficiency program for these vehicles. The law provides that the new standards must provide at least 4 full model years of regulatory leadtime and 3 full model years of regulatory stability (i.e., the standards must remain in effect for 3 years before they may be amended). On May 21, 2010, President Obama issued a memorandum directing NHTSA and EPA conduct a joint rulemaking (NHTSA regulating fuel efficiency and EPA regulating greenhouse gas emissions), and to issue a final rule by July 30, 2011.

Statement of Need:

Setting fuel consumption standards for commercial medium-duty and heavy-duty on-highway vehicles and work trucks will reduce fuel consumption, and will thereby improve U.S. energy security by reducing dependence on foreign oil, which has been a national objective since the first oil price shocks in the 1970s. Net petroleum imports now account for approximately 60 percent of U.S. petroleum consumption. World crude oil production is highly concentrated, exacerbating the risks of supply disruptions and price shocks. Tight global oil markets led to prices over $100 per barrel in 2008, with gasoline reaching as high as $4 per gallon in many parts of the U.S., causing financial hardship for many families and businesses. The export of U.S. assets for oil imports continues to be an important component of the historically unprecedented U.S. trade deficits. Transportation accounts for about 72 percent of U.S. petroleum consumption. Medium-duty and heavy-duty vehicles account for about 17 percent of transportation oil use, which means that they alone account for about 12 percent of all U.S. oil consumption.

Summary of Legal Basis:

Section 102 of EISA, codified at 49 U.S.C. 32902(k), requires NHTSA to develop a regulatory system for the fuel economy of commercial medium-duty and heavy-duty on-highway vehicles and work trucks in three steps: A study by the National Academy of Sciences (NAS), a study by NHTSA, and a rulemaking to develop the regulations themselves. Specifically, 49 U.S.C. 32902(k)(2) states that not later than 2 years after completion of the NHTSA study, DOT (by delegation, NHTSA), in consultation with the Department of Energy and EPA, shall develop a regulation to implement a ''commercial medium-duty and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement.''

Alternatives:

NHTSA is evaluating nine alternatives; (1) heavy-duty engines, only (2) Class 8 combination tractors and engines in Class 8 tractors, (3) heavy-duty engines and Class 7 and 8 tractors, (4) heavy-duty engines, Class 7 and 8 tractors, and Class 2b/3 pickup trucks and vans, (5) NPRM Preferred Alternative: heavy-duty engines, tractors, and Class 2b through 8 vehicles, (6) heavy-duty engines, tractors, Class 2b through 8 vehicles and trailers, (7) heavy-duty engines, tractors, Class2b-8 vehicles, and trailers plus advanced hybrid power-train technology for Class 2b through 8 vocational vehicles, pickups and vans, (8)15 percent less stringent that the NPRM Preferred Alternative, covering heavy-duty engines, tractors, and Class 2b through 8 vehicles, (9) 20 percent more stringent that the NPRM Preferred Alternative, covering heavy-duty engines, tractors, and Class 2b through 8 vehicles.

Anticipated Cost and Benefits:

Estimated lifetime discounted costs, benefits and net benenfits for all heavy-duty vehicles projected to be sold in model years 2014-2018: Costs $7.7B, Benefits $49.0B, Net Benefits $41B (with 3% discount rate).

Risks:

The Agency believes there are no substantial risks to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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Related RIN: Related to 2060–AP61

RIN: 2127–AK74

DOT—NHTSA

FINAL RULE STAGE

125. +EJECTION MITIGATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; delegation of authority at 49 CFR 1.50

CFR Citation:

49 CFR 571.226

Legal Deadline:

Final, Statutory, October 1, 2009.

Abstract:

This rulemaking would create a new Federal Motor Vehicle Safety Standard (FMVSS) for reducing occupant ejection. Currently, there are over 52,000 annual ejections in motor vehicle crashes, and over 10,000 ejected fatalities per year. This rulemaking would propose new requirements for reducing occupant ejection through passenger vehicle side widows. The requirement would be an occupant containment requirement on the amount of allowable excursion through passenger vehicle side windows. The SAFETEA-LU legislation requires that: ''[t]he Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.'' The SAFETEA-LU legislation also requires that, if the Secretary determines that the subject final rule deadline cannot be met, the Secretary shall notify and provide an explanation to the Senate Committee on Commerce, Science and Transportation and the House of Representatives Committee on Energy and Commerce of the delay. On September 24, 2009, the Secretary provided appropriate notification to Congress that the final rule will be delayed until January 31, 2011.

Statement of Need:

The agency's annualized injury data from 1997 to 2008 show that there are 6,412 fatalities and 5,709 Maximum Abbreviated Injury Scale (MAIS) 3+ non-fatal serious injuries for occupants partially and completely ejected through side windows in vehicles with a gross vehicle weight rating (GVWR) less than 4,536 kg (10,000 lbs.). Sixty-six percent of the fatalities and 77 percent of the serious injuries are from ejections that involve a rollover as part of the crash event.

Summary of Legal Basis:

Section 30111, title 49 of the U.S.C., states that the Secretary shall prescribe motor vehicle safety standards. Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to issue by October 1, 2009, an ejection mitigation final rule reducing complete and partial ejections of occupants from outboard seating positions. The SAFETEA-LU legislation also requires that if the Secretary determines that the subject final rule deadline cannot be met, the Secretary shall notify and provide explanation to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce of the delay. On September 24, 2009, the Secretary provided appropriate notification to Congress that the final rule will be delayed until January 31, 2011.

Alternatives:

The Agency is not pursuing any alternatives to reduce side window ejections of light vehicle occupants other than establishing FMVSS No. 226.

Anticipated Cost and Benefits:

The agency is reducing the population of partial and complete side window ejections through a series of rulemaking actions. These actions included adding a pole impact upgrade to FMVSS No. 214—Side Impact Protection (72 FR 51908) and promulgating FMVSS No. 126—Electronic Stability Control Systems (72 FR 17236). In the NPRM for this rulemaking, published December 2, 2009 (74 FR 63180), we estimated that promulgating FMVSS No. 226 will reduce the remaining population of ejection fatalities and serious injuries by the ranges of 390 to 402 and 296 to 310, respectively. The cost per equivalent fatality at a seven percent discount rate was estimated to be $2.0 million.

Risks:

The Agency believes there are no substantial risks to this rulemaking and that only beneficial outcomes will occur as the industry moves to reduce side window ejections of light vehicle occupants.

Timetable:

Action	Date	FR Cite
NPRM	12/02/09	74 FR 63180
NPRM Comment Period End	02/01/10	
Final Action	01/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2127–AK23

DOT—Federal Railroad Administration (FRA)

PROPOSED RULE STAGE

126. +HOURS OF SERVICE: PASSENGER TRAIN EMPLOYEES (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–432, Div A, 122 Stat 4848 et seq; Rail Safety Improvement Act of 2008; sec 108(e) (49 USC 21109)

CFR Citation:

49 CFR 242

Legal Deadline:

NPRM, Statutory, October 16, 2011.

Abstract:

This rulemaking would establish hours of service requirements for train employees engaged in commuter and intercity passenger rail transport.

Statement of Need:

Required by the Rail Safety Improvement Act of 2008, Public Law 110-432.

Summary of Legal Basis:

Required by the Rail Safety Improvement Act of 2008, Public Law 110-432.

Alternatives:

The Rail Safety Improvement Act of 2008 (RSIA of 2008) provides, in section 108 (d), that if FRA does not have a final regulation in effect by October 16, 2011, the hours of service requirements for train employees found in 49 U.S.C. section 21103, as revised by section 108 (b) of the RSIA of 2008, will go into effect for train employees of commuter and intercity passenger railroads.

Anticipated Cost and Benefits:

To be determined.

Risks:

The regulation is expected to reduce the risk of accidents and injuries caused or contributed to by fatigue, because it will require commuter and intercity passenger railroads to analyze the risk for fatigue in the schedules worked by their train employees, and will require that they mitigate the fatigue risks in those schedules demonstrating a risk for a level of fatigue at which safety may be compromised.

Timetable:

Action	Date	FR Cite
NPRM	05/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2130–AC15

DOT—Federal Transit Administration (FTA)

PROPOSED RULE STAGE

127. ● +MAJOR CAPITAL INVESTMENT PROJECTS

Priority:

Other Significant

Legal Authority:

49 USC 5309

CFR Citation:

49 CFR 611

Legal Deadline:

Final, Statutory, April 7, 2006.

Abstract:

This rulemaking, mandated specifically by 49 U.S.C. 5309(e)(9), is intended to make changes to the regulations that govern the New Starts discretionary funding program authorized by 49 U.S.C. 5309. FTA's initial rulemaking on this subject (RIN 2132-AA81), initiated to meet the statutory deadline, was terminated as the result of subsequent congressional action prohibiting FTA from issuing a rule.

Statement of Need:

Section 3011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA) fixed guideway capital investment grant program known as ''New Starts.'' SAFETEA-LU also added created a new category of major capital investments that have a total project cost of less than $250 million and that are seeking less than $75 million in section 5309 major capital investment funds. This rulemaking proposes to implement those changes and a number of other changes that FTA believes will improve the process for evaluating major capital investment projects.

Summary of Legal Basis:

Section 5309, title 49, of the United States Code requires the Secretary to promulgate regulations for the evaluation and selection of major capital investment projects that have a total project cost of less than $250 million, and that are seeking less than $75 million in section 5309 major capital investment funds.

Alternatives:

This rulemaking is mandated by section 3011 of SAFETEA-LU, so there is not an alternative to pursuing rulemaking. Within the rulemaking process, FTA has already issued and has received comments on an Advance Notice of Proposed Rulemaking that will inform the various options FTA might pursue in the Notice of Proposed Rulemaking.

Anticipated Cost and Benefits:

The single largest change in the New Starts program is the creation in SAFETEA-LU of the ''Small Starts'' program. Over the first 10 years of the Small Starts program, the cumulative impact of transfer from New Starts to Small Starts will likely be $1.9 Billion, with a Net Present Value of $1.311 Billion using a discount rate of 7 percent. This effect is difficult to characterize in terms of cost or benefit, as it simply represents a ''transfer of a transfer'' from one governmental entity to another.

Risks:

The proposed rulemaking provides a framework for a discretionary grant program; it does not propose to regulate other than for applicants for Federal funds. As such, the rulemaking poses no risks for the regulated community, other than for the risks inherent in pursuing Federal funds that might not be awarded if a project fails to satisfy the eligibility and evaluation criteria in the proposed regulatory structure.

Timetable:

Action	Date	FR Cite
ANPRM	06/03/10	75 FR 31383
ANPRM Comment Period End	08/02/10	
NPRM	06/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2132–AB02

DOT—Pipeline and Hazardous Materials Safety Administration (PHMSA)

PROPOSED RULE STAGE

128. ● +HAZARDOUS MATERIALS: LIMITING THE USE OF MOBILE TELEPHONES BY HIGHWAY

Priority:

Other Significant

Legal Authority:

Not Yet Determined

CFR Citation:

49 CFR 177

Legal Deadline:

None

Abstract:

This rulemaking would limit the use of mobile telephones by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a select agent or toxin listed in 42 CFR part 73. Additionally, in accordance with requirements proposed by the Federal Motor Carrier Safety Administration (FMCSA), motor carriers would be prohibited from requiring or allowing drivers of covered motor vehicles to engage in the use of mobile telephones while driving. This rulemaking would improve health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles.

Statement of Need:

This rulemaking expands on mobile phone limitations under development by FMCSA that would limit the use of mobile phones by drivers transporting a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 in intrastate commerce. FMCSA's authority over motor carriers of these materials is limited to transportation in interstate commerce. The safety benefits associated with limiting the distractions caused by mobile phones are equally applicable to drivers transporting covered hazardous materials via intrastate as they are to interstate commerce. The use of a mobile phone while driving constitutes a safety risk to the motor vehicle driver, other motorists, and bystanders.

Summary of Legal Basis:

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.)

Alternatives:

PHMSA will consider two alternatives:

1. Amend the HMR to expand the scope of the FMCSA NPRM to include those intrastate motor carriers and drivers that transport a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73; or

2. Take no action.

Anticipated Cost and Benefits:

Not yet calculated. However, the population of motor carriers affected will be less than 1,500. PHMSA expects costs to be minimal when compared to the risks of distracted driving.

Risks:

Risk to the public and regulated community from distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles transporting covered hazardous materials in intrastate commerce.

Timetable:

Action	Date	FR Cite
NPRM	09/17/10	75 FR 56972
NPRM Comment Period Extended	11/16/10	75 FR 66912
NPRM Comment Period End	11/16/10	
NPRM Comment Period Extended End	12/03/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

HM-256A

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2137–AE65

DOT—PHMSA

FINAL RULE STAGE

129. ● +HAZARDOUS MATERIALS: LIMITING THE USE OF ELECTRONIC DEVICES BY HIGHWAY

Priority:

Other Significant

Legal Authority:

Not Yet Determined

CFR Citation:

49 CFR 177

Legal Deadline:

None

Abstract:

This rulemaking would restrict the use of electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73. Additionally, in accordance with requirements proposed by the Federal Motor Carrier Safety Administration (FMCSA) motor carriers are prohibited from requiring or allowing drivers of covered motor vehicles to engage in texting while driving. This rulemaking would improve health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles.

Statement of Need:

This rulemaking expands on the limitations on wireless communications proposed by FMCSA's April 1, 2010, NPRM to the transportation of a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 in intrastate commerce. FMCSA's authority over motor carriers of these materials is limited to transportation in interstate commerce. The safety benefits associated with limiting the distractions caused by electronic devices are equally applicable to drivers transporting covered hazardous materials via intrastate as they are to interstate commerce. The use of an electronic device while driving constitutes a safety risk to the motor vehicle driver, other motorists, and bystanders.

Summary of Legal Basis:

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.)

Alternatives:

PHMSA considered two alternatives:

1. Amend the HMR to expand the scope of the FMCSA NPRM to include those intrastate motor carriers and drivers that transport a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73; or

2. Take no action.

Anticipated Cost and Benefits:

PHMSA estimates that this proposed rule will cost $5,227 annually. Additionally, PHMSA has not identified a significant increase in crash risk associated with drivers? strategies for complying with this proposed rule. As indicated in the regulatory evaluation, a crash resulting in property damage only (PDO) averages approximately $17,000 in damages. Consequently, the texting restriction would have to eliminate just one PDO crash every 3.25 years for the benefits of this proposed rule to exceed the costs.

Risks:

Risk to the public and regulated community from distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles transporting covered hazardous materials in intrastate commerce.

Timetable:

Action	Date	FR Cite
NPRM	09/27/10	75 FR 59197
NPRM Comment Period End	10/27/10	
Final Rule	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

HM-256

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

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RIN: 2137–AE63

BILLING CODE 4910–9X–S

DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.

To manage the Government's finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue functions, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency.

To safeguard the U.S. and international financial systems from those who would use these systems for illegal purposes or to compromise U.S. national security interests, while keeping them free and open to legitimate users.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. It is the policy of the Department to comply with requirements to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Since then, the Department has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376). Over the next several months, the Department will continue implementing the Act, including promulgating regulations required under the Act.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866 and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Emergency Economic Stabilization Act

On October 3, 2008, the President signed the Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-334). Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a Troubled Asset Relief Program (TARP) to ''purchase, and to make and fund commitments to purchase, troubled assets from any financial institution on such terms and conditions as are determined by the Secretary and in accordance with this Act and policies and procedures developed and published by the Secretary.''

EESA provides authority to issue regulations and guidance to implement the program. Regulations and guidance required by EESA include conflicts of interest, executive compensation, and tax guidance. The Secretary is also charged with establishing a program that will guarantee principal of, and interest on, troubled assets originated or issued prior to March 14, 2008.

The Department has issued guidance and regulations and will continue to provide program information through the next year. Regulatory actions taken to date include the following:

Executive compensation. In October 2008, the Department issued an interim final rule that set forth executive compensation guidelines for the TARP Capital Purchase Program (73 FR 62205). Related tax guidance on executive compensation was announced in IRS Notice 2008-94. In addition, among other EESA tax guidance, the IRS issued interim guidance regarding loss corporation and ownership changes in Notice 2008-100, providing that any shares of stock owned by the Department of the Treasury under the Capital Purchase Program will not be considered to cause Treasury's ownership in such corporation to increase. On June 15, 2009, the Department issued a revised interim final rule that sets forth executive compensation guidelines for all TARP program participants (74 FR 28394), implementing amendments to the executive compensation provisions of EESA made by the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5). Public comments on the revised interim final rule regarding executive compensation were due by August 14, 2009, and will be considered as part of the process of issuing a final rule on this subject.

Insurance program for trouble assets. On October 14, 2008, the Department released a request for public input on an insurance program for troubled assets.

Conflicts of interest. On January 21, 2009, the Department issued an interim final rule providing guidance on conflicts of interest pursuant to section 108 of EESA (74 FR 3431). Comments on the interim final rule, which were due by March 23, 2009, will be considered as part of the process of issuing a final rule.

The Department will continue implementing the EESA authorities to restore capital flows to the consumers and businesses that form the core of the Nation's economy.

Terrorism Risk Insurance Program Office

The Terrorism Risk Insurance Act of 2002 (TRIA) was signed into law on November 26, 2002. The law, which was enacted as a consequence of the events of September 11, 2001, established a temporary Federal reinsurance program under which the Federal Government shares the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. The Act, originally scheduled to expire on December 31, 2005, was extended to December 31, 2007, by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). The Act has since been extended to December 31, 2014, by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).

The Office of the Assistant Secretary for Financial Institutions is responsible for developing and promulgating regulations implementing TRIA, as extended and amended by TRIEA and TRIPRA. The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of TRIA. The purposes of this legislation are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Over the past year, the Office of the Assistant Secretary has issued proposed rules implementing changes authorized by TRIA as revised by TRIPRA. The following regulations should be published by December 31, 2010:

Final Netting. This rule would establish procedures by which, after the Secretary has determined that claims for the Federal share of insured losses arising from a particular Program Year shall be considered final, a final netting of payments to or from insurers will be accomplished.

Affiliates. This rule would make changes to the definition of ''affiliate'' to conform to the language in the statute

Civil Penalty. This rule establishes procedures by which the Secretary may assess civil penalties against any insurer that the Secretary determines, on the record after an opportunity for a hearing has violated provisions of the Act.

Renewals. Certain claims rules will be published for renewal without change.

During 2011, Treasury will continue the ongoing work of implementing TRIA and carrying out revised operations as a result of the TRIPRA related regulation changes.

Customs Revenue Functions

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is was known as the Bureau of Customs and Border Protection (CBP). Effective March 31, 2007, DHS changed the name of the Bureau of Customs and Border Protection to U.S. Customs and Border Protection (CBP) pursuant to section 872(a)(2) of the Act (6 U.S.C. 452(a)(2)) in a **Federal Register** notice (72 FR 20131) published on April 23, 2007. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions subject to certain exceptions. This order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During the past fiscal year, among the Treasury-retained CBP customs-revenue function regulations issued was a final rule that adopted the interim amendments updating the regulatory provisions relating to the requirement under the United States-Bahrain FTA (BFTA) that a good must be ''imported directly'' from Bahrain to the United States or from the United States to Bahrain to qualify for preferential tariff treatment. The change removed the condition that a good passing through the territory of an intermediate country must remain under the control of the customs authority of the intermediate country. CBP also finalized the interim regulations, which implemented the preferential tariff treatment provisions of the Dominican Republic-Central America-United States Free Trade Agreement (also known as ''CAFTA-DR'') Implementation Act.

In addition, during the past fiscal year, CBP finalized the interim amendments of the regulations to implement certain provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the ''JADE Act'') and Presidential Proclamation 8294 of September 26, 2008, which includes new Additional U.S. Note 4 to chapter 71 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The final amendments prohibit the importation of Burmese-covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies, and sets forth restrictions for the importation of non-Burmese covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies.

As a result of the Softwood Lumber Act of 2008, CBP finalized the interim regulations to parts 12 and 163 of the regulations that prescribed special entry requirements as well as an importer declaration program applicable to certain softwood lumber (SWL) and SWL products exported from any country into the United States. The regulations also implemented the Act's recordkeeping requirements applicable to certain imports of SWL home packages and kits that are subject to declaration requirements but that are not subject to the SWL importer declaration program.

This past fiscal year, consistent with the practice of continuing to move forward with Customs Modernization provisions of the North American Free Trade Implementation Act to improve its regulatory procedures, Treasury and CBP finalized its proposal to establish the remote location filing program, which had been a test program under the Customs Modernization Act for many years. This rule permits remote location filing of electronic entries of merchandise from a location other than where the merchandise arrives. In addition, Treasury and CBP also finalized a proposal which was published in August 2008 regarding the electronic payment and refund of quarterly harbor maintenance fees. The rule provides the trade with expanded electronic payment/refund options for quarterly harbor maintenance fees and it modernizes and enhances CBP's port use fee collection efforts.

During fiscal year 2011, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions not delegated to DHS:

Trade Act of 2002's preferential trade benefit provisions. Treasury and CBP plan to finalize several interim regulations that implement the trade benefit provisions of the Trade Act of 2002 including the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act.

Free Trade Agreements. Treasury and CBP also plan to finalize interim regulations this fiscal year to implement the preferential tariff treatment provisions of the United States-Singapore Free Trade Agreement Implementation Act. Treasury and CBP also expect to issue interim regulations implementing the United States-Australia Free Trade Agreement Implementation Act, the United States-Oman Free Trade Agreement Implementation Act, and the United States-Peru Free Trade Agreement Implementation Act.

Country of Origin of Textile and Apparel Products. Treasury and CBP also plan to publish a final rule adopting an interim rule that was published on the Country of Origin of Textile and Apparel Products, which implemented the changes brought about, in part, by the expiration of the Agreement on Textile and Clothing and

the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organizations (WTO) members.

North American Free Trade Agreement Country of Origin Rules. Based upon the public comments received on its July 25, 2008, proposal regarding establishing uniform rules governing CBP's determinations of the country of origin of imported merchandise, Treasury and CBP has decided not to proceed with this proposal. Instead, Treasury and CBP plan to withdraw the proposal to establish uniform rules of origin to all trade and to adopt as final regulations certain proposed amendments to the country of origin rules codified in part 102 of the CBP regulations applicable to pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile products.

Customs and Border Protection's Bond Program. Treasury and CBP plan to finalize its proposal to amend the regulations to reflect the centralization of the continuous bond program at CBP's Revenue Division. The changes proposed support CBP's bond program by ensuring an efficient and uniform approach to the approval, maintenance, and periodic review of continuous bonds as well as accommodating the use of information technology and modern business practices.

Courtesy Notices of Liquidation. Treasury and CBP plan to finalize its proposal to amend the regulations pertaining to the method by which CBP issues courtesy notices of liquidation in an effort to streamline the notification process and reduce printing and mailing costs.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*). The primary purpose of the CDFI Fund is to promote economic revitalization and community development through the following programs: The Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit (NMTC) Program. In addition the CDFI Fund administers the Financial Education and Counseling Pilot Program (FEC) and the Capital Magnet Fund (CMF).

In fiscal year (FY) 2011, subject to funding availability, the Fund will provide awards through the following programs:

Native American CDFI Assistance (NACA) Program. Through the NACA Program, the CDFI Fund will provide technical assistance grants and financial assistance awards to promote the development of CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities.

Bank Enterprise Award (BEA) Program. Through the BEA Program, the CDFI Fund will provide financial incentives to encourage insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs.

New Markets Tax Credit (NMTC) Program. Through the NMTC Program, the CDFI Fund will provide allocations of tax credits to qualified community development entities (CDEs). The CDEs in turn provide tax credits to private sector investors in exchange for their investment dollars; investment proceeds received by the CDEs are to be used to make loans and equity investments in low-income communities. The CDFI Fund administers the NMTC Program in coordination with the Office of Tax Policy and the Internal Revenue Service.

Financial Education and Counseling (FEC) Pilot Program. Through the FEC Pilot Program, the CDFI Fund will provide grants to eligible organizations to provide a range of financial education and counseling services to prospective homebuyers. The CDFI Fund will administer the FEC Program in coordination with the Office of Financial Education.

Capital Magnet Fund (CMF). Through the Capital Magnet Fund, the CDFI Fund will provide competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects. In FY 2010, the Fund expects to draft and publish regulations to govern the application process, award selection, and compliance components of the CMF.

Bond Guarantee (Small Business Jobs and Credit Act of 2010, Pub. L. No. 111-240, Section 1134). Pursuant to section 1134 of Public Law No. 111-240, the Treasury Department is required to promulgate regulations implementing the bond guarantee provisions by September 2011. The program must then be implemented no later than September 2012 and sunsets on September 30, 2014.

Financial Crimes Enforcement Network

As chief administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are the core of the Department's anti-money laundering and counter-terrorism financing programmatic efforts. FinCEN's responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism. Those regulations also require designated financial institutions to establish anti-money laundering programs and compliance procedures. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. These objectives and priorities include: (1) Issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and, as appropriate, overseeing compliance examination functions delegated to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA; (4) maintaining a Governmentwide access service to that same data, and for network users with overlapping interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and the financial sector; and (6) coordinating with and collaborating on anti-terrorism and anti-money laundering initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

During fiscal year 2010, FinCEN issued the following regulatory actions:

Administrative Rulings. On November 17, 2009, FinCEN issued a final technical rule change to update the BSA provisions to reflect that Administrative

Rulings are published on the FinCEN Web site, rather than in the Federal Register, allowing information to be distributed more broadly and more expediently.

Prepaid Access—Regulatory Framework for Activity Previously Referred to as Stored Value. On June 28, 2010, FinCEN issued a Notice of Proposed Rulemaking (NPRM) that would establish a more comprehensive regulatory framework for non-bank prepaid access. The proposed rule, which focuses on prepaid programs that pose the greatest potential risks of money laundering and terrorist financing, was developed in close cooperation with law enforcement and regulatory authorities.

The proposed changes impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others who might be in a position to provide meaningful information to regulators and law enforcement, such as prepaid access sellers. Although mandated by the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) of 2009 (section 503) to issue a final rule ''regarding issuance, sale, redemption, or international transport of stored value,'' rulemaking activities were already underway. Just prior to the enactment of the CARD Act, FinCEN issued an NPRM clarifying the applicability of BSA regulations with respect to MSB activities. As part of this NPRM, FinCEN solicited comments on various prepaid/stored value issues to assist with future rulemakings.

Confidentiality of Suspicious Activity Reports. On March 3, 2009, FinCEN issued a Notice of Proposed Rulemaking clarifying the non-disclosure provisions with respect to the existing regulations pertaining to the confidentiality of suspicious activity reports (SARs). In conjunction with this notice, FinCEN issued for comment two guidance documents, SAR Sharing with Affiliates for depository institutions and SAR Sharing with Affiliates for securities and futures industry entities, to solicit comment permitting certain financial institutions to share SARs with their U.S. affiliates that are also subject to SAR reporting requirements. FinCEN expects to publish the final rule before the end of 2010.

Mutual Funds. On April 14, 2010, FinCEN issued a Final Rule to include mutual funds within the general definition of ''financial institutions'' in BSA regulations, subjecting mutual funds to rules on the filing of Currency Transaction Reports (CTRs) for cash transactions over $10,000 in lieu of current obligations to file Form 8300s, and on the creation, retention, and transmittal of records or information for transmittals of funds. In addition, the final rule harmonized the definition of mutual fund in the AML program rule with the definitions found in the other BSA rules to which mutual funds are subject.

Non-Bank Residential Mortgage Lenders and Originators. On July 21, 2009, FinCEN issued an Advance Notice of Proposed Rulemaking to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report (SAR) regulations to a specific sub-set of loan and finance companies, i.e., non-bank residential mortgage lenders and originators FinCEN is working on a Notice of Proposed Rulemaking that would require nonbank residential mortgage lenders and originators to implement AML program and SAR filing requirements, which is expected to be published prior to the end of 2010.

Expansion of Special Information Sharing Procedures (pursuant to section 314(a) of the BSA). On February 10, 2010, FinCEN issued a Final Rule to amend the BSA regulations to allow certain foreign law enforcement agencies, State and local law enforcement agencies, as well as FinCEN and other appropriate components of the Department of the Treasury to submit requests for information to financial institutions.

FBAR Requirements. On February 26, 2010, working with Treasury Tax Policy and the IRS, FinCEN issued an NPRM with regard to revising the regulations governing the filing of Reports of Foreign Bank and Financial Accounts (FBARs). Among other things, FinCEN and the IRS will seek comments regarding when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account, and when an interest in a foreign entity (e.g., a corporation, partnership, trust or estate) should be subject to FBAR reporting. The final rule is expected to be published in FY 2011.

Cross Border Electronic Transmittal of Funds. FinCEN drafted a Notice of Proposed Rulemaking (NPRM) in conjunction with the feasibility study prepared pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 concerning the issue of obtaining information about certain cross-border funds transfers and transmittals of funds. The NPRM proposes requirements for certain banks and money transmitters to submit reports of transmittal orders associated with certain cross border electronic transmittals of funds. In addition, the proposal would require an annual filing with FinCEN by all banks of a list of taxpayer identification numbers of accountholders who transmitted or received a cross border electronic transmittal of funds that is subject to reporting. FinCEN published the NPRM on September 30, 2010.

Renewal of Existing Rules. FinCEN renewed without change a number of information collections associated with existing requirements: The Currency Transaction Report requiring financial institutions to report cash transactions over $10,000 (FinCEN Form 104), regulations requiring businesses to report cash payments over $10,000 received in a trade or business (FinCEN Form 8300), two USA PATRIOT Act regulations imposing special measures against the Commercial Bank of Syria including its subsidiary, Syrian Lebanese Commercial Bank, a USA Patriot Act regulation imposing special measures against Banco Delta Asia, and regulations requiring certain financial institutions to establish special due diligence programs for correspondent accounts for foreign financial institutions.

Special Due Diligence Programs for Certain Foreign Accounts. As a result of a congressional mandate to prescribe regulations under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, FinCEN is revising the BSA regulations to incorporate an additional relevant factor for a covered financial institution to consider when assessing the money laundering risks presented by correspondent accounts for foreign financial institutions. FinCEN expects to issue a final rule change to 103.176 before the end of 2010.

Administrative Rulings and Written Guidance. FinCEN issued 37 Administrative Rulings, written responses to interpretive questions, and written guidance pieces interpreting the BSA and providing clarity to regulated industries.

FinCEN's regulatory priorities for fiscal year 2011 include finalizing any initiatives mentioned above that are not finalized by fiscal year end, as well as the following projects:

Reorganization of BSA Rules. On October 23, 2008, FinCEN issued a Notice of Proposed Rulemaking to re-

designate and reorganize the BSA regulations in a new chapter within the Code of Federal Regulations. The re-designation and reorganization of the regulations in a new chapter is not intended to alter regulatory requirements. The regulations will be organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. The new chapter will replace 31 CFR part 103.

Money Services Businesses-Definitions and Other Regulations. On May 12, 2009, FinCEN issued a Notice of Proposed Rulemaking revising the definitions for Money Services Businesses (MSBs) to delineate more clearly the scope of entities regulated as MSBs, incorporating previously issued Administrative Rules and guidance with regard to MSBs, and ensuring that certain foreign-located persons engaging in MSB activities within the United States are subject to BSA rules. FinCEN expects to issue a Final Rule in fiscal year 2011.

Anti-Money Laundering Programs. Pursuant to section 352 of the USA PATRIOT Act, certain financial institutions are required to establish AML programs. Continued from prior fiscal years, FinCEN is researching and developing rulemaking to require State-chartered credit unions and other depository institutions without a Federal functional regulator to implement AML programs. FinCEN also is researching and developing AML program (and SAR reporting) requirements for investment advisers. Finally, FinCEN also will continue to consider regulatory options regarding additional loan and finance companies, and certain corporate and trust service providers.

Other Requirements. FinCEN also will continue to issue proposed and final rules pursuant to section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects to propose various technical and other regulatory amendments in conjunction with its ongoing, comprehensive review of existing regulations to enhance regulatory efficiency.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2011, the IRS will accord priority to the following regulatory projects:

Deduction and Capitalization of Costs for Tangible Assets. Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Under section 263(a) of the Code, no immediate deduction is allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Those expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. It often is not clear whether an amount paid to acquire, produce, or improve property is a deductible expense or a capital expenditure. Although existing regulations provide that a deductible repair expense is an expenditure that does not materially add to the value of the property or appreciably prolong its life, the IRS and Treasury believe that additional clarification is needed to reduce uncertainty and controversy in this area. In August 2006, the IRS and Treasury issued proposed regulations in this area and received numerous comments. In March 2008, the IRS and Treasury withdrew the 2006 proposed regulations and issued new proposed regulations, which have generated relatively few comments. The IRS and Treasury intend to finalize those regulations.

Arbitrage Investment Restrictions on Tax-Exempt Bonds. The arbitrage investment restrictions on tax-exempt bonds under section 148 generally limit issuers from investing bond proceeds in higher-yielding investments. Treasury and the IRS plan to issue proposed regulations to address selected current issues involving the arbitrage restrictions, including guidance on the issue price definition used in the computation of bond yield, working capital financings, grants, investment valuation, modifications and terminations of qualified hedging transactions, and selected other issues.

Tax Credit Bonds. Tax credit bonds are bonds in which the holder receives a Federal tax credit in lieu of some or all of the interest on the bond. The American Recovery and Reinvestment Act of 2009 created a number of new types of tax credit bonds and modified the law as it concerned several existing types of tax credit bonds. The Hiring Incentives to Restore Employment Act added subsection (f) to section 6431 which authorizes issuers to receive Federal direct payments of allowances of refundable tax credits in lieu of the Federal tax credits that otherwise would be allowed to holders of certain tax credit bonds. The IRS and Treasury intend to provide guidance on selected legal issues concerning tax credit bonds and remedial actions involving refundable tax credit bonds.

Build America Bonds. Treasury and the IRS plan to issue proposed regulations to provide guidance on interpretative issues that have arisen in implementing the broad new Build America Bond program in section 54AA, which was created by the American Recovery and Reinvestment Act of 2009.

Guidance on the Tax Treatment of Distressed Debt. A number of tax issues relating to the amount, character, and timing of income, expense, gain, or loss on distressed debt remain unresolved. In addition, the tax treatment of distressed debt, including distressed debt that has been modified, may affect the qualification of certain entities for tax purposes or result in additional taxes on the investors in such entities, such as regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits (REMICs). During fiscal year 2010, Treasury and the IRS have addressed some of these issues through published guidance, including (1) two revenue procedures providing relief for certain modifications of distressed commercial mortgage loans held by a REMIC, (2) a notice providing that interest deductions for certain refinanced corporate indebtedness issued in 2010 would not be deferred or disallowed under section 163(e)(5), and (3) proposed regulations clarifying that the deterioration in the financial condition of the issuer of a modified debt instrument is not taken into account to determine whether the instrument is debt or equity. Treasury

and the IRS plan to address more of these issues in published guidance.

Elective Deferral of Certain Business Discharge of Indebtedness Income. In the recent economic downturn, many business taxpayers realized income as a result of modifying the terms of their outstanding indebtedness or refinancing on terms subjecting them to less risk of default. The American Recovery and Reinvestment Act of 2009 includes a special relief provision allowing for the elective deferral of certain discharge of indebtedness income realized in 2009 and 2010. The provision, section 108(i) of the Code, is complicated and many of the details will have to be supplied through regulatory guidance. On August 9, 2009, Treasury and the IRS issued Revenue Procedure 2009-37 that prescribes the procedure for making the election. Treasury and the IRS recently promulgated temporary and proposed regulations (TD 9497 and TD 9498), which were published in the Federal Register on August 13, 2010. These regulations provide additional guidance on such issues as the types of indebtedness eligible for the relief, acceleration of deferred amounts, the operation of the provision in the context of flow-through entities, the treatment of the discharge for the purpose of computing earnings and profits, and the operation of a provision of the statute deferring original issue discount deductions with respect to related refinancings. Treasury and the IRS intend to issue final regulations.

Regulation of Tax Return Preparers. In June 2009, the IRS launched a comprehensive review of the tax return preparer program with the intent to propose a set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. The IRS published findings and recommendations in Publication 4832, *Return Preparer Review*. In the report, the IRS recommended increased oversight of the tax return preparer industry, including but not limited to, mandatory preparer tax identification number (PTIN) registration and usage, competency testing, continuing education requirements, and ethical standards for all tax return preparers. As part of a multi-step effort to increase oversight of Federal tax return preparers, Treasury and the IRS published regulations authorizing the IRS to require tax return preparers who prepare all or substantially all of a tax return for compensation after December 31, 2010, to use PTINs as the preparer's identifying number on all tax returns and refund claims that they prepare. On September 30, 2010, Treasury and the IRS published regulations that set the user fee for obtaining a PTIN at $50 plus a third-party vendor's fee. On August 23, 2010, Treasury and IRS published proposed amendments to Circular 230, which will establish registered tax return preparers as a new category of tax practitioner and will extend the ethical rules for tax practitioners to any individual who is a tax return preparer. Treasury and the IRS intend to finalize these regulations in 2010 or 2011 and publish additional guidance as necessary to implement the recommendations in the report.

Requirement for Certain Taxpayers to File Forms Disclosing Uncertain Tax Positions. Section 6011 of the Internal Revenue Code provides that persons liable for a tax imposed by title 26 must make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation section 1.6011-1 requires every person liable for income tax to make such returns as are required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation section 1.6012-2 sets out the corporations that are required to file returns and the form those returns must take. Treasury and the IRS issued proposed regulations on September 9, 2010, that would require corporations to file a Schedule UTP consistent with the forms, instructions, and other appropriate guidance provided by the IRS. The IRS intends to implement the authority provided in this regulation initially by issuing a schedule and explanatory publication that require those corporations that prepare audited financial statements to file a schedule identifying and describing the uncertain tax positions, as described in FIN 48 and other generally accepted accounting standards, that relate to the tax liability reported on the return.

Basis Reporting. Section 403 of the Energy Improvement and Extension Act of 2008 (Pub. L. No. 110-343), enacted on October 3, 2008, added sections 6045(g), 6045A, and 6045B to the Internal Revenue Code. Section 6045(g) provides that every broker required to file a return with the Service under section 6045(a) showing the gross proceeds from the sale of a covered security must include in the return the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Section 6045A further provides that, beginning in 2011, a broker and any other specified person (transferor) that transfers custody of a covered security to a receiving broker must furnish to the receiving broker a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). The transferor must furnish the statement to the receiving broker within 15 days after the date of the transfer or at a later time provided by the Secretary. Proposed regulations implementing these provisions and a notice of public hearing were published on December 17, 2009, and a hearing was held on February 17, 2010. Final regulations and a Notice providing transitional relief from the transfer reporting requirements for calendar year 2011 were issued in October 2010.

Withholding on Government Payments for Property and Services. Section 3402(t) was added to the Internal Revenue Code by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Section 3402(t) requires all Federal, State, and local Government entities (except for certain small State entities) to deduct and withhold an income tax equal to 3 percent from all payments (with certain enumerated exceptions) the Government entity makes for property or services. Section 3402(t) will be effective for payments made after December 31, 2011. On March 11, 2008, the IRS issued Notice 2008-38 soliciting public comments regarding guidance to be provided to Federal, State, and local governments required to withhold under section 3402(t). After considering the many comments, the IRS and Treasury issued a Notice of Proposed Rulemaking, which was published in the Federal Register on December 4, 2008. A hearing on the proposed regulations was held on April 16, 2009, and the IRS has received 168 comments from stakeholders on the proposed regulations. The IRS and Treasury are considering the comments and intend to issue final regulations.

Information Reporting for Foreign Accounts of U.S. Persons. In March 2010, chapter 4 (sections 1471 to 1474) was added to subtitle A of the Internal Revenue Code as part of the Hiring Incentives to Restore Employment Act (HIRE Act) (Pub. L. 111-147). Chapter 4 was enacted to address concerns with offshore tax evasion, and generally requires foreign financial institutions (FFIs) to enter into an agreement (FFI Agreement) with the IRS to report information regarding certain financial accounts of U.S. persons and foreign

entities with significant U.S. ownership. An FFI that does not enter into an FFI Agreement generally will be subject to a withholding tax on the gross amount of certain payments from U.S. sources, as well as the proceeds from disposing of certain U.S. investments. Treasury and the IRS published Notice 2010-60, which provides preliminary guidance and requests comments on the most important and time-sensitive issues under chapter 4. Treasury and the IRS expect to follow up this notice with proposed regulations, a proposed model FFI Agreement, and other guidance before the general effective date of chapter 4, which applies to payments made on or after January 1, 2013. This guidance will address numerous issues, notably the definition of FFI, the due diligence required of withholding agents and FFIs in identifying U.S. accountholders, and the requirements for reporting U.S. accounts.

Withholding on Certain Dividend Equivalent Payments under Notional Principal Contracts. The HIRE act also added section 871(l) to the Code (now section 871(m)), which designates certain substitute dividend payments in security lending and sale-repurchase transactions and dividend-referenced payments made under certain notional principal contracts as U.S.-source dividends for purposes of the Federal withholding tax obligations of withholding agents and foreign persons (dividend equivalents). In response to this legislation, on May 20, 2010, the IRS issued Notice 2010-46, addressing the requirements for determining the proper withholding in connection with substitute dividends paid in foreign-to-foreign security lending and sale-repurchase transactions. The IRS and Treasury intend to issue regulations to implement the provisions of this Notice as well as regulations addressing cases where dividend equivalents should be found to arise in connection with notional principal contracts and other financial derivatives.

Foreign Financial Asset Reporting (section 6038D). Section 6038D was enacted by section 511 of the HIRE Act, effective for taxable years beginning after March 18, 2010. Section 6038D requires an individual taxpayer to include a disclosure statement with the individual's income tax return and to report certain information required by section 6038D(c) if the aggregate value of the taxpayer's interests in specified foreign financial assets exceeds $50,000 for the taxable year, or such higher dollar amount as the Secretary may prescribe. In addition, if a domestic entity is formed or availed of for the purpose of holding, directly or indirectly, specified foreign financial assets, then the Secretary may require the domestic entity to comply with section 6038D and report its specified foreign financial assets in the same manner as if the domestic entity were an individual. Treasury and the IRS intend to issue regulations, as well as a form and instructions, to implement section 6038D.

New International Tax Provisions of the Education, Jobs and Medicaid Assistance Act. On August 10, 2010, the Education, Jobs, and Medicaid Assistance Act of 2010 (Pub L. 111-226) was signed into law. The new law includes a significant package of international tax provisions. These provisions include limitations on the availability of foreign tax credits in certain cases where U.S. tax law and foreign tax law provide different rules for recognizing income and gain, and in cases where income items treated as foreign source under certain tax treaties would otherwise be sourced in the United States. The legislation also limits the ability of multinationals to reduce their U.S. tax burdens by using a provision intended to prevent corporations from avoiding U.S. income tax on repatriated corporate earnings. Other new provisions under this legislation limit the ability of multinational corporations to use acquisitions of related party stock to avoid U.S. tax on what would otherwise be taxable distributions of dividends. The statute also includes a new provision intended to tighten the rules under which interest expense is allocated between U.S.- and foreign-source income within multinational groups of related corporations when a foreign corporation has significant amounts of U.S.-source income that is effectively connected with a U.S. business. Treasury and the IRS expect to issue regulatory guidance on most of these provisions.

Guidance on Tax-Related Health Care Provisions. On March 23, 2010, the President signed the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) and on March 30, 2010, the President signed the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (referred to collectively as the Affordable Care Act (ACA)). The ACA's comprehensive reform of the health insurance system affects individuals, families, employers, health care providers, and health insurance providers. The ACA provides authority for Treasury and the IRS to issue regulations and other guidance to implement tax provisions in the ACA, some of which are effective immediately and some of which will become effective over the next several years. In the past few months, Treasury and the IRS, together with the Department of Health and Human Services and the Department of Labor, have issued a series of temporary and proposed regulations implementing various provisions of the ACA related to individual and group market reforms. In addition, Treasury and the IRS have issued guidance on specific ACA provisions relating to the tax treatment of health care benefits provided to children under age 27 (sec. 105 of the Code), the credit for small employers that provide health insurance coverage (sec. 45R), the credit for qualifying therapeutic discovery projects (sec. 48D), additional requirements for tax-exempt hospitals (sec. 501(r)), the tax on indoor tanning services (sec. 5000B), and information reporting for payments to corporations (sec. 6041). Providing additional guidance to implement tax provisions of the ACA is a priority for Treasury and the IRS.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers.

The OCC seeks to assure a banking system in which national banks soundly manage their risks, maintain the ability to compete effectively with other providers of financial services, meet the needs of their communities for credit and financial services, comply with laws and regulations, and provide fair access to financial services and fair treatment of their customers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376, July 21, 2010) imposes a significant number of rulemaking requirements that must be completed during fiscal year 2011. Most of them are to be issued jointly with other agencies. The exact details and timing of the rulemakings have not yet been determined and, therefore, they are not included here or in our regulatory agenda. When more information is known, we will promptly add them to our regulatory agenda and report them in our fiscal year 2012 regulatory plan.

Significant rules issued during fiscal year 2010 include:

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital — Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program (12 CFR part 3).* In order to support and facilitate the timely implementation of the Making Home Affordable Plan (MHAP) announced by the U.S. Department of Treasury and to promote the stability of banking organizations and the financial system, the banking agencies issued a final rule providing that a residential mortgage loan (whether a first-lien or a second-lien loan) modified under the MHAP will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other relevant supervisory criteria. The rule minimizes disincentives to bank participation in the MHAP that could otherwise result from agencies' regulatory capital regulations. The banking agencies believe that this treatment is appropriate in light of the overall important public policy objectives of promoting sustainable loan modifications for at-risk homeowners that balance the interests of borrowers, servicers, and investors. Joint agency action was essential to ensure that the regulatory capital consequences of participation in the MHAP are the same for all commercial banks and thrifts. A final rule was issued on November 20, 2009. (74 FR 60137)
- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues (12 CFR part 3).* The Federal banking agencies amended their general risk-based and advanced risk-based capital adequacy frameworks by adopting a final rule that eliminates the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; provides for an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect on risk-weighted assets that will result from changes to U.S. generally accepted accounting principles pertaining to the transfer and consolidation assets; provides for an optional two-quarter delay, followed by an optional two-quarter phase-in, of the application of the agencies' regulatory limit on the inclusion of the allowance for loan and lease losses (ALLL) in tier 2 capital for the portion of the ALLL associated with the assets a banking organization consolidates as a result of changes to U.S. generally accepted accounting principles; and provides a reservation of authority to permit the agencies to require a banking organization to treat entities that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the structure. The delay and subsequent phase-in periods of the implementation apply only to the agencies' risk-based capital requirements, not the leverage ratio requirement. This final rule was issued on January 28, 2010 (75 FR 4636).
- *Registration of Mortgage Loan Originators (12 CFR part 34).* The banking agencies, the NCUA, and Farm Credit Administration (FCA) issued final rules to implement the S.A.F.E. Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289. These amendments require an employee of a depository institution, an employee of a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the FCA who engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (NMLSR) and to obtain a unique identifier. These amendments also provide that these institutions must require their employees who act as mortgage loan originators to comply with this Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with these requirements. The final rules were issued on July 28, 2010 (75 FR 44656). The OCC has included this rulemaking project in The Regulatory Plan (1557-AD23).
- *Community Reinvestment Act Regulations (12 CFR part 25).* The banking agencies issued proposed regulations to revise provisions of their rules implementing the Community Reinvestment Act. The agencies proposed revising the term ''community development'' to include loans, investments, and services by financial institutions that support, enable or facilitate projects or activities that meet the criteria described in section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA) and are conducted in designated target areas identified in plans approved by the U.S. Department of Housing and Urban Development under the Neighborhood Stabilization Program (NSP), established by HERA. This notice of proposed rulemaking was published on June 24, 2010 (75 FR 36016).
- *Community Reinvestment Act Regulations (12 CFR part 25).* On August 14, 2008, the Higher Education Opportunity Act (HEOA) was enacted into law (Pub. L. 110-315, 122 Stat. 3078). Section 1031 of the HEOA revised the Community Reinvestment Act (CRA) to require the banking agencies, when evaluating a bank's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the bank to low-income borrowers. The banking agencies issued a final rule that would implement section 1031 of the HEOA. In addition, the rule would incorporate into the banking agencies' rules statutory language that allows them to consider as a factor when evaluating a bank's record of meeting community credit needs capital investment, loan participation, and other ventures undertaken by nonminority- and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions. The joint final rule was published on October 4, 2010 (75 FR 61046)
- *Alternatives to the Use of External Credit Ratings in the Regulations of the OCC (12 CFR parts 1, 16, and 28).* Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings. The agencies are also required to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-worthiness. Through an advanced notice of proposed rulemaking (ANPRM), the OCC is seeking to gather information as it begins to review its regulations pursuant to the Dodd-Frank Act. This

ANPRM describes the areas where the OCC's regulations, other than those that establish regulatory capital requirements, currently rely on credit ratings; sets forth the considerations underlying such reliance; and requests comment on potential alternatives to the use of credit ratings. The ANPRM was published on August 13, 2010 (75 FR 49423).

- *Advance Notice of Proposed Rulemaking Regarding Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies (12 CFR part 3).* Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act directs all Federal agencies to review, no later than 1 year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings. The agencies are also required to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-worthiness. Through an advanced notice of proposed rulemaking, the Federal banking agencies are seeking to gather information as they begin to review their regulations and capital standards pursuant to the Dodd-Frank Act. This ANPRM describes the areas in the agencies' risk-based capital standards (including the general risk-based capital rules, market risk rules, and advanced approaches rules) where the agencies rely on credit ratings, as well as the Basel Committee on Banking Supervision's recent amendments to the Basel Accord, which could affect those standards. The ANPRM then requests comment on potential alternatives to the use of credit ratings. The ANPRM was published on August 25, 2010 (75 FR 52283).

The OCC's regulatory priorities for fiscal year 2011 include the following:

- *Standards Governing the Release of a Suspicious Activity Report (12 CFR part 4). Confidentiality of Suspicious Activity Reports (12 CFR part 21).*

The OCC is issuing final regulations governing the release of non-public OCC information set forth in 12 CFR part 4, subpart C. The final rule clarifies that the OCC's decision to release a suspicious activity report (SAR) will be governed by the standards set forth in amendments to the OCC's SAR regulation, 12 CFR 21.11(k), that are part of a separate, but simultaneously issued, final rulemaking discussed below.

The OCC's final regulations implementing the Bank Secrecy Act governing the confidentiality of a suspicious activity report (SAR) will: Clarify the scope of the statutory prohibition on the disclosure by a national bank of a SAR; address the statutory prohibition on the disclosure by the government of a SAR as that prohibition applies to the OCC's standards governing the disclosure of SARs; clarify that the exclusive standard applicable to the disclosure of a SAR, or any information that would reveal the existence of a SAR, by the OCC is ''to fulfill official duties consistent with the purposes of the BSA''; and modify the safe harbor provision in its rules to include changes made by the USA PATRIOT Act. This final rule is based upon a similar rule prepared by the Financial Crimes Enforcement Network (FinCEN).

- *Collective Investment Funds (12 CFR part 9).* The OCC plans to develop and issue a notice of proposed rulemaking to update the regulation of short term investment funds (STIFs). The proposal would seek comment on: A proposed requirement for STIFs to adopt a stable Net Asset Value (NAV) as a fund objective; a shortened period for securities maturities, liquidity standards, and a contingency funding plan; proposed stress testing of funds; a proposal to compare NAV to market value, contingency plans, and actions to be taken at certain variances between NAV and market value; proposed disclosures to fund participants; and a proposed bank notification to the OCC if certain events impact a STIF.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, timely approach to supervision.

OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the banking agencies) continue to work together on regulations where they share the responsibility to implement statutory requirements. The banking agencies currently are working jointly on rules to implement provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and to update capital standards to maintain and improve consistency in agency rules. These rules include revisions to implement the *International Convergence of Capital Management and Capital Standards: A Revised Framework (Basel II Framework)* and include:

- *Risk-Based Capital Standards: Market Risk:* In 2006, the banking agencies issued an NPRM on Market Risk. In the NPRM, OTS proposed to require savings associations to measure and hold capital to cover their exposure to market risk. The banking agencies did not finalize the 2006 NPRM. Subsequently, the Basel Committee directed international revisions, which were completed in July 2009. At that time, the banking agencies began drafting a new NPRM based upon the international revisions, as well as on the comments received on the 2006 NPRM. The banking agencies plan to issue a new NPRM in 2011.
- *Risk-Based Capital Standards: Standardized Approach:* In 2008, the banking agencies issued an NPRM implementing the Standardized Approach to credit risk and approaches to operational risk that are contained in the Basel II Framework. Banking organizations would be able to elect to adopt these proposed revisions or remain subject to the agencies' existing risk-based capital rules, unless the banking organization uses the Advanced Capital Adequacy Framework. The banking agencies are considering how best to move forward in adopting this proposal, particularly in light of section 939A of the Dodd-Frank Act, which directs Federal agencies to review their regulations that reference or require the use of credit ratings to assess the creditworthiness of an instrument and replace such references with uniform standards of creditworthiness.
- *Risk-Based Capital Standards: Alternatives to the Use of Credit Ratings.* The banking agencies are seeking to gather information as they begin work toward revising their capital regulations to comply with the Dodd-Frank Act. Section 939A of the Act directs all Federal agencies to review their regulations that reference or require the use of credit ratings to

assess the creditworthiness of an instrument. The Act further directs the agencies to remove such requirements and to substitute in their place uniform standards of creditworthiness.

- *Excessive Incentive-Based Compensation; Compensation Structure Disclosure:* Section 956 of the Dodd-Frank Act requires the banking agencies, the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC), and the Federal Housing Finance Agency, to jointly prescribe regulations or guidance prohibiting any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions by providing an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits, or that could lead to material financial loss to the covered financial institution. The Act also requires such agencies to jointly prescribe regulations or guidance requiring each covered financial institution to disclose to its regulator the structure of all incentive-based compensation arrangements offered by such institution sufficient to determine whether the compensation structure provides any officer, employee, director, or principal shareholder with excessive compensation or could lead to material financial loss to the institution.

In addition to the interagency risk-based capital regulatory project involving alternatives to the use of credit ratings referenced above, OTS also will undertake:

- *Alternatives to the Use of External Credit Ratings in the Regulations of the OTS:* Pursuant to the requirements of section 939 of the Dodd-Frank Act, OTS will review any non-capital regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings, and will remove references to or requirements of reliance on credit ratings and will substitute an alternative standard of creditworthiness.

OTS is also working on joint rulemakings with the OCC, FRB, and FDIC to implement regulations related to other statutes, including the Community Reinvestment Act (CRA) and the Gramm-Leach-Bliley Act (GLBA):

- *CRA Higher Education Loans final rule:* The banking agencies published a proposed rule on June 30, 2009, to implement section 1031 of the Higher Education Opportunity Act, which requires the agencies, when evaluating an institution's record of meeting community credit needs to consider, as a factor, low-cost education loans provided by the institution to low-income borrowers (74 FR 31209). The banking agencies plan to issue a final rule in the fall of 2010.
- *CRA Neighborhood Stabilization Program (NSP) final rule:* On June 24, 2010, the banking agencies published a proposed rule to revise the term ''community development'' to include loans, investments, and services by institutions that support, enable, or facilitate projects or activities that meet the criteria described in section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 and are conducted in designated target areas identified in plans approved by the U.S. Department of Housing and Urban Development under the NSP (75 FR 36016). The agencies plan to issue a final rule in the fall of 2010.
- *Recordkeeping Requirements for Securities Activities, Joint Notice of Proposed Rulemaking*: The GLBA requires the banking agencies to adopt recordkeeping requirements sufficient to facilitate and demonstrate compliance with the exceptions to the definitions of ''broker'' or ''dealer'' for banks in the Securities Exchange Act of 1934. The banking agencies plan to issue the NPRM in the fall of 2010.

Significant final rules issued by OTS during fiscal year 2010 include:

- *Risk-Based Capital Guidelines: Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs.* On January 28, 2010 (75 FR4636), the banking agencies modified their general risk-based capital standards and advanced risk-based capital adequacy framework to eliminate the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; and permit the banking agencies to require banking organizations to treat structures that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes commensurate with the risk relationship of the banking organization to the structure.
- *S.A.F.E. Mortgage Licensing:* The banking agencies, the NCUA, and the Farm Credit Administration issued a joint final rule on July 28, 2010, to amend their rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act) (75 FR 44656). These amendments require an employee of a depository institution or a depository institution subsidiary regulated by a Federal banking agency, or an employee of an institution regulated by the NCUA or FCA, that engages in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. The amendments also provide that these regulated institutions must require their employees who act as mortgage loan originators to comply with the S.A.F.E. Act's registration and unique identifier requirements and must adopt and follow written policies and procedures to assure compliance with such requirements.
- *Privacy Notices*: On December 1, 2009, OTS implemented section 728 of the Financial Services Regulatory Relief Act of 2006 by amending its privacy rules under the GLBA to include a safe harbor model privacy form (74 FR 62894). The banking agencies, the SEC, the Federal Trade Commission, and the Commodities Futures Trading Commission issued final amendments to their rules requiring that initial and annual privacy notices be sent to their customers. And, pursuant to section 728, the banking agencies adopted a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages. TTB's mission and regulations are designed to:

1) Regulate with regard to the issuance of permits and authorizations to operate in the alcohol and tobacco industries;
2) Assure the collection of all alcohol, tobacco, and firearms and

ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries; and

3) Suppress commercial bribery, consumer deception, and other prohibited practices in the alcohol beverage industry.

TTB plans to pursue one significant regulatory action during FY 2011. In 2007, the Department approved the publication of a notice of proposed rulemaking soliciting comments on a proposal to require a serving facts statement on alcohol beverage labels. The proposed statement would include information about the serving size, the number of servings per container, and per-serving information on calories and grams of carbohydrates, fat, and protein. The proposed rule would also require information about alcohol content. This regulatory action was initiated under section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. 205(e), which confers on the Secretary of the Treasury authority to promulgate regulations for the labeling of alcoholic beverages, including regulations that prohibit consumer deception and the use of misleading statements on labels and that ensure that such labels provide the consumer with adequate information as to the identity and quality of the product. TTB anticipates publication of a final rule in FY 2011.

In addition to the regulatory action described above, in FY 2011, TTB plans to give priority to the following regulatory matters:

Modernization of title 27, Code of Federal Regulations. TTB will continue to pursue its multi-year program of modernizing its regulations in title 27 of the Code of Federal Regulations (CFR). This program involves updating and revising the regulations to be more clear, current, and concise, with an emphasis on the application of plain language principles. TTB laid the groundwork for this program in 2002 when it started to recodify its regulations in order to present them in a more logical sequence. In FY 2005, TTB evaluated all of the 36 parts in chapter I of title 27 of the CFR and prioritized them as ''high,'' ''medium,'' or ''low'' in terms of the need for complete revision or regulation modernization. TTB determined importance based on industry member numbers, revenue collected, and enforcement and compliance issues identified through field audits and permit qualifications, statutory changes, significant industry innovations, and other factors. The 10 parts of title 27 of the CFR that TTB ranked as ''high'' include the five parts directing operation of the major taxpayers under the Internal Revenue Code of 1986: Part 19—Distilled Spirits Plants; part 24—Wine; part 25—Beer; part 40—Manufacture of Tobacco Products and Cigarette Papers and Tubes; and part 53—Manufacturers Excise Taxes—Firearms and Ammunition. These five parts represent nearly all the tax revenue that TTB collects. The remaining five parts rated ''high'' consist of regulations covering imports and exports (part 27—Importation of Distilled Spirits, Wines, and Beer; part 28—Exportation of Alcohol; and part 44—Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax), as well as regulations addressing the American Viticultural Area program (part 9) and TTB procedures (part 70).

To date, related to the modernization plan, TTB has published notices of proposed rulemaking to revise part 19 and to amend part 9 and has reviewed the public comments received in response to those notices. TTB also plans to put forward to the Department for publication approval an advance notice of proposed rulemaking (ANPRM) for the revision of the beer regulations in part 25. We anticipate that the final rules for parts 9 and 19 and the ANPRM for part 25 will be published in FY 2011. In FY 2011, TTB will begin a modernization effort on the export regulations in part 28 and a crosscutting modernization effort to incorporate statutory changes into the regulations.

Allergen Labeling. In FY 2006, TTB published interim regulations setting forth standards for voluntary allergen labeling of alcohol beverages. These regulatory changes were an outgrowth of changes made to the Federal Food, Drug, and Cosmetic Act by the Food Allergen Labeling and Consumer Protection Act of 2004. At the same time, TTB published a proposal to make those interim requirements mandatory. In FY 2011, TTB will continue its review of mandatory allergen labeling with a view to preparing a final rule document that would take effect on the same date as the serving facts regulatory changes discussed above.

Other Wine Labeling Issues. In FY 2011, TTB will continue to act on petitions for the establishment of new American viticultural areas (AVAs) and for the modification of the boundaries of existing AVAs. TTB also will seek Departmental publication approval of a number of other wine labeling rulemaking documents for public comment in FY 2011, including a notice of proposed rulemaking to adopt new label designation standards for wines now generally described as ''wine with natural flavors,'' and an advance notice of proposed rulemaking seeking comments on a petition requesting that the regulations be amended to limit the use of American appellations to wines produced entirely from U.S. grapes.

Specially Denatured and Completely Denatured Alcohol Formulas. In FY 2011, TTB will submit for publication approval by the Department a proposal to reclassify some specially denatured alcohol (SDA) formulas as completely denatured alcohol (CDA) for which formula submission to TTB is not required. The proposed regulatory changes would also allow other SDA formulas to be used without the submission of article formulas. These changes would allow TTB to shift its SDA-dedicated resources from the current front-end pre-market formula control approach to a post-market assessment of actual compliance with SDA regulations.

Alternation of Brewery Premises. In FY 2011, TTB will forward to the Department for publication approval a notice of proposed rulemaking to amend the TTB regulations to set forth specific standards for the approval and operation of alternating proprietorships at the same brewery premises. The proposed regulations will include standards for alternation agreements between host and tenant brewers as well as rules for recordkeeping and segregation of products made by different brewers.

Classification of Tobacco Products. In FY 2011, TTB will continue its review of standards for the classification of different tobacco products. In FY 2010, TTB published an advance notice seeking comments on appropriate standards to distinguish between pipe tobacco and roll-your-own tobacco. TTB will review comments in 2011 and proceed with further rulemaking as appropriate.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) has responsibility for borrowing the money needed to operate the Federal Government and accounting for the resulting debt, regulating the primary and secondary Treasury securities markets, and ensuring that reliable systems and processes are in place for buying and transferring Treasury securities.

BPD administers regulations: (1) Governing transactions in government securities by government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended; (2) Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local government securities; (3) Setting out the terms and conditions by which Treasury may buy back and redeem outstanding, unmatured marketable Treasury securities through debt buyback operations; (4) Governing securities held in Treasury's retail systems; and (5) Governing the acceptability and valuation of collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

During fiscal year 2011, BPD will accord priority to the following regulatory projects:

Savings Bond Issuing and Paying Agent Regulations. BPD plans to issue a final rule amending the savings bond issuing agent regulations (31 CFR part 317) to allow BPD to reduce the fee it pays issuing agents for submitting savings bond applications in paper form.

TreasuryDirect. BPD is ending the sale of paper savings bonds through payroll savings plans. In October 2010, BPD anticipates a rulemaking that will add electronic payroll savings plans to TreasuryDirect.

SellDirect. BPD plans to eliminate the SellDirect option from Legacy Treasury Direct and TreasuryDirect. The anticipated effective date for this rulemaking is December 31, 2010.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Governmentwide accounting programs. For fiscal year 2011, FMS' regulatory plan includes the following priorities:

Management of Federal Agency Disbursements. We are amending our regulation that describes the responsibilities of Federal agencies and recipients with respect to the electronic delivery of Federal payments and establishes the circumstances under which waivers from the electronic funds transfer (EFT) requirement are available. Federal law requires that, unless waived by the Secretary of the Treasury, all Federal payments, other than payments made under the Internal Revenue Code of 1986, must be made electronically, that is, by EFT. The amendments generally require individuals to receive Federal nontax payments by EFT, effective March 1, 2011. Individuals receiving Federal payments by check on the effective date, however, may continue to do so until February 28, 2013.

For Federal benefit recipients, this means that individuals who apply for Federal benefits on or after March 1, 2011, would receive their benefit payments by direct deposit. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. Beginning on March 1, 2013, all recipients of Federal benefit and other non-tax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Federal Government Participation in the Automated Clearing House. We are amending our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The amendments adopt, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA), as the rules governing the use of the ACH Network by Federal agencies. We are issuing this rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identity the parties to the transaction and to allow transactions to be screened for compliance with for Office of Foreign Assets Control (OFAC) requirements.

In addition, the amendments will: (1) Streamline the process for reclaiming post-death benefit payments from financial institutions; (2) require financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008; and (3) modify our previous guidance regarding the requirement that non-vendor payments be delivered to a deposit account in the name of the recipient.

Indorsement and Payment of Checks Drawn on the United States Treasury. By amending our regulation governing the indorsement and payment of checks drawn on the United States Treasury, we will provide Treasury with authority to debit a financial institution's reserve account at the financial institution's servicing Federal Reserve Bank for all check reclamations that the financial institution has not protested. Financial institutions will continue to have the right to file a protest with FMS if they believe a proposed reclamation is in error.

Debt Collection Authorities Under the Debt Collection Improvement Act. We are amending our regulation governing the offset of Federal tax refunds to collect delinquent State income tax obligations. The SSI Extension for Elderly and Disabled Refugees Act of 2008 amended section 6402 of the Internal Revenue Code to authorize the offset of Federal tax refunds to collect certain delinquent unemployment compensation debts owed to States by taxpayers. Treasury will incorporate the procedures necessary to collect State unemployment compensation debts reported by States as part of our centralized Treasury Offset Program.

Domestic Finance

Office of the Fiscal Assistant Secretary (OFAS)

The Office of the Fiscal Assistant Secretary develops policy for and oversees the operations of the financial infrastructure of the Federal Government, including payments, collections, cash management, financing, central accounting, and delinquent debt collection.

Anti-Garnishment. On April 19, 2010, Treasury issued a joint proposed rule with the Office of Personnel Management, the Railroad Retirement Board, the Social Security Administration, and Veterans Affairs. Treasury plans to promulgate a final joint rule, with the Federal benefit agencies, to give force and effect to various benefit agency statutes that exempt Federal benefits from garnishment. Typically, upon receipt of a garnishment order from a State court, financial institutions will freeze an account as they perform due diligence in complying with the order. The joint rule will address this practice of account freezes to ensure that benefit recipients have access to a certain amount of lifeline funds, while garnishment orders or other legal

processes are resolved or adjudicated, and will provide financial institutions with specific administrative instructions to carry out upon receipt of a garnishment order. The joint rule will apply to financial institutions but is not expected to have specific provisions for consumers, debt collectors, or banking regulators. However, the banking regulators would enforce the policy in cases of noncompliance by means of their general authorities.

Small Business Jobs Act

The Small business Jobs Act created two programs that Treasury is implementing during FY2011. First, the Act established the Small Business Lending Fund, a $30 billion fund to help small and community banks provide new loans to small businesses. The Act also established the State Small Business Credit Initiative, which provides funding to strengthen state small business lending programs. As required by the Act, Treasury expects issue guidance and regulations to implement these programs.

Federal Insurance Office (FIO)

Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank'' or ''Act'') established the Federal Insurance Office (FIO) with the Department of the Treasury. FIO will provide the federal government with dedicated expertise regarding the insurance industry. The Office will monitor the insurance industry, including identifying gaps or issues in the regulation of insurance that could contribute to a systemic crisis in the insurance industry or the United States financial system. FIO may receive and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports and regulations.

Office of Financial Research

Title I, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (''Dodd-Frank Act'') establishes the Office of Financial Research (OFR). The OFR is an office within the Department of the Treasury and will be headed by a Director, appointed by the President, by and with the advice and consent of the Senate. Congress created the OFR to help facilitate financial market data gathering and analyses for the new Financial Stability Oversight Council (FSOC), which is responsible for monitoring the financial system as a whole in order to promote financial stability and for the member agencies of the FSOC. Section 153(c) of the Dodd-Frank Act provides that the OFR ''shall issue rules, regulations, and orders'' to carry out specified purposes and duties under the Act.

BILLING CODE 4810–25–S

DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers benefit programs that recognize the important public obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their beneficiaries. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their beneficiaries. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to honor the memory and service of those who served in the Armed Forces.

VA's regulatory priorities include a special project to undertake a comprehensive review and improvement of its existing regulations. The first portion of this project is devoted to reviewing, reorganizing, and rewriting the VA's compensation and pension regulations found in 38 CFR part 3. The goal of the Regulation Rewrite Project is to improve the clarity and logical consistency of these regulations in order to better inform veterans and their family members of their entitlements.

BILLING CODE 8320–01–S

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

Overview

Created in the wake of elevated concern about environmental pollution, the U.S. Environmental Protection Agency opened its doors in downtown Washington, DC, on December 2, 1970. EPA was established to consolidate in one agency a variety of Federal research, monitoring, standard-setting, and enforcement activities to ensure environmental protection. EPA's mission is to protect human health and to safeguard the natural environment—air, water, and land—upon which life depends. For the past 40 years, EPA has been working for a cleaner, healthier environment for the American people.

From regulating vehicle emissions to ensuring that drinking water is safe; from cleaning up toxic waste to assessing the safety of pesticides and chemicals; and from reducing greenhouse gas emissions to encouraging conservation, reuse, and recycling, EPA and its Federal, State, local, and community partners have made enormous progress in protecting the Nation's health and environment. Our air and water have both grown significantly cleaner in the last 40 years. The number of Americans receiving water that meets health standards went from 79 percent in 1993, to 92 percent in 2008. We have also reduced 60 percent of the dangerous air pollutants that cause smog, acid rain, lead poisoning, and more since the passage of the Clean Air Act in 1970. Innovations like smokestack scrubbers and catalytic converters in automobiles have helped this process. Today, new cars are 98 percent cleaner in terms of smog-forming pollutants than they were in 1970. Meanwhile, American families and businesses went from recycling about 10 percent of trash in 1980 to more than 33 percent in 2008. Eighty-three million tons of trash are recycled annually-the equivalent of cutting greenhouse gas emissions from more than 33 million automobiles.

Highlights of EPA's Regulatory Plan

Despite the Nation's progress, however, much work remains. The environmental problems the country faces today are often more complex than those of years past, and implementing solutions—both nationally and globally—are more challenging. Addressing global climate change will call for coordinated efforts to research alternative fuels and other emission reduction technologies and will require strong partnerships across many economic sectors and around the world. Increased energy consumption and higher costs underscore the need to promote alternative energy sources and invest in new technologies. EPA and States face serious challenges in improving and maintaining the Nation's drinking water and wastewater infrastructure, and both are seeking innovative ways to fund needed repairs and construction. EPA remains committed to working with global partners to advance shared priorities, not only by adapting to climate change, but also in ensuring national security, facilitating commerce, promoting sustainable development, protecting vulnerable populations, and engaging diplomatically around the world.

Deepwater BP Oil Spill

EPA responded swiftly and transparently to the Deepwater BP oil spill in the Gulf of Mexico. The Agency has been working with local, State, and Federal response partners to provide sampling and real-time monitoring of the air, water, and sediment along the Gulf Coast. These efforts are intended to help States and other Federal agencies understand the immediate and long-term impacts of oil contamination and to ensure that residents in affected areas have access to information about the quality of their water. As part of its ongoing response, the Agency has developed new ways to provide the public with the latest data and information. EPA's emergency response site (www.epa.gov/bpspill) has offered downloadable files with data on air, water, sediment, and waste conditions gathered since April 28th, just days after the spill.

This spill has seriously affected the ecological and economic health of the Gulf Coast communities. Following the emergency response with a sustained, effective recovery and rebuilding effort will require significant commitments of resources, scientific and technical expertise, and coordination with a range of partners in the months and years ahead.

Seven Guiding Priorities

The Deepwater BP oil spill and other challenges inspire the Agency and drive its commitment to excellent performance and strong, measurable results. EPA is committed to carrying out its mission while respecting its core values of science, transparency, and the rule of law. Effective, consistent enforcement is critical to achieving the human-health and environmental benefits expected from our environmental laws. To guide the Agency's efforts in 2011 and subsequent years, Administrator Lisa P. Jackson has established seven guiding priorities.

1. Taking Action on Climate Change

In 2009, EPA finalized an endangerment finding on greenhouse gases; issued the first national rules to reduce greenhouse gas emissions under the Clean Air Act; and initiated a national reporting system for greenhouse gas emissions. While EPA stands ready to help Congress craft strong, science-based climate legislation that addresses the spectrum of issues, the Agency will deploy existing regulatory tools as they are available and warranted. Using the Clean Air Act, EPA will finalize mobile source rules and provide a framework for continued improvements in that sector. In 2011, EPA will further develop the national reporting system for greenhouse gases to enable the agency to receive, quality-assure, and verify data submitted electronically from 10,000 to 15,000 covered facilities. EPA will also continue to develop common-sense solutions for reducing greenhouse gas emissions from large stationary sources like power plants. In all of this, EPA is committed to recognizing that climate change affects other parts of its core mission.

Greenhouse Gas Emissions Standards for Automobiles. Last year, EPA took the first Federal regulatory steps to address the problem of global climate change by requiring industries to report their greenhouse gas emissions, and by issuing regulations that reduce greenhouse emissions from cars and light trucks and increase the Nation's use of renewable fuels. Transportation sources emitted 28 percent of all U.S. greenhouse gas emissions in 2007 and have been the fastest-growing source of those emissions since 1990. This year EPA is taking another major step by proposing to set national emissions standards under section 202 of the Clean Air Act to control greenhouse gas emissions from heavy-duty trucks and buses.

Prevention of Significant Deterioration. In January 2011, EPA will begin implementing its Prevention of Significant Deterioration and title V Greenhouse Gas Tailoring rule. EPA issued a final rule in May 2010 that establishes a common sense approach to addressing greenhouse gas emissions from stationary sources under the Clean Air Act (CAA) permitting programs. This final rule sets thresholds for

greenhouse gas (GHG) emissions that define when permits under the New Source Review Prevention of Significant Deterioration (PSD) and title V Operating Permit programs are required for new and existing industrial facilities. The rule ''tailors'' the requirements of these CAA permitting programs to limit which facilities will be required to obtain PSD and title V permits.

2. Improving Air Quality

Since passage of the Clean Air Act Amendments in 1990, nationwide air quality has improved significantly for the six criteria air pollutants for which there are national ambient air quality standards. Despite this progress, about 127 million Americans lived in counties with air considered unhealthy in 2008. Long-term exposure to air pollution can cause cancer and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems.

Review Air Quality Standards. Despite progress, millions of Americans still live in areas that exceed one or more of the national standards. Ground-level ozone and particle pollution still present challenges in many areas of the country. This year's regulatory plan describes efforts to review the primary National Ambient Air Quality Standards (NAAQS) for carbon monoxide, lead, and particulates. In addition, the Plan includes a joint review of the secondary NAAQS for oxides of nitrogen and oxides of sulfur.

Replacing the Clean Air Interstate Rule. In the spring of 2011, EPA expects to complete and begin implementing a rule to replace the Transport Rule that was remanded by the courts in 2008. Strengthening the standards and decreasing the emissions that contribute to interstate transport of air pollution will help many areas of the country attain the standards and achieve significant improvements in public health.

Cleaner Air from Improved Technology. EPA continues to address toxic air pollution under authority of the Clean Air Act Amendments of 1990. The centerpiece of this effort is the ''Maximum Achievable Control Technology'' (MACT) program, which requires that all major sources of a given type use emission controls that better reflect the current state of the art. This year's regulatory plan describes MACT standards under development for electric utility steam-generating units.

3. Assuring the Safety of Chemicals

One of EPA's highest priorities is to make significant and long overdue progress in assuring the safety of chemicals. On September 29, 2009, Administrator Jackson announced clear principles to guide Congress in writing a new chemical risk management law that will fix the weaknesses in Toxic Substances Control Act (TSCA). EPA is shifting its focus to addressing high-concern chemicals and filling data gaps on widely produced chemicals in commerce. In 2011, EPA will aggressively assess and manage the risks of chemicals used in consumer products, and the workplace.

Management of Chemical Risks.EPA's Administrator has highlighted the need to strengthen EPA's chemical management program as one of her top priorities. Using sound science as a compass, the mission of the Office of Chemical Safety and Pollution Prevention (OCSPP) is to protect individuals, families, and the environment from potential risks of pesticides and other chemicals. In its implementation of these programs, OCSPP uses several different statutory authorities, including the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Food, Drug, and Cosmetic Act, the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act, as well as collaborative and voluntary activities.

Enhancing EPA's Current Chemicals Management Program under TSCA. As part of this comprehensive effort, EPA has developed plans on specific chemicals, which outline the concerns that each chemical may present and specific actions the Agency will take to address those concerns. The Agency considers a range of actions to address potential risks, including utilizing for the first time the TSCA section 5(b)(4) authority to list chemicals of concern. EPA also intends to propose several regulatory actions under TSCA to gather additional information on nanoscale chemical materials, which will help the Agency assess the safety of nanoscale chemicals. EPA is also taking a number of steps to provide the public with greater access to chemical information, which includes increased web access to TSCA data and new policies for the review of confidential business information (CBI) claims for substantial risk and health and safety studies.

Addressing Concerns with Legacy Chemicals—Lead and Mercury. EPA is continuing its efforts to combat childhood lead poisoning through implementation of the Lead Renovation, Repair, and Painting (RRP) rule, which includes consideration of a proposed rule to require that renovation firms perform dust wipe testing after certain renovations and provide the results of the testing to the owners and occupants of the building. EPA also is developing a number of actions to further reduce the use of mercury in a range of products, including switches, relays, and certain measuring devices.

Protecting Subjects in Human Research involving Pesticides. On June 18, 2010, EPA settled a lawsuit over its 2006 regulation that established protections for subjects of human research involving pesticides. Under the settlement agreement, EPA agreed that by January 18, 2011, it will propose to broaden the applicability of the 2006 rule to apply to research involving intentional exposure of a human subject to ''a pesticide,'' without limitation as to the regulatory statutes under which the data might be submitted, considered, or relied upon. EPA also committed to propose amendments to the rule that would, if finalized, disallow consent by an authorized representative of a test subject and that would require the Agency, in its reviews of covered human research, to document its ethics and science considerations.

Defining the Nature of Regulated Production of Plant-Incorporated Protectants (PIPs). PIPs are pesticidal substances intended to be produced and used in living plants and the genetic material needed for their production. EPA regulates PIPs under FIFRA and FFDCA, including issuing experimental use permits and commercial registrations. However, these Acts and the current implementing regulations do not specifically address what constitutes the production of PIPs or what units are relevant for purposes of reporting amounts of PIPs produced. This has led to inconsistency and confusion in the registration of PIP-producing establishments and in the reporting of units of PIPs produced, which in turn has resulted in significant difficulties in terms of compliance and enforcement. EPA intends to propose regulations to clarify the legal requirements applicable to PIP products at various phases of production. This rule will benefit the public by ensuring that public health and the environment are adequately protected while reducing burden on the regulated community, thereby potentially reducing costs for consumers.

4. Cleaning Up Its Communities

In 2009 EPA accelerated its Superfund program and confronted significant local environmental challenges like the asbestos Public

Health Emergency in Libby, Montana and the coal ash spill in Kingston, Tennessee. Using all the tools at its disposal, including enforcement and compliance efforts, EPA will continue to focus on making safer, healthier communities in 2011. EPA meets this priority by focusing on preparation for, prevention and response to chemical and oil spills, accidents, and emergencies; enhancement of homeland security; increasing the beneficial use and recycling of secondary materials, the safe management of wastes and cleaning up contaminated property and making it available for reuse. EPA carries out these missions in partnership with other Federal agencies, states, tribes, local governments, communities, nongovernmental organizations, and the private sector. Several regulatory priorities for the upcoming fiscal year will promote stewardship and resource conservation and focus regulatory efforts on risk reduction and statutory compliance.

Financial Responsibility under Superfund. Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), establishes certain authorities concerning financial responsibility requirements. The Agency has identified classes of facilities within the Hard Rock mining industry as those for which financial responsibility requirements will be first developed. This proposal will establish requirements for financial responsibility, notification, and implementation.

Non-Hazardous Secondary Materials. The Agency has proposed to define which non-hazardous secondary materials burned in combustion units are solid wastes under the Resource Conservation and Recovery Act (RCRA). This in turn will assist the Agency in determining which non-hazardous secondary materials will be subject to the emissions standards proposed under either section 112 or section 129 of the Clean Air Act (CAA). If the non-hazardous secondary material is considered a ''solid waste,'' the unit that burns the non-hazardous secondary material would be subject to the CAA section 129 requirements, while if the non-hazardous secondary materials would not be considered a ''solid waste,'' it would be subject to the CAA section 112 requirements.

Geologic Sequestration. In 2008, the Safe Drinking Water Act Underground Injection Control Program proposed to create a new class of injection wells (Class VI) for geological sequestration (GS) of carbon dioxide (CO2). EPA received numerous comments asking for clarification on how the Resource Conservation and Recovery Act (RCRA) hazardous waste requirements apply to CO2 streams. EPA is now considering a proposed rule under RCRA to explore a number of options.

5. Protecting America's Waters

Despite considerable progress, America's waters remain imperiled. Water quality and enforcement programs face complex challenges, from nutrient loadings and stormwater runoff to invasive species and drinking water contaminants. These challenges demand both traditional and innovative strategies.

Improving Water Quality. EPA plans to address challenging water quality issues in several rulemakings during fiscal year 2011.

Stormwater. First, EPA plans to propose a national rule to address stormwater discharges from new development and redevelopment and explore other regulatory improvements to its stormwater program. To address the degradation of water quality caused by stormwater discharges from impervious cover, EPA is exploring regulatory options, including establishing specific post construction requirements for stormwater discharges from, at a minimum, new development and redevelopment. Stormwater discharges from areas of impervious cover in developed areas are a significant contributor to water quality impairments in receiving waters.

Sanitary Sewer Overflows. EPA is also considering proposing modifications to the NPDES regulations as they apply to municipal sanitary sewer collection systems and sanitary sewer overflows (SSOs) in order to better protect the environment and public health from the harmful effects of sanitary sewer overflows and basement back ups. Some of the changes EPA is considering include establishing standard permit conditions for publicly owned treatment works (POTW) permits that specifically address sanitary sewer collection systems and SSOs, and clarifying the regulatory framework for applying NPDES permit conditions to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality.

Use of Offsets. EPA plans to propose a National Pollutant Discharge Elimination System permit regulation for new dischargers and the appropriate use of offsets with regard to water quality permitting. This action may consider how to best clarify EPA's approach to permitting new dischargers in order to ensure the protection of water quality under Clean Water Act and may examine options to address the appropriate and permissible use of offsets which ensures that NPDES permits are protective of water quality standards. Additionally, EPA may examine options for addressing new dischargers in impaired waters, both when a TMDL is in place and prior to TMDL issuance.

Concentrated Animal Feeding Operations. In 2008, EPA amended the concentrated animal feeding operation (CAFO) regulation to require, among other things, CAFOs that discharge or propose to discharge to seek coverage under an NPDES permit. Under the authority of section 308 of the Clean Water Act, EPA is proposing a rule to collect facility information from all CAFOs which will provide a CAFO inventory and assist in implementing the 2008 CAFO rule.

Cooling Water Intake Structures. EPA plans to propose standards for cooling water intakes for electric power plants and for other manufacturers who use large amounts of cooling water. The goal of the proposed rule will be to protect aquatic organisms from being killed or injured through impingement or entrainment.

Improving Clean Water Act Enforcement. EPA has the primary responsibility to ensure that the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program is effectively and consistently implemented across the country, thus ensuring that public health and environmental protection goals of the CWA are met. EPA needs site-specific information to provide national NPDES program direction and oversight, to inform Congress and the public, and to better ensure protection of public health and the environment. EPA plans to propose an NPDES Electronic Reporting Rule that will seek to improve the EPA's access to facility-specific information for the diverse universe of NPDES-regulated sources of wastewater discharges. Electronic reporting of NPDES information may be sought from NPDES permittees and/or States.

6. Expanding the Conversation on Environmentalism and Working for Environmental Justice.

Environmentalism has been described as a conversation that we all must have

because it is about protecting people in the places they live, work, and raise families. In FY 2011, the Agency is focused on expanding the conversation to include new stakeholders and involve communities in more direct ways.

In managing risk and in ensuring that environmental rules protect all Americans, EPA directs its efforts toward identifying and mitigating exposures and other factors in our communities, schools, homes, and workplaces that might negatively impact human health and environmental quality. A renewed focus is being placed on the continuing Environmental Justice (EJ) efforts to address the environmental and public health concerns of minority, low income, tribal, and other disproportionately burdened communities and focus on improving environmental and public health protection in these communities.

Environmental Justice in Rulemaking. In July 2010, EPA released an interim guidance document to help Agency staff include environmental justice principles in its rulemaking process. The rulemaking guidance is an important and positive step toward meeting EPA Administrator Lisa P. Jackson's priority to work for environmental justice and protect the health and safety of communities who have been disproportionately impacted by pollution. In carrying out this mandate, EPA will also seek to ensure that such communities do not experience disproportionate economic impacts from its programs and regulations.

Children's Health. The protection of vulnerable subpopulations is one of the EPA's top priorities, especially with regard to children. EPA's revitalized Children's Health Office is bringing a new energy to safeguarding children through the entire Agency's regulatory and enforcement efforts. In 2011, EPA will co-lead an interagency effort in integrating existing school programs including asthma, indoor air quality, chemical safety and management, green practices, and enhanced use of integrated pest management.

7. Building Strong State and Tribal Partnerships

EPA's success depends more than ever on working with increasingly capable and environmentally conscious partners. The Agency works with the States and tribes, business and industry, nonprofit organizations, environmental groups, and educational institutions in a wide variety of collaborative efforts. Currently, more than 13,000 firms and other organizations participate in EPA partnership programs. States and tribal nations bear important responsibilities for the day-to-day mission of environmental protection, but declining tax revenues and fiscal challenges are pressuring State agencies and tribal governments to do more with fewer resources. EPA must do its part to support State and tribal capacity.

Recognizing the Right of Tribes as Sovereign Nations. In FY 2009, EPA Administrator Jackson reaffirmed the Agency's Indian Policy, which recognizes that the United States has a unique legal relationship with tribal governments based on treaties, statutes, executive orders, and court decisions. EPA recognizes the right of Tribes as sovereign governments to self-determination and acknowledges the federal government's trust responsibility to Tribes. In FY 2011, EPA and Tribes are focusing on drinking water, sanitation, schools, and properly managing solid and hazardous waste on tribal lands.

Conclusion

These priorities will guide EPA's work in the years ahead. They are built around the challenges and opportunities inherent in our mission to protect human health and the environment for all Americans. This mission is carried out by respecting EPA's core values of science, transparency, and the rule of law. Within these parameters, EPA carefully considers the impacts its regulatory actions will have on society.

Aggregate Costs and Benefits

EPA has calculated a combined aggregate estimate of the costs and benefits of regulations included in the regulatory plan. For the fiscal year 2009, EPA has been able to gather sufficient data on 5 of the 30 anticipated regulations to include them in an aggregate estimate. For the remaining actions, costs and benefits have not yet been calculated for various reasons.

The regulations included in the aggregate estimate of costs and benefits are:

- Federal Transport Rule;
- Combined Rulemaking for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources;
- National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial & Institutional Boilers and Process Heaters;
- Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; and
- Criteria and Standards for Cooling Water Intake Structures—Phase II Remand.

EPA obtained aggregate estimates of total costs and benefits assuming both a 3 percent discount rate and a 7 percent discount rate. One of the five regulations (TSCA Lead Renovation) included costs estimates but provided no estimate of the monetized benefit of the rule. Given a 3 percent discount rate, benefits range from $144 billion to $349 billion. With a 7 percent discount rate, benefits range from $132 billion to $323 billion. Costs were relatively constant, approximately $6 billion, regardless of the discount rate. All values are 2008 dollars. For the two rules that did not use a 2008 base year, values were converted using a GDP deflator.

These results should be considered with caution for a number of reasons. First, there are significant gaps in data. In general, the benefits estimates reported above do not include values for benefits that have been quantified but not monetized and missing values for qualitative benefits, such as some human health benefits and ecosystem health improvements. Second, methodologies and types of costs/benefits considered are inconsistent, as are the units of analysis. Some of the costs/benefits are described as annualized values while other values are specific to one year. Third, problems with aggregation can arise from differing baselines. Finally, the ranges presented do not reflect the full range of uncertainty in the benefit and cost estimates for these rules.

Rules Expected to Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Rulemaking Gateway (http://www.epa.gov/lawsregs/rulemaking/index.html) at any time. This Plan includes a number of rules that may be of particular interest to small entities:

- National Emission Standards for Hazardous Air Pollutants for Area

Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44);

- National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25);
- Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (2070-AJ57)
- Stormwater Regulations Revision to Address Discharges from Developed Sites (2040-AF13).

EPA

PROPOSED RULE STAGE

130. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

NPRM, Judicial, October 28, 2010, US District Court Northern District of CA San Francisco Division 5/5/08.

Final, Judicial, May 13, 2011, US District Court Northern District of CA San Francisco Division 5/5/08.

Abstract:

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. The last CO NAAQS review occurred in 1994 with a decision by the Administrator not to revise the existing standards. The current review which initiated in September 2007 includes the preparation of an Integrated Science Assessment, Risk/Exposure Assessment, and a Policy Assessment Document by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's decision as to whether to retain or revise the standards.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for carbon monoxide are to be reviewed every 5 years.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare.

Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for CO are whether to retain or revise the existing standards.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments will be conducted to evaluate health risks associated with retention or revision of the CO standards.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	
Final Action	08/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

EPA Docket information: EPA-HQ-OAR-2008-0015

URL For More Information:

http://www.epa.gov/ttn/naaqs/standards/co/s__co__index.html

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RIN: 2060–AI43

EPA

131. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

None

Abstract:

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 17, 2006, EPA published a final rule to revise the primary and secondary NAAQS for particulate matter to provide increased protection of public health and welfare. With regard to the primary standard for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM2.5), EPA

revised the level of the 24-hour PM2.5 standard to 35 micrograms per cubic meter (ug/m3) and retained the level of the annual PM2.5 standard at 15 ug/m3. With regard to primary standards for particles generally less than or equal to 10 micrometers in diameter (PM10), EPA retained the 24-hour PM10 standard and revoked the annual PM10 standard. With regard to secondary PM standards, EPA made them identical in all respects to the primary PM standards, as revised. EPA initiated the current review in 2007 with a workshop to discuss key policy-relevant issues around which EPA would structure the review. This review includes the preparation of an Integrated Science Assessment (ISA), Risk/Exposure Assessment (REA), and a Policy Assessment (PA) by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's decision as to whether to retain or revise the standards. The ISA was completed in December 2009, the final REAs for health risk assessment and visibility assessment were finalized in June and July 2010, respectively. The first draft PA was reviewed by CASAC on April 8-9, 2010. The second draft Policy Assessment was reviewed by CASAC on July 26-27, 2010.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for particulate matter are to be reviewed every 5 years.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare.

Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for particulate matter are whether to retain or revise the existing standards and, if revisions are necessary, the indicators, averaging times, forms and levels of the revised standards. Options for these alternatives will be developed as the rulemaking proceeds.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments have been conducted to evaluate health risks associated with retention or revision of the particulate matter standards.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	
Final Action	11/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA Docket information: EPA-HQ-OAR-2007-0492

URL For More Information:

www.epa.gov/air/particlepollution/

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RIN: 2060–AO47

EPA

132. REVIEW OF THE SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OXIDES OF NITROGEN AND OXIDES OF SULFUR

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

NPRM, Judicial, July 12, 2011.

Final, Judicial, March 20, 2012, The court has approved the amendments to the consent decree incorporating the revised dates.

Abstract:

Under the Clean Air Act, EPA is required to review and, if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 11, 1995, EPA published a final rule not to revise either the primary or secondary NAAQS for nitrogen dioxide (NO2). On May 22, 1996, EPA published a final decision that revisions of the primary and secondary NAAQS for sulfur dioxide (SO2) were not appropriate at that time, aside from several minor technical changes. On December 9, 2005, EPA's Office of Research and Development (ORD) initiated the current periodic review of NO2 air quality criteria with a call for information in the Federal Register (FR). On May 3, 2006, ORD initiated

the current periodic review of SO2 air quality criteria with a call for information in the FR. Subsequently, the decision was made to review the oxides of nitrogen and the oxides of sulfur together, rather than individually, with respect to a secondary welfare standard for NO2 and SO2. This decision derives from the fact that NO2, SO2, and their associated transformation products are linked from an atmospheric chemistry perspective, as well as from an environmental effects perspective, most notably in the case of secondary aerosol formation and acidification in ecosystems. This review includes the preparation of an Integrated Science Assessment (ISA), Risk/Exposure Assessment (REA), and a Policy Assessment Document (PAD) by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the standards. It should be noted that this review will be limited to only the secondary standards; the primary standards for SO2 and NO2 were reviewed separately. The ISA, REA and first draft PAD have been completed and a review of the second draft PAD by CASAC is anticipated on October 6 and 7, 2010.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for oxides of nitrogen and oxides of sulfur are to be reviewed every 5 years.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare.

Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for oxides of nitrogen and oxides of sulfur are whether to retain or revise the existing standards.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on the developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments may be conducted to evaluate public welfare risks associated with retention or revision of the NOx/SOx secondary standards.

Timetable:

Action	Date	FR Cite
NPRM	07/00/11	
Final Action	03/00/12	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA Docket information: EPA-HQ-OAR-2007-1145

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RIN: 2060–AO72

EPA

133. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR COAL– AND OIL–FIRED ELECTRIC UTILITY STEAM GENERATING UNITS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Clean Air Act sec 112(d)

CFR Citation:

40 CFR 63

Legal Deadline:

NPRM, Judicial, March 16, 2011, No later than March 16, 2011, EPA shall sign for publication in the **Federal Register** a notice of proposed rulemaking.

Final, Judicial, November 16, 2011, No later than November 16, 2011, EPA shall sign for publication in the **Federal Register** a notice of final rulemaking.

Abstract:

On May 18, 2005 (70 FR 28606), EPA published a final rule requiring reductions in emissions of mercury from Electric Utility Steam Generating Units. That rule was vacated on February 8, 2008, by the U.S. Court of Appeals for the District of Columbia Circuit. As a result of that vacatur, coal- and oil-fired electric utility steam generating units remain on the list of sources that must be regulated under section 112 of the Clean Air Act (CAA). The Agency will develop standards under CAA section 112(d), which will reduce hazardous air pollutant (HAP) emissions from this source category. Recent court decisions on other CAA section 112(d) rules will be considered in developing this regulation.

Statement of Need:

Section 112(n)(1)(A) of the Clean Air Act required EPA to conduct a study of the hazards to public health resulting from emissions of hazardous air pollutants from electric utility steam generating units and, after considering the results of that study, determine whether it was appropriate and necessary to regulate such units under section 112. The study was completed in 1998 and in December 2000, EPA determined that it was appropriate and necessary to regulate coal- and oil-fired electric utility steam generating units

and added such units to the list of sources for which standards must be developed under section 112. The February 8, 2008, vacatur of the May 18, 2005, Clean Air Mercury Rule and March 29, 2005, section 112(n) Revision Rule (which had removed such sources from the list) resulted in the requirement to regulate under section 112 being reinstated.

Summary of Legal Basis:

Clean Air Act, section 112

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	
Final Action	11/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

Additional Information:

EPA Docket information: EPA-HQ-OAR-2009-0234

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AP52

EPA

134. CONTROL OF GREENHOUSE GAS EMISSIONS FROM MEDIUM AND HEAVY–DUTY VEHICLES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

Clean Air Act sec 202

CFR Citation:

40 CFR 1036, 1037, 1066, and 1068

Legal Deadline:

None

Abstract:

This action will be jointly proposed by the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) to set national emission standards under the Clean Air Act (CAA) and Energy Independence and Security Act (EISA) to reduce greenhouse gas emissions and improve fuel energy for heavy duty trucks and buses. This rulemaking would significantly reduce GHG emissions from future heavy duty vehicles by setting GHG standards that would lead to the introduction of GHG-reducing vehicle and engine technologies. This action follows the U.S. Supreme Court decision in Massachusetts vs. EPA and would follow EPA's formal determination on endangerment for GHG emissions. This rulemaking also follows the Advance Notice of Proposed Rulemaking ''Regulating Greenhouse Gas Emissions Under the Clean Air Act,'' (73 FR 44354, Jul. 20, 2008).

Statement of Need:

EPA recently proposed to find that emissions of greenhouse gases from new motor vehicles and engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Therefore, there is a need to reduce GHG emissions from medium- and heavy-duty vehicles to protect public health and welfare. The medium- and heavy-duty truck sector accounts for approximately 18 percent of the U.S. mobile source GHG emissions and is the second largest mobile source sector. GHG emissions from this sector are forecast to continue increasing rapidly; reflecting the anticipated impact of factors such as economic growth and increased movement of freight by trucks. This rulemaking would significantly reduce GHG emissions from future medium- and heavy-duty vehicles by setting GHG standards that will lead to the introduction of GHG reducing vehicle and engine technologies.

Summary of Legal Basis:

The Clean Air Act section 202(a)(1) states that ''The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Section 202(a) covers all on-highway vehicles including medium- and heavy-duty trucks. In April 2007, the Supreme Court found in Massachusetts v. EPA that greenhouse gases fit well within the Act's capacious definition of ''air pollutant'' and that EPA has statutory authority to regulate emission of such gases from new motor vehicles. Lastly, in April 2009, EPA issued the Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act. The endangerment proposal stated that greenhouse gases from new motor vehicles and engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare.

Alternatives:

The rulemaking proposal will include an evaluation of regulatory alternatives that can be considered in addition to the Agency's primary proposal. In addition, the proposal is expected to include tools such as averaging, banking, and trading of emissions credits as an alternative approach for compliance with the proposed program.

Anticipated Cost and Benefits:

Detailed analysis of economy-wide cost impacts, greenhouse gas emission reductions, and societal benefits will be performed during the rulemaking process. Initial estimates indicate that the vehicles produced during the first 5 years after implementation of the program could achieve reductions of up to 250 million metric ton of CO2 emissions during the lifetime of these trucks. The costs associated with the GHG control technologies are expected to pay for themselves through fuel cost savings within the first 2 to 5 years of the vehicle's life.

Risks:

The failure to set new GHG standards for medium- and heavy-duty trucks risks continued increases in GHG emissions from the trucking industry and therefore increased risk of unacceptable climate change impacts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	
Final Action	08/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 5355.

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RIN: 2060–AP61

EPA

135. • REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

None

Abstract:

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On November 12, 2008, EPA published a final rule to revise the primary and secondary NAAQS for lead to provide increased protection for public health and welfare. With regard to the primary standard, EPA revised the level to 0.15 micrograms per cubic meter (ug/m3) of lead in total suspended particles and the averaging time to a rolling 3-month period with a maximum (not-to-be-exceeded) form, evaluated over a 3-year period. EPA revised the secondary standard to be identical in all respects to the revised primary standard. EPA has now initiated the next review. The review began in May 2010 with a workshop to discuss key policy-relevant issues around which EPA would structure the review. This review includes the preparation of an Integrated Science Assessment, and if warranted, a Risk/Exposure Assessment and also a Policy Assessment Document by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the standards.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for lead are to be reviewed every 5 years.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare.

Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for lead are whether to retain or revise the existing standards.

Anticipated Cost and Benefits:

The Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, the Agency prepares cost and benefit information in order to provide States information that may be useful in considering different implementation strategies for meeting proposed or final standards. Cost and benefit information is not developed to support a NAAQS rulemaking until sufficient policy and scientific information is available to narrow potential options for the form and level associated with any potential revisions to the standard. Therefore, work on developing the plan for conducting the cost and benefit analysis will generally start 1 1/2 to 2 years following the start of a NAAQS review.

Risks:

During the course of this review, risk assessments may, as warranted, be conducted to evaluate health and/or environmental risks associated with retention or revision of the lead standards.

Timetable:

Action	Date	FR Cite
NPRM	12/00/13	
Final Action	10/00/14	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA Docket information: EPA-HQ-OAR-2010-0108

URL For More Information:

http://www.epa.gov/ttn/naaqs/standards/pb/s__pb__index.html

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RIN: 2060–AQ44

EPA

136. NPDES ELECTRONIC REPORTING RULE

Priority:

Other Significant

Legal Authority:

CWA secs 304(i) and 501(a), 33 USC 1314(i) and 1361(a)

CFR Citation:

40 CFR 123, 403, and 501

Legal Deadline:

None

Abstract:

The U.S. Environmental Protection Agency (EPA) has responsibility to ensure that the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program is effectively and consistently implemented across the country. This regulation would identify the essential information that EPA needs to receive electronically, primarily from NPDES permittees with some data required from NPDES agencies (NPDES-authorized States, territories, and tribes) to manage the national NPDES permitting and enforcement program. Through this regulation, EPA seeks to ensure that such facility-specific information would be readily available, accurate, timely, and nationally consistent on the facilities that are regulated by the NPDES program.

In the past, EPA primarily obtained this information from the Permit Compliance System (PCS). However, the evolution of the NPDES program since the inception of PCS has created an increasing need to better reflect a more complete picture of the NPDES program and the diverse universe of regulated sources. In addition, information technology has advanced significantly so that PCS no longer meets EPA's national needs to manage the full scope of the NPDES program or the needs of individual States that use PCS to implement and enforce the NPDES program.

Statement of Need:

As the NPDES program and information technology have evolved in the past several decades, the Permit Compliance System (PCS), EPA's NPDES national data system, which has been in use since 1985, has become increasingly ineffective in meeting the full scope of EPA's and individual State's needs to manage, direct, oversee, and report on the implementation and enforcement of the NPDES program. Therefore, a NPDES component of EPA's existing Integrated Compliance Information System (ICIS), ICIS-NPDES, was designed and constructed based upon EPA and State input to manage data for the full breadth of the NPDES program. This rulemaking would identify essential NPDES-specific information EPA needs to receive from NPDES agencies (authorized States and tribes, as well as EPA Regions). This information will be managed by EPA in a format compatible with the new NPDES component of the Integrated Compliance Information System (ICIS) in order to better enable EPA to ensure the protection of public health and the environment, effectively manage the national NPDES permitting and enforcement program, identify and address environmental problems, and ultimately replace PCS. This action would be of interest primarily to NPDES permittees, NPDES-authorized states, and to the public at large, which would ultimately have increased access to this NPDES information.

Summary of Legal Basis:

In 1972, Congress passed the Clean Water Act to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The Clean Water Act established a comprehensive program for protecting and restoring our Nation's waters. The Clean Water Act prohibits the discharge of pollutants from a point source to waters of the United States except when authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The Clean Water Act established the NPDES permit program to authorize and regulate the discharges of pollutants to waters of the United States. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR parts 122 to 125, 129 to 133, 136, and subpart N.

Under the NPDES permit program, point sources subject to regulation may discharge pollutants to waters of the United States subject to the terms and conditions of an NPDES permit. With very few exceptions (40 CFR 122.3), point sources require NPDES permit authorization to discharge, including both municipal and industrial discharges. NPDES permit authorization may be provided under an individual NPDES permit, which is developed after a process initiated by a permit application (40 CFR 122.21), or under a general NPDES permit, which, among other things, applies to one or more categories of dischargers (e.g., oil and gas facilities, seafood processors) with the same or substantially similar types of operations and the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal [40 CFR 122.28(a)(2)].

The U.S. Environmental Protection Agency has the primary responsibility to ensure that the NPDES program is effectively and consistently implemented across the country, thus ensuring that public health and environmental protection goals of the CWA are met. Many States and some territories have received authorization to implement and enforce the NPDES program, and EPA works with its State partners to ensure effective program implementation and enforcement. CWA section 304(i)(2) directs EPA to promulgate guidelines establishing the minimum procedural and other elements of a State, territory, or tribal NPDES program, including monitoring requirements, reporting requirements (including procedures to make information available to the public), enforcement provisions, and funding, personnel qualifications, and manpower requirements [CWA section 304(i)(2)].

EPA published NPDES State, territory, and tribal program regulations under CWA section 304(i)(2) at 40 CFR part 123. Among other things, the part 123 regulations specify NPDES program requirements for permitting, compliance evaluation programs, enforcement authority, sharing of information, transmission of information to EPA, and noncompliance and program reporting to EPA.

This proposed rulemaking may add some specificity to those particular regulations regarding what NPDES information is required to be submitted to EPA by States and may modify other regulations to require electronic reporting of NPDES information by NPDES permittees to the States and EPA.

Alternatives:

For this proposed rulemaking, EPA has determined that the need for EPA's receipt of such NPDES information exists. If, for whatever reason, electronic reporting by permittees is not a feasible option for certain NPDES information, the obvious alternative would be for EPA to require States to provide that information to EPA. The States already receive that information from the permittees, and therefore, they have the information that EPA seeks.

Within the rulemaking process itself, various alternatives are under consideration based on the feasibility of particular electronic reporting options. For example, EPA may consider establishing requirements for electronic reporting of discharge monitoring reports by NPDES permittees. Under this proposed rulemaking, EPA may consider establishing similar requirements for any or all of the following types of NPDES information: Notices of intent to discharge (for facilities seeking coverage under general permits), permitting information (including permit applications), various program reports (e.g., pretreatment compliance reports from approved local pretreatment programs, annual reports from concentrated animal feeding operations, biosolids reports, sewage overflow incident reports, annual reports for pesticide applicators, annual reports for municipal storm water systems), and annual compliance certifications.

Some States might also raise the possibility of supplying only summary-level information to EPA rather than facility-specific information to EPA. Based upon considerable experience, EPA considers such alternative non-facility-specific data to be insufficient to meet its needs, except in very particular situations or reports.

One alternative that EPA may consider for rule implementation is whether third-party vendors may be better equipped to develop and modify such electronic reporting tools than EPA.

Anticipated Cost and Benefits:

The economic analysis for this proposed rulemaking has not yet been completed; therefore, the dollar values of estimated costs and benefits are not yet known. However, some generalizations can still be made regarding expectations. EPA anticipates that electronic reporting of discharge monitoring reports (DMRs) by NPDES permittees will provide significant data entry cost savings for States and EPA. These discharge monitoring reports are already required to be submitted by NPDES permittees to States and EPA, which in turn currently enter that information into the State NPDES data system or EPA's national NPDES data system. These discharge monitoring reports contain significant amounts of information regarding pollutants discharged, identified concentrations and quantities of pollutants, discharge locations, etc. Through electronic reporting by permittees, States, and EPA will no longer have associated data entry costs to enter this information. Electronic reporting by NPDES permittees of other NPDES information (such as notices of intent to discharge or various program reports) may also yield considerable data entry savings to the States and EPA.

In addition, some States have been able to quantify savings by the permittees to electronically report their NPDES information using existing electronic reporting tools. Such savings are being examined in the economic analysis process for this rulemaking.

Additional benefits of this rule will likely include improved transparency of information regarding the NPDES program, improved information regarding the national NPDES program, improved targeting of resources and enforcement based on identified program needs and noncompliance problems, and ultimately improved protection of public health and the environment.

Some NPDES information will need to be reported by States to EPA; therefore, there will be some data entry costs associated with that information, but it will likely be far less than the savings that will be realized by States through electronic reporting by NPDES permittees. In addition, EPA will likely have sizable costs to develop tools for electronic reporting by permittees, as well as operation and maintenance costs associated with those tools.

Risks:

Given the scope of this proposed rulemaking, the most significant risks associated with this effort may be those if EPA does not proceed with this rulemaking. At this point, EPA does not receive sufficient NPDES information from the States to be able to fully assess the implementation of the national NPDES program nor the smaller subprograms. Such information is not currently required by EPA from the States, and the lack of such reporting requirements perpetuates this problem. Furthermore, EPA does not have facility-specific information regarding most of the facilities regulated under the NPDES program, and therefore, EPA cannot easily identify potential implementation problems or noncompliance problems. This lack of information may adversely impact EPA's ability to better ensure the protection of public health and the environment, nationally and locally.

A potential risk associated with this rule may involve EPA efforts to develop electronic reporting tools for use by permittees. The costs associated with the internal development of such tools, possibly for multiple types of NPDES information from various types of NPDES permittees, and the future costs of operation and maintenance may be substantial for EPA, possibly impacting the availability of funding for other purposes. Furthermore, EPA would also need to determine the feasibility of ensuring that the electronic tools can be flexible enough to meet State needs and work well with State data systems. Problems in the development and maintenance of these electronic tools could pose significant risks for the effective implementation of this rule.

Timetable:

Action	Date	FR Cite
Notice—Public Meeting	07/01/10	75 FR 38068
NPRM	04/00/11	
Final Action	04/00/12	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN No. 5251

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RIN: 2020–AA47

EPA

137. REGULATIONS TO FACILITATE COMPLIANCE WITH THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT BY PRODUCERS OF PLANT–INCORPORATED PROTECTANTS (PIPS)

Priority:

Other Significant

Legal Authority:

7 USC 136a et seq

CFR Citation:

40 CFR 174; 40 CFR 152; 40 CFR 156; 40 CFR 167; 40 CFR 168; 40 CFR 169; 40 CFR 172

Legal Deadline:

None

Abstract:

Plant-Incorporated Protectants (PIPs) are pesticidal substances intended to be produced and used in living plants and the genetic material needed for their production. EPA regulates PIPs under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including issuing experimental use permits and commercial registrations. In 2001, EPA published rules establishing much of the current regulatory structure for PIPs. This rulemaking effort is intended to address the issues that were not addressed in 2001, including defining the nature of regulated production of PIPs and associated issues such as reporting, product labeling and record keeping. The rule will affect those persons who produce PIPs and is expected to clarify the legal requirements of their products at various production phases, improving their ability to conduct business. It is expected to also improve the ability of the EPA to identify and respond to instances where there are potentially significant violations. EPA also intends to address activities that the Agency does not believe warrant regulation and will consider exempting those activities, as appropriate, from FIFRA in whole or in part.

Statement of Need:

This action is needed to clarify PIP regulations for the Agency and PIP developers, producers and farmers. Section 7 of FIFRA requires producers of pesticides to register their establishments with EPA and to submit annual reports stating the amounts of pesticides produced at each establishment. However, neither the Act nor the regulations promulgated under section 7 specifically address what constitutes the production of PIPs, or what units are relevant for purposes of reporting amounts of PIPs produced. This has led to inconsistency and confusion in the registration of PIP-producing establishments and in the reporting of units of PIPs produced. Members of the PIP production industry have indicated that they are uncertain of their legal obligations for PIPs under FIFRA section 7 and have requested guidance on these matters. The Agency reviewed the concerns raised by industry and other stakeholders and reached the conclusion that, because of problems inherent in the application of the current regulations to this class of pesticides known as PIPs, EPA is unable to provide guidance. As written, the current regulations have been difficult to enforce with respect to PIPs. Ambiguity regarding the applicability of section 7 requirements makes it difficult for EPA and regulators in States and tribes to monitor production and subsequent distribution, sale and use of products, and can cause difficulties with respect to compliance inspection and enforcement. State and tribal involvement in compliance oversight can be greatly complicated by a lack of clear compliance requirements. This uncertainty may be resolved by a substantive modification of the regulations through rulemaking.

Summary of Legal Basis:

EPA has regulatory authority to promulgate regulations under FIFRA sections 3(a), 8(a), 25(a), and 25(b) (7 U.S.C. 136a(a), 136f(a), 136w(a), and 136w(b)).

PIPs are pesticides under FIFRA section 2 because they are introduced into plants with the intention of ''preventing, destroying, repelling, or mitigating any pest. . ..'' (7 U.S.C. 136(u)).

Under FIFRA section 2, any person who manufactures, prepares, compounds, propagates or processes any pesticide is a ''producer.'' (7 U.S.C. 136(w)). FIFRA section 7 requires that producers of pesticides register the establishments where production occurs and requires that producers report their annual production (7 U. S. C. 136e). In addition, FIFRA section 8 provides that EPA may issue regulations requiring producers to maintain records with respect to their operations and to make such records available for inspection (7 U. S. C. 136f). Under FIFRA section 9, appropriately credentialed inspectors have the authority to conduct inspections at pesticide producing establishments, or other places where pesticides are being held for distribution or sale, for the purpose of inspecting products, labels and records, and for obtaining samples (7 U. S. C. 136g).

FIFRA section 3(a) states that ''[t]o the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this Act and that is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18.''

FIFRA section 8(a) states that ''[t]he Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and device produced as the Administrator determines are necessary for the effective enforcement of this Act and to make the records available for inspection and copying in the same manner as provided in [FIFRA section 8(b)] .''

FIFRA section 25(a) states that ''[t]he Administrator is authorized in accordance with the procedure described in [sec. 25(a)(2) of the Act], to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides, including public health pesticides, and differences in environmental risk and the appropriate data for evaluating such risk between agricultural, nonagricultural, and public health pesticides.''

FIFRA section 25(b) states that ''[t]he Administrator may exempt from the requirements of this Act by regulation any pesticide which the Administrator determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.''

Alternatives:

Alternatives will be presented in the preamble to the proposed rule.

Anticipated Cost and Benefits:

The Agency is conducting an economic analysis to inform decisions for the proposed rule. Anticipated benefits include greater certainty and

transparency in terms of applicable requirements for these products. Since the proposed rulemaking is currently still under development, information about anticipated costs is not yet available.

Risks:

This rulemaking is not intended to address a specific risk associated with registered PIPs. However, facilitating compliance with FIFRA requirements could minimize potential risks associated with inadvertent noncompliance. In addition the rulemaking is intended to provide a means to identify and minimize risks associated with use of unregistered PIPs for production for export.

Timetable:

Action	Date	FR Cite
ANPRM	04/04/07	72 FR 16312
Notice of Public Meeting	04/11/07	72 FR 18191
ANPRM: Extension of Comment Period	05/23/07	72 FR 28911
ANPRM Comment Period End	06/13/07	
ANPRM Comment Period Extended To	07/13/07	
NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Tribal

Additional Information:

EPA publication information: ANPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480220026; EPA Docket information: EPA-HQ-OPP-2006-1003

Sectors Affected:

61131 Colleges, Universities and Professional Schools; 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 54171 Research and Development in the Physical Sciences and Engineering Sciences

URL For More Information:

http://www.epa.gov/pesticides/biopesticides/pips/index.htm

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RIN: 2070–AJ32

EPA

138. MERCURY; REGULATION OF USE IN CERTAIN PRODUCTS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 2605

CFR Citation:

40 CFR 750

Legal Deadline:

None

Abstract:

Mercury is well documented as a toxic, environmentally persistent substance that demonstrates the ability to bioaccumulate and to be atmospherically transported on a local, regional, and global scale. In addition, mercury can be environmentally transformed into methylmercury, which biomagnifies and is highly toxic. EPA has conducted a preliminary analysis via the Risk-Based Prioritization of Mercury in Certain Products. By compiling data pertaining to the stated costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, EPA made a preliminary judgment that effective and economically feasible alternatives exist. These products include switches, relays/contactors, flame sensors, button cell batteries, and measuring devices (e.g., non-fever thermometers, manometers, barometers, pyrometers, flow meters, and psychrometers/hygrometers). Therefore, EPA is evaluating whether an action (or combination of actions) under Toxic Substances Control Act (TSCA) is appropriate for mercury used in such products. As appropriate, such an action(s) would involve a group(s) of these products. Specifically, EPA will determine whether the continued use of mercury in one or more of these products would pose an unreasonable risk to human health and the environment.

Statement of Need:

Mercury is well documented as a toxic, environmentally persistent substance that demonstrates the ability to bioaccumulate and to be atmospherically transported on a local, regional, and global scale. In addition, mercury can be environmentally transformed into methylmercury, which biomagnifies and is highly toxic. Human health risks associated with elemental mercury and methylmercury are well documented. Humans can be exposed from products directly to elemental mercury vapor and indirectly through fish contaminated with methylmercury. EPA has conducted a preliminary analysis via the Risk-Based Prioritization of Mercury in Certain Products. By compiling data pertaining to the stated costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, EPA made a preliminary judgment that effective and economically feasible alternatives exist. In its initial prioritization of mercury in certain products, EPA considered mercury's well documented toxicity, persistence, ability to bioaccumulate, ability to be environmentally transformed into methylmercury, and its demonstrated ability to be transported globally as well as locally and the availability of effective and economically feasible alternatives for mercury in certain products. EPA believes manufacturing, processing, use, or disposal of elemental mercury in these products may result in significant potential for human and environmental exposures to elemental mercury and methylmercury.

Summary of Legal Basis:

EPA is evaluating whether an action (or combination of actions) under Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., is appropriate for mercury used in certain products. TSCA provides EPA with authority to require reporting, recordkeeping, and

testing requirements, and restrictions relating to chemical substances and/or mixtures. Specifically, section 4 authorizes EPA to require testing of chemicals by manufacturers, importers, and processors where risks or exposures of concern are found. Section 5 authorizes EPA to require prior notice by manufacturers, importers, and processors when it identifies a ''significant new use'' that could result in exposures to, or releases of, a substance of concern. Section 6 gives EPA the authority to protect against unreasonable risk of injury to health or the environment from chemical substances. If EPA finds that there is a reasonable basis to conclude that the chemical's manufacture, processing, distribution, use or disposal presents an unreasonable risk, EPA may by rule take action to: prohibit or limit manufacture, processing, or distribution in commerce; prohibit or limit the manufacture, processing, or distribution in commerce of the chemical substance above a specified concentration; require adequate warnings and instructions with respect to use, distribution, or disposal; require manufacturers or processors to make and retain records; prohibit or regulate any manner of commercial use; prohibit or regulate any manner of disposal; and/or require manufacturers or processors to give notice of the unreasonable risk of injury, and to recall products if required. Section 8 authorizes EPA to require reporting and recordkeeping by persons who manufacture, import, process, and/or distribute chemical substances in commerce.

Alternatives:

EPA has conducted a preliminary analysis via the Risk-Based Prioritization of Mercury in Certain Products. By compiling data pertaining to the stated costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, EPA made a preliminary judgment that effective and economically feasible alternatives exist.

Anticipated Cost and Benefits:

As part of the economic, exposure, and risk assessment to support the current action, EPA is conducting a comprehensive use-substitute analysis and industry profile that will consider the costs and benefits of an action (or combination of actions) under Toxic Substances Control Act (TSCA). Those assessments consider the costs of mercury-containing and mercury-free alternatives and the impact that any action would have on potentially affected stakeholders, including economic, human health, and environmental criteria.

Risks:

As part of the economic, exposure, and risk assessment to support the current action, EPA is conducting a comprehensive use-substitute analysis and industry profile that will consider the risks associated with an action (or combination of actions) under Toxic Substances Control Act (TSCA). Those assessments consider the relative toxicity and other considerations associated with mercury-free alternatives to mercury-containing products and the impact that any action would have on potentially affected stakeholders, including economic, human health, and environmental criteria.

Timetable:

Action	Date	FR Cite
NPRM	10/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

SAN No. 5312

URL For More Information:

http://www.epa.gov/mercury/

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RIN: 2070–AJ46

EPA

139. NANOSCALE MATERIALS; REPORTING UNDER TSCA SECTION 8(A)

Priority:

Other Significant

Legal Authority:

15 USC 2607(a) TSCA 8(a)

CFR Citation:

40 CFR 704

Legal Deadline:

None

Abstract:

Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA is developing a proposal to establish reporting requirements for certain nanoscale materials. This rule would propose that persons who manufacture these nanoscale materials notify EPA of certain information including production volume, methods of manufacture and processing, exposure and release information, and available health and safety data. The proposed reporting of these activities will provide EPA with an opportunity to evaluate the information and consider appropriate action under TSCA to reduce any risk to human health or the environment.

Statement of Need:

EPA is proposing reporting requirements under section 8(a) of TSCA for persons who are manufacturing, importing, or processing existing nanoscale materials in commerce to collect data on these

activities. The data will help EPA to take any measures to ensure that nanoscale materials are manufactured and used in a manner that protects against unreasonable risks to human health and the environment.

Summary of Legal Basis:

Section 8(a) of TSCA authorizes the Administrator to promulgate rules, which require each person (other than a small manufacturer, importer, or processor) who manufactures, imports, processes, or proposes to manufacture, import, or process a chemical substance, to maintain such records and submit such reports as the Administrator may reasonably require.

Alternatives:

EPA developed a voluntary Nanoscale Materials Stewardship Program (NMSP) to complement and support its regulatory activities on nanoscale materials. EPA initiated the NMSP to quickly learn about commercially available nanoscale materials by soliciting existing data and information on a voluntary basis from manufacturers, importers, processors, and users of nanoscale materials. In addition, the program was designed to identify and encourage use of risk management practices in developing and commercializing nanoscale materials. In its NMSP interim report, EPA identified data gaps for existing nanoscale material production, uses, and exposures, based on the information EPA received prior to January 2009. For example, EPA estimated that companies provided information on only about 10 percent of the nanomaterials that may be commercially available. EPA is proposing reporting requirements under section 8(a) of TSCA for persons who are manufacturing, importing, or processing nanoscale materials in commerce to address some of the data gaps identified in the NMSP interim report. EPA has not identified any other activities, including regulatory activities under TSCA that would address data gaps for existing nanoscale materials.

Anticipated Cost and Benefits:

EPA has evaluated the potential costs of 8(a) reporting requirements for potential manufacturers, importers, and processors that would be subject to the proposed rule. If an entity were to submit a notice to the Agency, the annual burden is estimated to average 157 hours per response. This information would facilitate EPA's evaluation of the materials and consideration of appropriate action under TSCA to reduce any unreasonable risk to human health or the environment.

Risks:

There is a growing body of scientific evidence showing the differences that exist between nanoscale material(s) and their non-nanoscale counterpart(s). Nanoscale materials may have different or enhanced properties—for example, electrical, chemical, magnetic, mechanical, thermal, or optical properties—or features, such as improved hardness or strength, that are highly desirable for applications in commercial, medical, military, and environmental sectors. These properties are a direct consequence of small size, which results in a larger surface area per unit of volume and/or quantum effects that occur at the nanometer scale (i.e., 1 x 10-9 meters). Small size itself can also be a desirable property of nanoscale materials that is exploited for miniaturization of applications/processes and/or stabilization or delivery of payloads to diverse environments or incorporation into diverse products.

The properties that can make nanoscale materials desirable for commercial applications also raise questions whether the small size of nanoscale materials or the unique or enhanced properties of nanoscale materials may, under specific conditions, pose new or increased hazards to humans and the environment. Government, academic, and private sector scientists in multiple countries are performing research into the environmental and human health effects of diverse nanoscale materials, resulting in a substantial and rapidly growing body of scientific evidence. These research findings point to the possibility for nanoscale materials to affect human health and the environment adversely. Research also indicates that not all materials in the nanoscale size range behave differently from larger sized materials of the same substance.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

EPA Docket information: EPA—HQ—OPPT—2010-0572

Sectors Affected:

325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing

URL For More Information:

http://www.epa.gov/oppt/nano/

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RIN: 2070–AJ54

EPA

140. NANOSCALE MATERIALS; SIGNIFICANT NEW USE RULE (SNUR)

Priority:

Other Significant

Legal Authority:

15 USC 2604

CFR Citation:

40 CFR 721

Legal Deadline:

None

Abstract:

EPA is developing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for nanoscale materials. This action would require persons who intend to manufacture, import, or process this/these chemical substance(s) for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs to prevent unreasonable risk to human health or the environment.

Statement of Need:

EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of TSCA that would designate as a significant new use, any use of chemical substances as nanoscale materials after the proposed date of the rule. Persons who intend to manufacture, import, or process these chemical substances for the new use after the date of the proposed rule would be required to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risks to human health or the environment.

Summary of Legal Basis:

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)).

Alternatives:

Nanoscale materials based on chemical substances already on the TSCA Inventory are considered existing chemical substances. These nanoscale materials do not require reporting as new chemical substances because they are nanoscale forms of chemical substances already in commerce. If EPA does not use authority under 5(a)(2) of TSCA to require notification of new uses of nanoscale materials, EPA would have to use existing chemical authority under sections 4, 6, and 8 of TSCA to gather data and address any unreasonable risks.

Anticipated Cost and Benefits:

EPA has evaluated the potential costs of reporting requirements for potential manufacturers, importers, and processors that would be subject to the significant new use rule. If an entity were to submit a notice to the Agency, the annual burden is estimated to average 95 hours per response. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risks to human health or the environment.

Risks:

There is a growing body of scientific evidence showing the differences that exist between nanoscale material(s) and their non-nanoscale counterpart(s). Nanoscale materials may have different or enhanced properties—for example, electrical, chemical, magnetic, mechanical, thermal, or optical properties—or features, such as improved hardness or strength, that are highly desirable for applications in commercial, medical, military, and environmental sectors. These properties are a direct consequence of small size, which results in a larger surface area per unit of volume and / or quantum effects that occur at the nanometer scale (i.e., 1 x 10-9 meters). Small size itself can also be a desirable property of nanoscale materials that is exploited for miniaturization of applications/processes and/or stabilization or delivery of payloads to diverse environments or incorporation into diverse products.

The properties that can make nanoscale materials desirable for commercial applications also raise questions whether the small size of nanoscale materials or the unique or enhanced properties of nanoscale materials may, under specific conditions, pose new or increased hazards to humans and the environment. Government, academic, and private sector scientists in multiple countries are performing research into the environmental and human health effects of diverse nanoscale materials, resulting in a substantial and rapidly growing body of scientific evidence. These research findings point to the possibility for nanoscale materials to affect human health and the environment adversely. Research also indicates that not all materials in the nanoscale size range behave differently from larger sized materials of the same substance.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

EPA Docket information: EPA—HQ—OPPT—2010-0572

URL For More Information:

http://www.epa.gov/oppt/nano/

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RIN: 2070–AJ67

EPA

141. • REVISIONS TO EPA'S RULE ON PROTECTIONS FOR SUBJECTS IN HUMAN RESEARCH INVOLVING PESTICIDES

Priority:

Other Significant

Legal Authority:

PL 109–54, sec 201; 5 USC 301; 42 USC 300v–1(b); 7 USC 136 to 136y; 21 USC 346a

CFR Citation:

40 CFR 26

Legal Deadline:

NPRM, Judicial, January 18, 2011, Settlement Agreement Deadline for the Administrator's Signature.

Final, Judicial, December 18, 2011, Settlement Agreement Deadline for the Administrator's Signature.

Abstract:

As part of a settlement agreement, EPA will propose revisions to the existing rule governing the protection of subjects in human research involving pesticides. The current rule, issued in 2006, provides protections for subjects in human research by (1) prohibiting research conducted or supported by EPA that would involve intentional exposure of human subjects who are children or pregnant or nursing women; (2) prohibiting EPA reliance in actions under the pesticide laws on research

involving intentional exposure of children or pregnant or nursing women; (3) extending the substantive requirements of the Common Rule to the design and execution of research conducted by third-parties who intend to submit the data to EPA under the pesticide laws; and (4) establishing the Human Studies Review Board, an independent expert panel to review proposals for new research and reports of covered human research on which EPA proposes to rely under the pesticide laws. In settling this litigation, EPA agreed to propose to broaden the applicability of the 2006 rule to apply to research involving intentional exposure of a human subject to ''a pesticide,'' without limitation as to the regulatory statutes under which the data might be submitted, considered, or relied upon. The new proposed rule, therefore, would apply to all research with ''pesticides,'' as that term is defined in 7 U.S.C. 136(u) [Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), sec. 2(u)], submitted, considered, or relied upon under any regulatory statute that EPA administers. EPA also committed in the settlement agreement to propose amendments to the rule that would disallow consent by an authorized representative of a test subject and that would require the Agency, in its reviews of covered human research, to document its ethics and science considerations in terms of the recommendations articulated in the National Research Council's 2004 report, Intentional Human Dosing Studies for EPA Regulatory Purposes.

Statement of Need:

In 2006, EPA promulgated a regulation governing the protection of subjects in human research involving pesticides. EPA settled litigation challenging the 2006 rule by promising to conduct this rulemaking.

Summary of Legal Basis:

Public Law 109-54, section 201; 5 U.S.C. 301; 42 U.S.C. 300v-1(b); 7 U.S.C. 136 to 136y; 21 U.S.C. 346a

Alternatives:

This action involves proposal of amendments to the 2006 rule consistent with a negotiated settlement, followed by receipt and response to public comments and promulgation of a final rule. Because alternative educational, voluntary, incentive-based, market-based, or other non-regulatory approaches could not resolve the legal challenge to the 2006 rule, they are not being considered. EPA retains discretion to adopt a final rule that differs from its proposal.

Anticipated Cost and Benefits:

Impacts are expected to be primarily procedural and limited to the costs of supporting the rulemaking effort itself. Expected benefits from this action will result from resolution of the litigation and establishing the stability of the rules governing regulated human research with pesticides by third parties.

Risks:

Although no research is known of that would fall outside the scope of the 2006 rule but within the scope of the proposed amendment, this action addresses a perceived loophole for unethical human pesticide research to be submitted to EPA and relied on by the Agency under other regulatory statutes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	
Final Action	12/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

URL For More Information:

http://www.epa.gov/oppfead1/guidance/human-test.htm

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RIN: 2070–AJ76

EPA

142. HAZARDOUS WASTE MANAGEMENT SYSTEMS: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE: CARBON DIOXIDE (CO2) INJECTATE IN GEOLOGICAL SEQUESTRATION ACTIVITIES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6903; 42 USC 6912; 42 USC 6921–24

CFR Citation:

40 CFR 261

Legal Deadline:

None

Abstract:

On July 25, 2008, EPA published a proposed rule under the Safe Drinking Water Act Underground Injection Control Program to create a new class of injection wells (Class VI) for geological sequestration (GS) of carbon dioxide (CO2). 73 FR 43492. In response to that proposal, EPA received numerous comments asking for clarification on how the Resource Conservation and Recovery Act (RCRA) hazardous waste requirements apply to CO2 streams. EPA is now considering a proposed rule under RCRA to explore a number of options, including a conditional exemption from the RCRA requirements for hazardous CO2 streams in order to facilitate implementation of GS, while protecting human health and the environment.

Statement of Need:

The Agency is taking this action in order to reduce the uncertainty associated with managing CO2 streams under RCRA subtitle C, which will enable the continued research and deployment of carbon capture storage activities.

Summary of Legal Basis:

EPA expects the regulations to be proposed under the authority of sections 1004, 2002, 3001, 3002, 3003, and 3004 of RCRA, 42 U.S.C. 6903, 6912, 6921, 6922, 6923, and 6924.

Alternatives:

EPA intends to analyze options for clarifying the applicability of RCRA subtitle C to CO2 streams being

captured, transported, and sequestered in Class VI UIC wells, including a conditional exemption from the hazardous waste regulations.

Anticipated Cost and Benefits:

The economic impact assessment for this action is presently under development, and there are no preliminary estimates of costs or benefits at this time.

Risks:

EPA intends to evaluate how requirements under other statutes and programs (for example, Department of Transportation (DOT) regulations, and EPA's Underground Injection Control Class VI rule) may adequately address potentially unacceptable risks from the capture, transport, and geologic sequestration of CO2 streams. Therefore, EPA does not expect to perform a separate risk assessment of those CO2 streams.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, State

Sectors Affected:

31-33 Manufacturing; 48-49 Transportation; 22 Utilities

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RIN: 2050–AG60

EPA

143. • FINANCIAL RESPONSIBILITY REQUIREMENTS UNDER CERCLA SECTION 108(B) FOR CLASSES OF FACILITIES IN THE HARD ROCK MINING INDUSTRY

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 9601 et seq.; 42 USC 9608 (b)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain authorities concerning financial responsibility requirements. The Agency has identified classes of facilities within the Hard Rock mining industry as those for which financial responsibility requirements will be first developed. EPA intends to include requirements for financial responsibility, as well as notification and implementation.

Statement of Need:

The Agency is currently examining various classes of facilities that may produce, transport, treat, store or dispose of hazardous substances for development of financial responsibility requirements under CERCLA section 108(b).

Summary of Legal Basis:

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

To be determined.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
Priority Notice	07/28/09	74 FR 37213
NPRM	04/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

EPA publication information: Priority Notice - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809fc1ff; Split from RIN 2050-AG56.; EPA Docket information: EPA-HQ-SFUND-2009-0834

Sectors Affected:

212 Mining (except Oil and Gas)

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RIN: 2050–AG61

EPA

144. NPDES PERMIT REQUIREMENTS FOR MUNICIPAL SANITARY AND COMBINED SEWER COLLECTION SYSTEMS, MUNICIPAL SATELLITE COLLECTION SYSTEMS, SANITARY SEWER OVERFLOWS, AND PEAK EXCESS FLOW TREATMENT FACILITIES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1311 CWA 301; 33 USC 1314 CWA 304; 33 USC 1318 CWA 308; 33 USC 1342 CWA 402; 33 USC 1361 CWA 501(a)

CFR Citation:

40 CFR 122.38; 40 CFR 122.41; 40 CFR 122.42

Legal Deadline:

None

Abstract:

EPA will develop a notice of proposed rulemaking outlining a broad-based regulatory framework for sanitary sewer collection systems under the NPDES program. The Agency is considering proposing standard permit conditions for inclusion in permits for publicly owned treatment works (POTWs) and municipal sanitary sewer collection systems. The standard requirements would address reporting, public notification, and recordkeeping requirements for sanitary sewer overflows (SSOs), capacity assurance, management, operation, and maintenance requirements for municipal sanitary sewer collection systems; and a prohibition on SSOs. The Agency is also considering proposing a regulatory framework for applying NPDES permit conditions, including applicable standard permit conditions, to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality.

Statement of Need:

EPA is developing a rule to modify the National Pollutant Discharge Elimination System regulations as they apply to municipal sanitary sewer collection systems and sanitary sewer overflows in order to better protect the environment and public health from the harmful effects of sanitary sewer overflows and basement back ups.

Summary of Legal Basis:

The Agency is undertaking this effort to help advance the Clean Water Act objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters (CWA, sec. 101 (a)).

Alternatives:

EPA will consider a variety of options during the rulemaking process.

Anticipated Cost and Benefits:

EPA will consider anticipated costs and benefits during the rulemaking process.

Risks:

EPA will consider potential risks during the rulemaking process.

Timetable:

Action	Date	FR Cite
Notice—Public Meeting	06/01/10	75 FR 30395
NPRM	11/00/11	
Final Action	11/00/12	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

Additional Information:

EPA Docket information: EPA—HQ—OW— 2010—0464

Sectors Affected:

22132 Sewage Treatment Facilities

URL For More Information:

www.epa.gov/npdes

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RIN: 2040–AD02

EPA

145. CRITERIA AND STANDARDS FOR COOLING WATER INTAKE STRUCTURES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

CWA 101; CWA 308; CWA 316; CWA 402; CWA 501; CWA 510

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline:

None

Abstract:

Section 316(b) of the Clean Water Act (CWA) requires EPA to ensure that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impacts. In developing regulations to implement section 316(b), EPA divided its effort into three rulemaking phases. Phase II, for existing electric generating plants that use at least 50 MGD of cooling water, was completed in July 2004. Industry and environmental stakeholders challenged the Phase II regulations. On review, the U.S. Court of Appeals for the Second Circuit remanded several key provisions. In July 2007, EPA suspended Phase II. Following the decision in the Second Circuit, several parties petitioned the U.S. Supreme Court to review that decision, and the Supreme Court granted the petitions, limited to the issue of whether the Clean Water Act authorized EPA to consider the relationship of costs and benefits in establishing section 316(b) standards. On April 1, 2009, the Supreme Court reversed the Second Circuit, finding that the Agency may consider cost-benefit analysis in its decisionmaking but not holding that the Agency must consider costs and benefits in these decisions. In June 2006, EPA promulgated the Phase III regulation, covering existing electric generating plants using less than 50 MGD of cooling water, new offshore oil and gas facilities, and all existing manufacturing facilities. Petitions to review this rule were filed in the U.S. Court of Appeals for the Fifth Circuit. EPA has asked for, and was granted a partial voluntary remand of the determinations in the Phase III regulation concerning existing facilities, in order to issue a regulation that addresses both Phase II and III existing facilities. EPA expects this new rulemaking would apply to the approximately 1,200 existing electric generating and manufacturing plants.

Statement of Need:

In the absence of national regulations, NPDES permit writers have developed requirements to implement section 316(b) on a case-by-case basis. This may result in a range of different requirements, and, in some cases, delays in permit issuance or reissuance. This regulation may have substantial ecological benefits.

Summary of Legal Basis:

The Clean Water Act requires EPA to establish best technology available standards to minimize adverse environmental impacts from cooling water intake structures. On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities under section 316(b) of the Clean Water Act (Phase II rule). 69 FR 41576 (Jul. 9, 2004). These regulations were challenged , and the Second Circuit remanded several provisions of the Phase II rule on various grounds. Riverkeeper, Inc. v. EPA, 475F.3d83, (2d Cir., 2007). EPA suspended most of the rule in response to the remand. 72 FR 37107 (Jul. 9, 2007). The remand of Phase III does not change permitting requirements for these facilities. Until the new rule is issued, permit directors continue to issue permits on a case-by-case, Best Professional Judgment basis for Phase II facilities.

Alternatives:

This analysis will cover various sizes and types of potentially regulated facilities, and control technologies. EPA is considering whether to regulate on a national basis, by subcategory, by broad water body category, or some other basis.

Anticipated Cost and Benefits:

The technologies under consideration in this rulemaking are similar to the technologies considered for the original Phase II and Phase III rules. Those costs evaluated for the Phase II remanded rule, in 2002 dollars, ranged from $389 million (the final rule option) to $440 million (the final rule option at proposal) to $1 billion to $3.5 billion (closed cycle cooling for facilities on certain waterbodies, or at all facilities). The monetized benefits of the original final rule were estimated to be $82 million. The monetized benefits include only the use value associated with quantifiable increases in commercial and recreational fisheries. Non-use benefits were not analyzed. The costs and benefits of the Phase III option most closely aligned with the Phase II option co-promulgated were $38.3 million and $2.3 million respectively, in 2004 dollars. EPA will develop new costs and benefits estimates for this new effort.

Risks:

Cooling water intake structures may pose significant risks for aquatic ecosystems.

Timetable:

Action	Date	FR Cite
NPRM	02/00/11	
Final Action	07/00/12	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

Additional Information:

EPA Docket information: EPA-HQ-OW-2008-0667

URL For More Information:

www.epa.gov/waterscience/316b

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RIN: 2040–AE95

EPA

146. STORMWATER REGULATIONS REVISION TO ADDRESS DISCHARGES FROM DEVELOPED SITES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1251 et seq

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Judicial, September 30, 2011, Chesapeake Bay Settlement Agreement; May 11, 2010; Fowler v US EPA, No 1 :09–CV –00005–CKK (D DC).

Final, Judicial, November 19, 2012, Chesapeake Bay Settlement Agreement; May 11, 2010; Fowler v US EPA, No 1 :09–CV –00005–CKK (D DC).

Abstract:

Stormwater discharge from developed areas is a major cause of degradation of surface waters. This is true for both conveyance of pollutants and the erosive power of increased stormwater flow rates and volumes. Current stormwater regulations were promulgated in 1990 and 1999. In 2006, the Office of Water asked the National Research Council (NRC) to review the stormwater program and recommend ways to strengthen it. The NRC Report, which was finalized in October 2008, found that the current stormwater program ''. . .is not likely to adequately control stormwater's contribution to waterbody impairment'' and recommended that EPA take action to address the harmful effects of stormwater flow. This proposed action would establish requirements for, at minimum, managing stormwater discharges from newly developed and re-developed sites, to reduce the amount of pollutants in stormwater discharges entering receiving waters by reducing the discharge of excess stormwater. This action may also expand the scope of municipal separate storm sewer systems (MS4) required to be regulated under NPDES permits, to include rapidly developing areas and to cover some discharges that are not currently regulated. The Phase I and Phase II MS4 regulations might also be combined and amended, and may include provisions for retrofitting existing development. In order to comply with the Executive order issued by President Obama on Mat 12, 2010, that among other things, require EPA to identify ways to strengthen stormwater management practices within the Bay watershed in order to restore and protect the Bay and its tributaries. EPA plans to include in this proposed rulemaking a separate section containing additional stormwater provisions for the Chesapeake Bay Watershed.

Statement of Need:

Section 402(p) of the Clean Water Act requires EPA to regulate certain stormwater discharges. Stormwater is a primary contributor of water quality impairment. There is a need to strengthen the stormwater program's effectiveness by reducing pollutant loading from currently regulated and unregulated stormwater discharges and preserving surface water health and integrity. This action was informed by

the 2006 National Research Council report.

Summary of Legal Basis:

Section 402(p) of the Clean Water Act requires EPA to regulate certain discharges from stormwater in order to protect water quality.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

To be determined.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	
Final Action	12/00/12	
Notice—Public Meeting	To Be	Determined

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Federalism:

Undetermined

Additional Information:

EPA Docket information: EPA-HQ-OW-2009-0817-0319

URL For More Information:

www.epa.gov/npdes/stormwater/rulemaking

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RIN: 2040–AF13

EPA

147. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT REGULATIONS FOR NEW DISCHARGERS AND THE APPROPRIATE USE OF OFFSETS WITH REGARD TO WATER QUALITY PERMITTING

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1361; 33 USC 1311(b)(1)(C)

CFR Citation:

40 CFR 122.4(i)

Legal Deadline:

None

Abstract:

This rulemaking may consider how to best clarify EPA's approach to permitting new dischargers in order to ensure the protection of water quality under Clean Water Act section 301(b)(1)(C). The rulemaking may examine options to address the appropriate and permissible use of offsets, which ensures that NPDES permits are protective of water quality standards. The rulemaking may also examine options for addressing new dischargers in impaired waters, both when a TMDL is in place and prior to TMDL issuance.

Statement of Need:

The EPA is initiating a rulemaking to consider clarifying the EPA's interpretation of 40 CFR section 122.4(i) and addressing the adverse Ninth Circuit decision in Friends of Pinto Creek v. EPA (2007), which created uncertainty regarding the permitting of new dischargers. Through this rulemaking, EPA will consider how to best ensure that the requirements at 40 CFR 122.4(i) and/or related regulations pertaining to the permitting of new dischargers are consistent with Clean Water Act (CWA) requirements.

Summary of Legal Basis:

Clean Water Act (CWA) section 301(b)(1)(C) requires permits to include limitation as stringent as necessary to meet water quality standards. The Federal regulations at 40 CFR 122.4(i) implements that requirement for new dischargers.

Alternatives:

TBD

Anticipated Cost and Benefits:

TBD

Risks:

TBD

Timetable:

Action	Date	FR Cite
NPRM	04/00/11	
Final Action	01/00/12	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 5240

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RIN: 2040–AF17

EPA

148. • CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) INFORMATION COLLECTION REQUEST RULE

Priority:

Other Significant

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Under the authority of section 308 of the CWA, EPA is proposing a rule to collect facility information from all Concentrated Animal Feeding Operations (CAFOs), which will

provide a CAFO inventory and assist in implementing the 2008 CAFO rule.

Statement of Need:

Under the authority of section 308 of the CWA, EPA is proposing a rule to collect facility information from all CAFOs, which will provide a CAFO inventory and assist in implementing the 2008 CAFO rule.

Summary of Legal Basis:

EPA is proposing a rule to collect facility information from all CAFOs under the authority of section 308 of the CWA.

Timetable:

Action	Date	FR Cite
NPRM	05/00/11	
Final Action	05/00/12	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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RIN: 2040–AF22

EPA

FINAL RULE STAGE

149. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AREA SOURCES: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

Clean Air Act sec 112

CFR Citation:

40 CFR 63

Legal Deadline:

NPRM, Judicial, May 7, 2010, 60–day extension granted on July 30, 2009. Additional 2–week extension was subsequently granted, and the signature date was April 29, 2010.

Final, Judicial, January 16, 2011, 30–day extension granted from December 16, 2010.

Abstract:

The Clean Air Act (CAA) requires that EPA develop standards for toxic air pollutants, also known as hazardous air pollutants or air toxics for certain categories of sources. These pollutants are known or suspected to cause cancer and other serious health and environmental effects. This regulatory action will develop emission standards for boilers located at area sources. An area source facility emits or has the potential to emit less than 10 tons per year (tpy) of any single air toxic or less than 25 tpy of any combination of air toxics. Boilers burn coal and other substances such as oil or biomass (e.g., wood) to produce steam or hot water, which is then used for energy or heat. Industrial boilers are used in manufacturing, processing, mining, refining, or any other industry. Commercial and institutional boilers are used in commercial establishments, medical centers, educational facilities and municipal buildings. The majority of area source boilers covered by this proposed rule are located at commercial and institutional facilities and are generally owned or operated by small entities. EPA estimates that there are approximately 183,000 existing area source boilers at 91,000 facilities in the United States and that approximately 6,800 new area source boilers will be installed over the next 3 years. The rule will cover boilers located at area source facilities that burn coal, oil, biomass, or secondary ''non-waste'' materials. Natural gas-fired area source boilers are not part of the categories to be regulated. The rule will reduce emissions of a number of toxic air pollutants including mercury, metals, and organic air toxics. The standards for area sources must be technology-based. Standards for area sources can be based on either generally available control technology (GACT), or maximum achievable control technology (MACT). To determine GACT, we look at methods, practices and techniques that are commercially available and appropriate for use by the sources in the category. We consider the economic impacts on sources in the category and the technical capabilities of the firms to operate and maintain the emissions control systems. MACT can be based on the emissions reductions achievable through application of measures, processes, methods, systems, or techniques, but must at least meet minimum control levels as defined in the Clean Air Act. Economic impacts cannot be considered when determining those minimum control levels.

Statement of Need:

Section 112(c)(3) of the CAA requires EPA to develop rules to reduce specific air toxics emissions (30 urban toxic pollutants) that have been identified as posing the greatest threat to public health in the largest number of urban areas as a result of emissions from certain categories of area sources. Industrial boilers and institutional/commercial boilers are listed as two of the area source categories for regulation. In addition, both industrial boilers and commercial/institutional boilers are on the list of CAA 112(c)(6) source categories which requires that those categories be subject to MACT regulation for specific air toxics. These two categories were included on the list because of emissions of mercury and polycyclic organic matter (POM).

Summary of Legal Basis:

Clean Air Act, section 112.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

EPA estimates the total nationwide capital cost for the rulemaking for existing and new boilers, as proposed, to be approximately $2.5 billion, with an annualized cost of 1 billion. The annual cost includes control device operation and maintenance and annual boiler tuneups, as well as monitoring, recordkeeping, reporting, and performance testing. EPA estimates that the proposal would reduce nationwide emissions from existing and new area source boilers by approximately 1,500 tons per year (tpy) of total air toxics,

1,500 pounds per year of mercury, 250 tpy of non-mercury metals, 9 tpy of POM, and 7,600 tpy of PM. These emissions reductions will lead to significant annual health benefits. In 2013, this rule will protect public health by avoiding: 110 to 300 premature deaths, 81 cases of chronic bronchitis, 190 nonfatal heart attacks, 169 hospital and emergency room visits, 190 cases of acute bronchitis, 16,000 days when people miss work, 2,100 cases of aggravated asthma, and 95,000 acute respiratory symptoms. The monetized benefits of this proposed regulatory action are estimated to range from $1 billion to $2.4 billion and $900 million to $2.2 billion, at 3 percent and 7 percent discount rates, respectively.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	06/04/10	75 FR 31895
NPRM Extension of Comment Period	06/09/10	75 FR 32682
NPRM Comment Period End	07/19/10	
NPRM Comment Period Extended To	08/03/10	
Final Action	01/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480afbb98; Related to RIN 2060-AQ25.; EPA Docket information: EPA-HQ-OAR-2006-0790

Sectors Affected:

611 Educational Services; 62 Health Care and Social Assistance; 44-45 Retail Trade; 321 Wood Product Manufacturing

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Related RIN: Related to 2060–AQ25

RIN: 2060–AM44

EPA

150. TRANSPORT RULE (CAIR REPLACEMENT RULE)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 51, 52, 72, 78, 97

Legal Deadline:

None

Abstract:

On May 12, 2005, the Environmental Protection Agency (EPA) promulgated the Clean Air Interstate Rule, commonly known as CAIR (70 FR 25162). The CAIR used a cap and trade approach to reduce sulfur dioxide (SO2) and nitrogen oxides (NOx) emissions. On July 11, 2008, the D.C. Circuit issued an opinion finding parts of the CAIR unlawful and vacating the rule. On December 23, the D.C. Circuit issued a decision on the petitions for rehearing of the July 11 decision. The court granted EPA's petition for rehearing to the extent that it remanded the cases without vacatur of the CAIR. This ruling means that the CAIR remains in place temporarily but that EPA is obligated to promulgate another rule under Clean Air Act section 110(a)(2)(D) consistent with the court's July 11 opinion. This action would fulfill our obligation to develop a rule consistent with the July 11, 2008, and December 23, 2008, D.C. Court decisions.

Statement of Need:

The Clean Air Transport Rule is necessary to help States address interstate transport of pollutants from upwind States to downwind nonattainment areas. Specifically, the rule is needed to respond to the remand of the Clean Air Interstate Rule by the U.S. Court of Appeals for the D.C. Circuit.

Summary of Legal Basis:

The Clean Air Transport Rule is needed to help States address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act. This section requires States to prohibit emissions that contribute significantly to downwind nonattainment with the national ambient air quality standards or which interfere with maintaining the standards in those downwind States.

Alternatives:

To be determined.

Anticipated Cost and Benefits:

The proposed rule would yield more than $120 to $290 billion in annual benefits in 2014. This far outweighs the estimated annual costs of $2.8 billion for that year. Both the annual benefits and costs are in 2006 dollars. The emission reductions from this proposed rule would lead to significant annual health benefits. In 2014, this rule would protect public health by avoiding: 14,000 to 36,000 premature deaths, 21,000 cases of acute bronchitis, 23,000 nonfatal heart attacks, 26,000 hospital and emergency room visits, 1.9 million days when people miss work or school, 240,000 cases of aggravated asthma, and 440,000 upper and lower respiratory symptoms. Air quality improvements would lead to increased visibility in national and State parks, and increased protection for sensitive ecosystems including, Adirondack and Appalachian lakes, coastal waters and estuaries, and sugar maple forests.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
NPRM	08/02/10	75 FR 45210
NODA	09/01/10	75 FR 53613
NPRM Correcting Amendments	09/14/10	75 FR 55711
NPRM Comment Period End	10/01/10	
Final Action	07/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Energy Effects:

Statement of Energy Effects planned as required by Executive Order 13211.

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b25be1; EPA Docket information: EPA-HQ-OAR-2009-0491

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

URL For More Information:

www.epa.gov/airtransport

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RIN: 2060–AP50

EPA

151. REVISION TO PB AMBIENT AIR MONITORING REQUIREMENTS

Priority:

Other Significant

Legal Authority:

42 USC 7403, 7410, 7601(a), 7611, and 7619

CFR Citation:

40 CFR 58

Legal Deadline:

None

Abstract:

On November 12, 2008, the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for lead (Pb) and associated monitoring requirements. The finalized monitoring requirements require State and local monitoring agencies to conduct Pb monitoring near Pb sources emitting 1.0 tons per year (tpy) or more and in large urban areas referred to as Core Based Statistical Areas (CBSA) with a population of 500,000 people or more. In January 2009, EPA received a petition from the Missouri Coalition for the Environment Foundation, Natural Resources Defense Council, the Coalition to End Childhood Poisoning, and Physicians for Social Responsibility requesting EPA reconsider the 1.0 tpy emission threshold. EPA granted the petition to reconsider on July 22, 2009. This action represents the results of the EPA's reconsideration of the Pb monitoring requirements.

A proposed revision was published on December 30, 2009, in which the EPA proposed to lower the emission threshold to 0.50 tpy, and to require Pb monitoring at the approximately 80 NCore sites instead of monitoring Pb in CBSA's with a population greater than 500,000. The EPA also requested comments on an emission threshold greater than 0.50 tpy, alternative approaches for monitoring Pb near airports, and on staggering the monitoring deployment over two years.

Statement of Need:

This action is in response to a petition to reconsider that the Agency received and granted on the Pb monitoring requirements contained in the revision to the Pb NAAQS (73 FR 66964).

Summary of Legal Basis:

Clean Air Act title I

Alternatives:

To be determined.

Anticipated Cost and Benefits:

To be determined.

Risks:

To be determined.

Timetable:

Action	Date	FR Cite
NPRM	12/30/09	74 FR 69050
NPRM Comment Period End	02/16/10	
Final Action	01/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a74184; EPA Docket information: EPA-HQ-OAR-2006-0735

Sectors Affected:

9241 Administration of Environmental Quality Programs

URL For More Information:

http://www.epa.gov/air/lead

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RIN: 2060–AP77

EPA

152. RECONSIDERATION OF THE 2008 OZONE PRIMARY AND SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7409

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

On March 12, 2008, EPA announced the final decision on the ozone national ambient air quality standards (NAAQS). Soon after that decision was signed on March 27, 2008 (73 FR 16436), the

Clean Air Scientific Advisory Committee (CASAC) held an unsolicited public meeting and criticized EPA for setting primary and secondary standards that were not consistent with advice provided by the CASAC during review of the NAAQS. On July 25, 2008, several environmental and industry petitioners, as well as a number of States, sued EPA on the NAAQS decision, and the Court set a briefing schedule for the consolidated cases on December 23, 2008. On March 10, 2009, EPA requested that the Court vacate the briefing schedule and hold the consolidated cases in abeyance for 180 days. This request for extension was made to allow time for appropriate EPA officials appointed by the new Administration to determine whether the standards established in March 2008 should be maintained, modified, or otherwise reconsidered. Announcement of reconsideration of the March 2008 NAAQS decision occurred on September 16, 2009. The NAAQS proposal (including a proposal to stay implementation designations for the March 2008 NAAQS) was signed on January 6, 2010, with the final rule to be signed on or around October 2010. Reconsideration of the NAAQS will be limited to information and supporting documentation available to EPA and in the docket at the time of the March 2008 decision.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for ozone are to be reviewed every 5 years. As outlined in the abstract of this regulatory plan entry, this reconsideration is in response to actions by the courts regarding the last review in 2008.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the ''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare.

Alternatives:

The main alternatives for the Administrator's decision are whether to set different primary and secondary ozone standards than those set in 2008.

Anticipated Cost and Benefits:

A supplement to the RIA was prepared that presents the costs and benefits associated with the proposed revised ozone standards. This RIA was made available when the Notice of Proposed Rulemaking was published.

Risks:

The current national ambient air quality standards for ozone are intended to protect against public health risks associated with morbidity and/or premature mortality and public welfare risks associated with adverse vegetation and ecosystem effects. During the course of this review, risk assessments will be conducted to evaluate health and welfare risks associated with retention or revision of the ozone standards.

Timetable:

Action	Date	FR Cite
NPRM	01/19/10	75 FR 2938
NPRM Comment Period End	03/22/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a7f618; Related to RIN 2060-AN24; EPA Docket information: EPA-HQ-OAR-2005-0172

URL For More Information:

http://www.epa.gov/air/criteria.html

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Related RIN: Related to 2060–AN24

RIN: 2060–AP98

EPA

153. REVISIONS TO MOTOR VEHICLE FUEL ECONOMY LABEL

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

Clean Air Act

CFR Citation:

40 CFR 85, 86, 600; 49 CFR 575

Legal Deadline:

None

Abstract:

EPA is responsible for developing the fuel economy labels that are posted on window stickers of all new light duty cars and trucks sold in the U.S. and, beginning with the 2011 model year, on all new medium-duty passenger vehicles (a category that includes large sport-utility vehicles and passenger vans). In 2006, EPA updated how the city and highway fuel economy values are calculated, to better reflect typical real-world driving patterns and provide more realistic fuel economy estimates. Since then, increasing market penetration of advanced technology vehicles, in particular plug-in hybrid electric vehicles and electric vehicles, will require new metrics to effectively convey information to consumers. This action will amend the way in which fuel economy estimates are calculated and/or displayed. The changes in this action will not impact the Corporate Average Fuel Economy requirements.

Statement of Need:

The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have recently jointly proposed to redesign and add information to the current fuel economy label that is posted on the window sticker of all new cars and light-duty trucks sold in the U.S. The redesigned label will provide new information to American consumers about the fuel economy and consumption, fuel costs, and environmental impacts associated with purchasing new vehicles beginning with model year 2012 cars and trucks. This action will also develop new labels for certain advanced technology vehicles, which are poised to enter the U.S. market, in particular plug-in hybrid electric vehicles and electric vehicles.

NHTSA and EPA are proposing these changes because the Energy Independence and Security Act (EISA) of 2007 imposes several new labeling requirements, because the labels for conventional vehicles can be improved to help consumers make more informed vehicle purchase decisions, and because the time is right to develop new labels for advanced technology vehicles that are being commercialized.

Summary of Legal Basis:

Both EPA and NHTSA have authority over labeling requirements related to fuel economy and environmental information under the Energy Policy and Conservation Act (EPCA) and the Energy Independence and Security Act (EISA), respectively. In order to implement that authority in the most coordinated and efficient way, the agencies have jointly proposed to revise the Fuel Economy label.

Alternatives:

The rulemaking proposal includes an alternative label that is being considered in addition to the Agency's primary proposal.

Anticipated Cost and Benefits:

The primary costs associated with this proposed rule come from revisions to the fuel economy label and codifying testing requirements for EVs and PHEVs. This rule is not economically significant under E.O. 12866 or any DOT or EPA policies and procedures because it does not exceed $100 million or meet other related standards. The primary benefits associated with this proposed rule come from any improvements in consumer decisionmaking that may lead to reduced vehicle and fuel costs for them. There may be additional effects on criteria pollutants and greenhouse gas emissions. At this time, EPA and NHTSA do not believe it is feasible to fully develop a complete benefits analysis of the potential benefits.

Risks:

The failure to finalize updated conventional vehicle fuel economy labels and to create new labels for EVs and PHEVs will result in labels that are unhelpful and potentially misleading for consumers as they seek to select more energy efficient and environmentally friendly vehicles that meet their needs.

Timetable:

Action	Date	FR Cite
NPRM	09/23/10	75 FR 58078
Notice—Public Meeting	09/28/10	75 FR 59673
NPRM Comment Period End	11/22/10	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

EPA Docket information: EPA-HQ-OAR-2009-0865

URL For More Information:

http://www.epa.gov/fueleconomy/regulations.htm

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RIN: 2060–AQ09

EPA

154. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR MAJOR SOURCES: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

Clean Air Act sec 112

CFR Citation:

40 CFR 63

Legal Deadline:

NPRM, Judicial, April 29, 2010, 60–day extension granted on June 30, 2009. An additional 2 weeks was subsequently granted. Signature date: April 29, 2010.

Final, Judicial, January 16, 2011, 30–day extension granted from December 16, 2011.

Abstract:

Section 112 of the Clean Air Act (CAA) outlines the statutory requirements for EPA's stationary source air toxics program. Section 112 mandates that EPA develop standards for hazardous air pollutants (HAP) for both major and area sources listed under section 112(c). This regulatory action will finalize emission standards for boilers and process heaters located at major sources. Section 112(d)(2) requires that emission standards for major sources be based on the maximum achievable control technology (MACT). Industrial boilers and institutional/commercial boilers are on the list of section 112(c)(6) source categories. In this rulemaking, EPA will finalize standards for these source categories.

Statement of Need:

As a result of the vacatur of the Industrial Boiler MACT, the Agency will develop another rulemaking under CAA section 112 which will reduce hazardous air pollutant (HAP) emissions from this source category. Recent court decisions on other CAA section 112 rules will be considered in developing this regulation.

Summary of Legal Basis:

Clean Air Act, section 112.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

EPA estimates the total national capital cost for the final rule to be approximately $9.5 billion in the year 2013, with a total national annual cost of $2.9 billion in the year 2013. The annual cost, which considers fuel savings, includes control device operation and maintenance as well as monitoring, recordkeeping, reporting, and performance testing. EPA estimates that implementation of the rulemaking, as proposed, would reduce nationwide emissions from major source boilers and process heaters by: 15,000 pounds per year of mercury, 3,200 tpy of non-mercury metals, 37,000 tpy of HCl, 50,000 tpy of PM, 340,000 tpy of SO2, 722 grams per year of dioxin and 1,800 tpy of volatile organic compounds. These emissions reductions would lead to the following annual health benefits. In 2013, this rule will protect public health by avoiding 1,900 to 4,800 premature deaths, 1,300 cases of chronic bronchitis, 3,000 nonfatal heart attacks, 3,200 hospital and emergency room visits, 3,000 cases of acute bronchitis, 250,000 days when people miss work, 33,000 cases of aggravated asthma, and 1,500,000 acute respiratory symptoms. The monetized value of the benefits ranges from $17 billion to $41 billion in 2013—outweighing the costs by at least $14 billion.

Risks:

Not yet determined.

Timetable:

Action	Date	FR Cite
NPRM	06/04/10	75 FR 32006
NPRM Extension of Comment Period	06/09/10	75 FR 32682
NPRM Comment Period End	07/19/10	
NPRM Comment Period Extended To	08/03/10	
Final Action	06/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480afbb49; Split from RIN 2060-AM44. This rulemaking combines the area source rulemaking for boilers and the rulemaking for re-establishing the vacated NESHAP for boilers and process heaters.; EPA Docket information: EPA-HQ-OAR-2002-0058

Sectors Affected:

325 Chemical Manufacturing; 611 Educational Services; 322 Paper Manufacturing; 221 Utilities; 321 Wood Product Manufacturing

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Related RIN: Related to 2060–AM44

RIN: 2060–AQ25

EPA

155. LEAD; CLEARANCE AND CLEARANCE TESTING REQUIREMENTS FOR THE RENOVATION, REPAIR, AND PAINTING PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

15 USC 2601(c); 15 USC 2682(c)(3); 15 USC 2684; 15 USC 2686; 15 USC 2687

CFR Citation:

40 CFR 745

Legal Deadline:

NPRM, Judicial, April 22, 2010, Signature.

Final, Judicial, July 15, 2011, Signature.

Abstract:

On May 6, 2010, EPA proposed several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements, as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. Current requirements include training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. EPA is particularly concerned about dust lead hazards generated by renovations because of the well documented toxicity of lead, especially to younger children. This proposal includes additional requirements designed to ensure that lead-based paint hazards generated by renovation work are adequately cleaned after renovation work is finished and before the work areas are re-occupied. Specifically, EPA proposed to require dust wipe testing after many renovations covered by the RRP rule. For a subset of jobs involving demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operation, such as power sanders or abrasive blasters, this proposal would also require the renovation firm to demonstrate, through dust wipe testing, that dust-lead levels remaining in the work area are below regulatory levels.

Statement of Need:

EPA is particularly concerned about dust lead hazards generated by renovations because children, especially younger children, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure. This rulemaking revision is being considered in response to a settlement agreement.

Summary of Legal Basis:

Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities that create lead-based paint hazards in target housing, which is defined by statute to cover most pre-1978 housing, public buildings built before 1978, and commercial buildings. The work practice requirements for dust wipe testing and clearance, training, certification and accreditation requirements, and State, territorial, and tribal authorization provisions are being

promulgated under the authority of TSCA sections 402(c)(3), 404, and 407 (15 U.S.C. 2682(c)(3), 2684, and 2687).

Alternatives:

In addition to the proposed rule option, the Economic Analysis for the proposed rule analyzes several alternative options, including options with lower and higher thresholds (in terms of the amount of lead-based paint disturbed) for renovations that require dust wipe testing or clearance. See also the discussion in the preamble to the proposed rule at page 25058 et seq.

Anticipated Cost and Benefits:

Benefits. The proposed rule is estimated to generate benefits by providing greater assurance that dust-lead hazards created by renovations are adequately cleaned up, primarily by requiring renovation firms to provide building owners and occupants with information on dust lead levels remaining in the work area after many renovation projects, but also by requiring renovation firms to demonstrate that they have achieved regulatory clearance levels after some of the dustiest renovations. These changes will protect individuals residing in target housing or attending a child-occupied facility where these renovation events are performed. It will also protect individuals who move into target housing after such a renovation is performed, or who visit a friend, relative, or caregiver's house where such a renovation is performed. EPA has estimated the number of individuals residing in target housing units or attending COFs where renovation events are performed. The proposed rule will benefit 809,000 children under the age of 6 and 7,547,000 individuals age 6 and older (including 96,000 pregnant women) per year by minimizing their exposure to lead dust generated by renovations. The low threshold option would protect 882,000 children under the age of 6 and 8,193,000 individuals age 6 and older, including 105,000 pregnant women. The high threshold option protects 706,000 children and 6,590,000 individuals age 6 and older, including 83,000 pregnant women. The remaining three alternative options (dust wipe testing only, clearance only, and third party dust wipe testing) would affect the same number of individuals as the proposed rule, although the amount of protection provided to some of those individuals may differ from the proposed rule.

Costs. Total annualized costs for the proposed rule are $272 million per year using a 3 percent discount rate and $293 million per year using a 7 percent discount rate. Under the low threshold option, costs are $312 million per year with a 3 percent discount rate and $336 million per year with a 7 percent rate. Under the high threshold option, costs are $224 million per year with a 3 percent discount rate and $242 million per year with a 7 percent discount rate. The option that only requires dust wipe testing costs $268 million per year with a 3 percent discount rate and $288 million per year with a 7 percent discount rate. The option requiring clearance for all renovations covered by the proposed rule costs $367 million with a 3 percent discount rate and $394 million with a 7 percent discount rate. The option requiring the use of a third-party for dust wipe sampling costs $431 million per year with a 3 percent discount rate and $459 million per year with a 7 percent discount rate. These cost estimates are based on the assumption that improved lead test kits would be available.

Risks:

Lead is known for its ''broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action.'' (EPA Air Quality Criteria for Lead, October 2006). This array of health effects includes heme biosynthesis and related functions; neurological development and function; reproduction and physical development; kidney function; cardiovascular function; and immune function. There is also some evidence of lead carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations. Of particular interest to EPA during the RRP rulemaking was the delineation of lowest observed effect levels for those lead-induced effects that are most clearly associated with blood lead levels of less than 10 micrograms per deciliter in children and adults. See also the discussion in the preamble to the proposed rule at page 25039 et seq.

Timetable:

Action	Date	FR Cite
NPRM	05/06/10	75 FR 25038
NPRM Comment Period End	07/06/10	
NPRM Extension of Comment Period	07/07/10	75 FR 38959
NPRM Comment Period Extended To	08/06/10	
Final Action	07/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA publication information: NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ae7efa; EPA Docket information: EPA-HQ-OPPT-2005-0049

URL For More Information:

http://www.epa.gov/lead/pubs/renovation.htm

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RIN: 2070–AJ57

EPA

156. IDENTIFICATION OF NON–HAZARDOUS SECONDARY MATERIALS THAT ARE SOLID WASTES

Priority:

Other Significant

Legal Authority:

42 USC 6903(27); 42 USC 6912(a)(1)

CFR Citation:

40 CFR 241

Legal Deadline:

NPRM, Judicial, April 29, 2010.

Final, Judicial, January 16, 2011.

Abstract:

The Agency has proposed to define which non-hazardous secondary materials burned in combustion units are solid wastes under the Resource Conservation and Recovery Act (RCRA).

This in turn will assist the Agency in determining which non-hazardous secondary materials will be subject to the emissions standards proposed under sections 112 and 129 of the Clean Air Act (CAA). If the secondary material is considered a ''solid waste,'' the unit that burns the non-hazardous secondary material would be subject to the CAA section 129 requirements. The meaning of ''solid waste'' as defined under RCRA is important because CAA section 129, which regulates emissions from sources that combust solid wastes, states that the term ''solid waste'' shall have the meaning ''established by the Administrator [pursuant to RCRA].''

Statement of Need:

EPA is preparing to establish new emission standards under CAA sections 112 and 129. In order to establish these new emission standards, EPA must determine at the federal level which non-hazardous secondary materials are considered ''solid waste.'' The meaning of solid waste for purposes of these CAA standards is of particular importance since CAA section 129 states that the term ''solid waste'' shall have the meaning ''established by the Administrator.''

Summary of Legal Basis:

EPA is promulgating this regulation under the authority of sections 2002(a)(1) and 1004(27) of RCRA, as amended, 42 U.S.C. 6912(a)(1) and 6903(27). Section 129(a)(1(D) of the CAA directs EPA to establish standards for Commercial and Industrial Solid Waste Incinerators (CISWI), which burn solid waste (CAA sec. 129(g)(6), 42 U.S.C. 7429). Section 129(g)(6) provides that the term, solid waste, is to be established by EPA under RCRA. Section 2002(a)(1) of RCRA authorizes the Agency to promulgate regulations as are necessary to carry out the functions under the Act. The statutory definition of ''solid waste'' is provided in RCRA section 1004(27).

Alternatives:

The Notice of Proposed Rulemaking (NPRM) proposes an ''Alternative Approach'' that is broader than the proposed solid waste definition. This alternative may be adopted in the final rule, if warranted by information presented during the public comment period or otherwise available in the rulemaking record. Under this alternative, most non-hazardous secondary materials that are burned in a combustion unit would be considered solid wastes. Only fuels or ingredients that are combusted and remain within the control of the generator and met the legitimacy criteria would not be solid wastes under this alternative. This approach would not allow discarded materials processed into new product fuels to be considered as non-wastes, or allow for a petition process. This approach would expand the universe of non-hazardous secondary materials that would be considered to be solid wastes, and thus subject to CAA section 129. The proposed rule also takes comment on an approach that would classify all non-hazardous secondary materials that are burned in combustion units as solid wastes.

Anticipated Cost and Benefits:

The proposed rule specifies criteria under which non-hazardous secondary materials are considered solid wastes. Although the final rule will determine which section of the CAA under which a given combustion unit is regulated, this rule itself will not include any emission standards and will not require changes in the management or use of secondary materials. Only with the promulgation of the respective rules developed within EPA's Office of Air and Radiation (OAR) would society realize the costs, benefits, and other impacts. These impacts, therefore, are attributed entirely to the rules being developed by OAR.

Risks:

Air emission risks will be reduced as a result of the current promulgation of three-related rules developed by OAR and this rule. However, material diversion risks may increase under certain limited scenarios.

Timetable:

Action	Date	FR Cite
ANPRM	01/02/09	74 FR 41
ANPRM Comment Period End	02/02/09	
NPRM	06/04/10	75 FR 31843
NPRM Extension of Comment Period	06/09/10	75 FR 32682
NPRM Comment Period End	07/19/10	
NPRM Comment Period Extended To	08/03/10	
Final Action	01/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

EPA publication information: ANPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=090000648080b3d3; NPRM - http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480afbb78, NPRM - Extension of Comment Period - http://www.regulations.gov/search/Regs/home.html#documentDetail? For information on the proposed CAA emissions standards for boilers, process heaters, and commercial/industrial solid waste incinerators, see http://www.epa.gov/airquality/combustion/; EPA Docket information: EPA-HQ-RCRA-2008-0329

URL For More Information:

http://www.epa.gov/epawaste/nonhaz/define/index.htm

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RIN: 2050–AG44

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or agency) is to ensure equality of opportunity in employment by vigorously enforcing seven Federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended (makes it illegal to pay unequal wages to men and women performing substantially equal work at the same establishment, unless the difference is attributable to a bona fide seniority, merit, or incentive system, or to a factor other than sex); the Age Discrimination in Employment Act of 1967 (ADEA) as amended (prohibits employment discrimination based on age of 40 or older); Titles I and V of the Americans with Disabilities Act, as amended, and sections 501 and 505 of the Rehabilitation Act, as amended (prohibit employment discrimination based on disability); Title II of the Genetic Information Nondiscrimination Act (GINA) (prohibits employment discrimination based on genetic information and limits acquisition and disclosure of genetic information); and section 304 of the Government Employee Rights Act of 1991 (protects certain previously exempt state & local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability).

The first item in this regulatory plan is entitled ''Genetic Information Nondiscrimination Act.'' GINA was signed into law on May 21, 2008. Congress enacted GINA in recognition of many achievements in the field of genetics, the decoding of the human genome, and the creation and increased use of genomic medicine. Many genetic tests now exist that can inform individuals whether they may be at risk for developing a specific disease or disorder. GINA was enacted to address public concerns regarding the potential for misuse of genetic information.

Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. GINA prohibits use of genetic information in employment, whether acquired through genetic testing or from an individual's family medical history, and limits acquisition and disclosure of such information. It requires that, when genetic information is acquired, it be maintained in a confidential medical file, separate and apart from personnel information.

The second item in this regulatory plan is entitled ''Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act.'' The Americans with Disabilities Act Amendments Act of 2008 (''the Amendments Act'' or ''the Act'') was signed into law on September 25, 2008, with a statutory effective date of January 1, 2009. The Act makes important changes to the definition of the term ''disability'' by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

EEOC

FINAL RULE STAGE

157. REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT

Priority:

Other Significant

Legal Authority:

42 USC sec 12116 and sec 506 as redesignated under the ADA Amendments Act of 2008

CFR Citation:

29 CFR 1630

Legal Deadline:

None

Abstract:

The Americans With Disabilities Act Amendments Act of 2008 (''the Amendments Act'') was signed into law on September 25, 2008, with a statutory effective date of January 1, 2009. EEOC proposes to revise its Americans With Disabilities Act (ADA) regulations and accompanying interpretative guidance (29 CFR part 1630 and accompanying appendix) in order to implement the ADA Amendments Act of 2008. Pursuant to the 2008 amendments, the definition of disability under the ADA shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA, and the determination of whether an individual has a disability should not demand extensive analysis. The Amendments Act rejects the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

Statement of Need:

This regulation is necessary to bring the Commission's regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the existing regulations. The Amendments Act retains the terminology of the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the existing regulations and interpretive guidance contained in the accompanying ''Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act,'' which are published at 29 CFR part 1630. The proposed revisions to the title I regulations and appendix are intended to enhance predictability and consistency between judicial interpretations and executive enforcement of the ADA as now amended by Congress.

Summary of Legal Basis:

Section 506 of the Amendments Act, 42 U.S.C. section 12205a, gives the EEOC the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and

the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

Alternatives:

None: Congress mandated issuance of regulations.

Anticipated Cost and Benefits:

The EEOC anticipates economic and other benefits from the rule in many areas. For example, applicants and employees will be entitled to reasonable accommodation absent undue hardship to perform jobs for which they are qualified, whereas they may have been deemed not to meet the ADA's definition of disability prior to the Amendments Act and denied accommodations as a result. Also, employers will incur benefits from their ability to retain, hire, and promote qualified personnel; increased employee attendance and productivity; avoidance of costs associated with under-performance, workplace injury, and turnover; and benefits from savings in workers' compensation and related insurance. Finally, definitional clarity brought by the amended regulation will have the economic benefit of reducing litigation and the need for costly experts to address ''disability,'' and will streamline the issues requiring judicial attention. To the extent that employers may in some cases need to revise internal policies and procedures to reflect the broader definition of disability under the Amendments Act and train personnel to ensure appropriate compliance with the revised regulation, the Commission will continue to provide free technical assistance and outreach, including presentations and materials targeted specifically to small employers. Costs would be incurred by employers with 15 or more employees that are covered by the ADA. Applying the broader Amendments Act interpretation of when an impairment ''substantially limits'' a major life activity, more applicants and employees will meet the definition of disability and thus be potentially entitled to reasonable accommodations that do not pose an undue hardship. Available cost data is limited. However, using research indicating that the average cost of an accommodation is $462, the NPRM estimated the additional cost of accommodations as a result of the Amendments Act and the EEOC regulations at $74 million. Assuming these requests occur over 5 years, since it is reasonable to assume that not all new requests will occur in the same year, the annual estimated cost would be $15 million. The NPRM noted that it is possible that these estimates are at least twice as great as the actual costs would be, given research indicating that prior to the Amendments Act, fewer than half of the accommodation requests were granted. It is also important to note that both government-sponsored and private studies have repeatedly found that more than 50 percent of accommodations have zero costs for employers, both large and small.

Risks:

The proposed rule imposes no new or additional risk to employers. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/23/09	74 FR 48431
NPRM Comment Period End	11/23/09	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

The EEOC plans to issue a final rule by the end of December, 2010, subject to expedited E.O. 12866 review by OMB/OIRA.

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BILLING CODE 6570–01–S

FINANCIAL STABILITY OVERSIGHT COUNCIL (FSOC)

Statement of Regulatory Priorities

Title I, subtitle A, of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank'' or ''Act'') established the Financial Stability Oversight Council (FSOC). The purpose of the FSOC is to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies. In addition, the Council is responsible for promoting market discipline and responding to emerging risks to the stability of the United States financial system. The duties of the FSOC are set forth in section 112(a)(2) of the Dodd-Frank Act. The FSOC consists of ten voting members and five non-voting members, who serve in an advisory capacity. The Secretary of the Treasury serves as Chairperson.

Dodd-Frank provides the FSOC with authority to issue certain regulations to carry out the business of the Council and for certain other purposes. In fiscal year 2011, the FSOC has issued an advance notice of proposed rulemaking (ANPRM) regarding authority to require supervision and regulation of certain nonbank financial companies. This ANPRM is an initial step in the process by which the Council intends to develop a robust and disciplined framework for the designation of nonbank financial companies for heightened supervision.

Over the next several months, the FSOC and its members will continue efforts to issue regulations, policies, and guidance mandated by the Act and to take other actions necessary to effectively carry out the Act.

BILLING CODE 4810–25–S

GENERAL SERVICES ADMINISTRATION (GSA)

I. Mission and Overview

GSA oversees the business of the Federal Government. GSA's acquisition solutions supplies Federal purchasers with cost-effective, high-quality products and services from commercial vendors. GSA provides workplaces for Federal employees and oversees the preservation of historic Federal properties. GSA helps keep the Nation safe by providing tools, equipment, and non-tactical vehicles to the U.S. military, and providing State and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

GSA serves the public by delivering services directly to its Federal customers through the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Governmentwide Policy (OGP). GSA has a continuing commitment to its Federal customers and the U.S. taxpayers by providing those services in the most cost-effective manner possible.

Federal Acquisition Service (FAS)

FAS is the lead organization for procurement of products and services (other than real property) for the Federal Government. The FAS leverages the buying power of the Government by consolidating Federal agencies requirements for common goods and services. FAS provides a range of high-quality and flexible acquisition services that increase overall Government effectiveness and efficiency. FAS business operations are organized into four business portfolios based on the product or service provided to customer agencies: Integrated Technology Services (ITS); Assisted Acquisition Services (AAS); General Supplies and Services (GSS); and Travel, Motor Vehicles, and Card Services (TMVCS). The FAS portfolio structure enables GSA and FAS to provide best value services, products, and solutions to its customers by aligning resources around key functions.

Public Buildings Service (PBS)

PBS is the largest public real estate organization in the United States, providing facilities and workspace solutions to more than 60 Federal agencies. PBS aims to provide a superior workplace for the Federal worker and superior value for the U.S. taxpayer. Balancing these two objectives is PBS's greatest management challenge. PBS's activities fall into two broad areas. The first is space acquisition through both leases and construction. PBS translates general needs into specific requirements, marshals the necessary resources, and delivers the space necessary to meet the respective missions of its Federal clients. The second area is management of space. This involves making decisions on maintenance, servicing tenants, and ultimately, deciding when and how to dispose of a property at the end of its useful life.

Office of Governmentwide Policy (OGP)

OGP sets Governmentwide policy in the areas of personal and real property, travel and transportation, information technology, regulatory information and use of Federal advisory committees. OGP also helps direct how all Federal supplies and services are acquired, as well as GSA's own acquisition programs. OGP's regulatory function fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866 with policies covering acquisition, travel, and property and management practices to promote efficient Government operations. OGP's strategic direction is to ensure that Governmentwide policies encourage agencies to develop and utilize the best, most cost effective management practices for the conduct of their specific programs. To reach the goal of improving Governmentwide management of property, technology, and administrative services, OGP builds and maintains a policy framework, by (1) incorporating the requirements of Federal laws, Executive orders, and other regulatory material into policies and guidelines, (2) facilitating Governmentwide reform to provide Federal managers with business-like incentives and tools, and flexibility to prudently manage their assets, and (3) identifying, evaluating, and promoting best practices to improve efficiency of management processes. OGP's policy regulations are described in the following subsections.

Travel and Relocation Policy (FTR)

Federal Travel Regulation (FTR) enumerates the travel and relocation policy for all title 5 Executive agency employees. The Code of Federal Regulations (CFR) is available at www.gpoaccess.gov/cfr. Each version is updated as official changes are published in the **Federal Register** (FR). FR publications and FTR looseleaf pages are available at www.gsa.gov/ftr.

The FTR is the regulation contained in 41 Code of Federal Regulations (CFR), chapters 300 through 304, that implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense.

The Administrator of General Services promulgates the FTR to: (a) Interpret statutory and other policy requirements in a manner that balances the need to ensure that official travel is conducted in a responsible manner with the need to minimize administrative costs and (b) communicate the resulting policies in a clear manner to Federal agencies and employees.

Property and Management Policy (FMR)

Federal Management Regulation (FMR) establishes policy for aircraft, transportation, personal property, and mail management. The FMR is the successor regulation to the Federal Property Management Regulation (FPMR). It contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that describes how to do business with the GSA.

Acquisition Policy (FAR and GSAR)

GSA helps provide to the public and the Federal buying community the updating and maintaining of the rule book for all Federal agency procurements, the Federal Acquisition Regulation (FAR). This is achieved through its extensive involvement with the Federal Acquisition Regulatory (FAR) Council. The FAR Council is comprised of senior representation from the Office of Federal Procurement Policy (OFPP), National Aeronautics and Space Administration (NASA), the Department of Defense (DoD), and GSA.

The FAR Council directs the writing of the FAR cases, which is accomplished, in part, by teams of expert FAR analysts. All changes to the FAR are accompanied by review and analysis of public comment. Public comments play an important role in clarifying and enhancing this rulemaking process. The regulatory agenda pertaining to changes to the FAR are outside the scope of this discussion as GSA cannot speak on behalf of the FAR Council.

GSA's internal rules and practices on how it buys goods and services from its business partners are covered by the General Services Administration Acquisition Manual (GSAM) and the General Services Administration Acquisition Regulation (GSAR). The

GSAM is closely related to the FAR as it supplements areas of the FAR where GSA has additional and unique regulatory requirements. OCAO's Office of Acquisition Policy writes and revises the GSAM and the GSAR. The size and scope of the FAR are substantially larger than the GSAR. In effect, the GSAR and the GSAM adds to the FAR by providing additional guidance to GSA officials and its business partners.

Federal Acquisition Regulation (FAR): The FAR was established to codify uniform policies for acquisition of supplies and services by Executive agencies. It is issued and maintained jointly, pursuant to the Office of Federal Procurement Policy (OFPP) Reauthorization Act, under the statutory authorities granted to the Secretary of Defense, Administrator of General Services, and the Administrator, National Aeronautics and Space Administration. Statutory authorities to issue and revise the FAR have been delegated to the Procurement Executives in Department of Defense (DoD), GSA and National Aeronautics and Space Administration (NASA).

GSA Acquisition Regulation Manual (GSAM) along with Acquisition Letters: The GSAM incorporates the GSAR as well as internal agency acquisition policy. The rules that require publication fall into two major categories:

- Those that affect GSA's business partners (e.g., prospective offerors and contractors).
- Those that apply to acquisition of leasehold interests in real property. The FAR does not apply to leasing actions. GSA establishes regulations for lease of real property under the authority of 40 U.S.C. 490 note.

GSA Acquisition Regulation (GSAR): The GSAR establishes agency acquisition rules and guidance which contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

II. Statement of Regulatory and Deregulatory Priorities

FTR Regulatory Priorities

GSA plans, in fiscal year 2011, to amend the FTR by:

- Revising the Relocation Income Tax (RIT) Allowance; amending coverage on family relocation;
- Amending the calculations regarding the commuted rate for employee-managed household good shipments;
- Removing the Privately Owned Vehicle (POV) rates from the FTR; amending reimbursement for employees staying in their privately owned homes/condos while on TDY; and
- Revising policies within the FTR regarding the definition and coverage of domestic partners (to include same sex partners). Also, GSA plans to fully revise the FTR. This revision will begin during fiscal year 2011.

FMR Regulatory Priorities

GSA plans, in fiscal year 2011, to amend the FMR by:

- Revising rules regarding management of government aircraft;
- Revising rules regarding mail management;
- Amending coverage in motor vehicle management by revising the definition of ''motor vehicle rental'';
- Incorporating and migrating the provisions of the Federal Property Management Regulations (FPMR) regarding purchase of new motor vehicles from the to the FMR;
- Incorporating and migrating the provisions of the Interagency Fleet Management Systems from the Federal Property Management Regulations (FPMR) into the FMR;
- Amending transportation management regulations by revising coverage on open skies agreements, obligation authority and training for civilian transportation officers, and transportation data collection;
- Amending Transportation Management and Audit by revising the requirements regarding the refund of unused and expired tickets;
- Amending policy covering personal property to promote open government and disclosure by updating the requirements for submission of annual reports to use the automated reporting tool;
- Updating procedures for handling the transfer of Title for vehicles to donees via State Agencies for Surplus Property; removing activities related to the Federal Asset Sales program which initiated the program;
- Removing aircraft and aircraft-related parts from the exchange/sale prohibited list; and
- Migrating policy (including policy regarding supply and procurement) from the FPMR to the FMR.

GSAR Regulatory Priorities

GSA plans, in fiscal year 2011, to finalize the rewrite of the GSAR to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. Currently, there are only a few parts of the GSAR rewrite effort still outstanding.

GSA is clarifying the GSAR by—

- Providing consistency with the FAR;
- Eliminating coverage that duplicates the FAR or creates inconsistencies within the GSAR;
- Correcting inappropriate references listed to indicate the basis for the regulation;
- Rewriting sections that have become irrelevant because of changes in technology or business processes or that place unnecessary administrative burdens on contractors and the Government;
- Streamlining or simplifying the regulation;
- Rolling up coverage from the services and regions/zones that should be in the GSAR;
- Providing new and/or augmented coverage; and
- Deleting unnecessary burdens on small businesses.

GSAR Proposed Rule

GSA proposes to provide the Agency Protest Official the discretion to require one or more protest parties to participate in oral presentations and/or submit additional written material related to the protest issues.

Regulations of concern to small businesses

FAR and GSAR rules are relevant to small businesses who do or wish to do business with the Federal Government. Approximately 18,000 businesses, most of whom are small, have GSA schedule contracts. GSA assists its small businesses by providing assistance through its Office of Small Business Utilization.

Regulations which promote open government and disclosure

While there are currently no regulations which promote open government and disclosure, all government contract spend transactions are available online through Federal

Procurement Data System-Next Generation (FPDS-NG).

Regulations required by statute or court order

There are no regulations required by statute or court order.

BILLING CODE 6820–34–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

NASA plans to publish its 2011 Strategic Plan to accompany its FY 2012 budget request. NASA's mission, as stated in the draft 2011 Strategic Plan, is to ''drive advances in science, technology, and exploration to enhance knowledge, education, innovation, economic vitality, and stewardship of the Earth.'' This updated mission statement reflects NASA's practice of ensuring the knowledge and technologies developed to accomplish its missions are transferred to the public sector through programs, partnerships, and public outreach and engagement activities in ways that support the Administration's priorities.

Through a framework of six strategic goals, NASA's 2011 Strategic Plan guides our missions in human and robotic exploration, scientific discovery in earth and space science, technology innovation and development, and aeronautics research. The framework also includes strategic planning for NASA's human and institutional capabilities, which are critical to the success of our current and future missions, as well as the programs, to ensure the widest dissemination and use of NASA's results for the benefit of the Nation. The following strategic goal framework is intended to span a 20+ year horizon. The outcomes and more detailed objectives that flow from the strategic goals are also defined in the Strategic Plan and used to guide nearer term Agency activities:

Goal 1: Extend and sustain human activities across the solar system.

Goal 2: Expand scientific understanding of Earth and the universe in which we live.

Goal 3: Create innovative new space technologies for our exploration, science, and economic future.

Goal 4: Advance aeronautics research for societal benefit.

Goal 5: Enable program and institutional capabilities to conduct NASA's aeronautics and space activities. Goal 6: Share NASA with the public, educators, and students to provide opportunities to participate in our mission, foster innovation, and contribute to a strong national economy.

In the decades since Congress enacted the National Aeronautics and Space Act of 1958, NASA has challenged its scientific and engineering capabilities in pursuing its mission, while simultaneously generating tremendous results and benefits for humankind. NASA's founding legislation also instructed NASA to ''...provide for the widest practicable and appropriate dissemination of information...'' is a key principle of the Administration's Open Government initiative, and one that NASA has embedded in its operations for 50 plus years. NASA recognizes that ''open government'' is a process rather than a product and has taken a continuous-learning approach as outlined in Version 1.0 of the NASA Open Government Plan (http://www.nasa.gov/open/index.html). We strive to continuously improve the way in which we operate under OpenGov and are participating in related Administration initiatives, such as performance improvement (High Priority Performance Goals) and contributions of ''high value'' raw data sets and tools to Data.gov. NASA has also articulated in its strategic plan several overarching strategies that reflect the Administration's national priorities and are the basis of how we continue to govern the conduct of our work.

- **Investing in next-generation technologies** and approaches to spur innovation;
- **Inspiring students** to be our future scientists and engineers, explorers, and educators through interactions with NASA's people, missions, research, and facilities;
- **Expanding partnerships** with international, intergovernmental, academic, industrial, and entrepreneurial communities as important contributors of skill and creativity to our missions and for the propagation of our results;
- **Committing to environmental stewardship** through Earth observation and science, and the development and use of green technologies and capabilities in NASA missions and facilities; and
- **Securing the public trust** through transparency and accountability in our programmatic and financial management, procurement, and reporting practices.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. As a member of the Federal Acquisition Regulatory Council and a FAR signatory, NASA participates with other Federal agencies to implement regulatory changes. In many cases, legislation provides the basis for changes to the procurement regulations. Change is also driven by case law, agency needs, and opportunity for improvement. In addition to its Federal role on the FAR Council, NASA implements and supplements FAR requirements through it's internal procurement regulations, the NASA FAR Supplement (NFS), 48 CFR chapter 18. For the most part, NASA's procurement regulations are procedural; they lay out the framework and processes by which to implement the Federal regulations. NASA does not plan any major NFS revisions in FY 2011. In a continuing effort to keep the NFS current and to implement NASA initiatives and Federal procurement policy, minor revisions to the NFS will be published.

NASA is planning to add a subpart to its regulations that will set forth policies and procedures relating to requirements for the filing of claims against NASA where a potential claimant believes NASA is infringing on privately owned rights in patented inventions or copyrighted works. The proposed regulations will set forth guidelines as to what NASA considers as necessary to file a claim for patent or copyright infringement.

The National Aeronautics and Space Administration (NASA) is proposing revisions to its regulations for implementing the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) Code of Federal Regulations (CFR) (40 CFR parts 1500 to 1508). This proposed rule would replace procedures contained in NASA's current regulation at 14 CFR 1216.3, *Procedures for Implementing the National Environmental Policy Act.* The revision is necessary to clarify and update the current regulation. Since the previous major update of NASA's NEPA regulation in 1988, a number of Executive orders have streamlined the Federal Government through decentralization, reduction, and simplification of regulations, and management of risk. This proposed rule strives to meet the spirit of these Executive orders, while expanding the Categorical Exclusions in keeping with NASA's mission.

Regulations That Are of Particular Concern to Small Businesses

Regulations in FAR part 19—Small Business Programs, in particular FAR-19.5, FAR-19.8, FAR-19.13, and FAR-19.14, which address the various categories of small business, have caused confusion with both the small

businesses and Federal Contracting Officers. FAR-19.13, which addresses the Historically Underutilized Business Zone (HUBZone) Programs, in particular section 19.1305 (a) states, ''A participating agency contracting officer **shall** set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns ....'' For the remaining categories of small business that allow set-a-sides, the FAR states either ''may'' or ''should'' be set-a-side.

Over the past year or so, there have been numerous GAO and Court decisions that have held up protests from HUBZone companies saying that the Government can only award to HUBZone companies because the FAR states ''shall'' award and the other programs state either ''may'' or ''should.'' Both the Small Business Administration (SBA) and the Office of Management and Budget (OMB) have issued direction to the Federal agencies stating, ''The GAO's Decisions are not binding on Federal agencies and are contrary to regulations promulgated by the Small Business Administration (SBA) that provide for ''parity'' among the three small business programs.''

The resulting environment is one in which Federal agencies are at significantly increased risk of upheld contract award protests, delayed procurements, and failure to meet small business goals in certain categories. Statutory changes are likely required in order to clarify FAR 19 and resolve the situation which greatly impacts the small business community.

BILLING CODE 7510–13–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

Overview

The National Archives and Records Administration (NARA) issues regulations directed to other Federal agencies and to the public. Records management regulations directed to Federal agencies concern the proper management and disposition of Federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Governmentwide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has two regulatory priorities for fiscal year 2010, which is included in The Regulatory Plan. The first is the drafting of regulations for the Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007. OGIS has a two-pronged mission: (1) Review policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); review compliance with FOIA by administrative agencies; and recommend policy changes to Congress and the President to improve the administration of FOIA; and (2) to provide mediation services to resolve disputes between FOIA requesters and agencies. OGIS also serves as the FOIA Ombudsman.

The second priority is an update to NARA's regulations related to declassification of classified national security information in records transferred to NARA's legal custody. The rule incorporates changes resulting from promulgation of Executive Order 13526, Classified National Security Information. These changes include establishing procedures for the automatic declassification of records in NARA's legal custody and revising requirements for reclassification of information to meet the provisions of E.O. 13526. Executive Order 13526 also created the National Declassification Center (NDC) with a mission to align people, processes, and technologies to advance the declassification and public release of historically valuable permanent records while maintaining national security.

NARA

PROPOSED RULE STAGE

158. OFFICE OF GOVERNMENT INFORMATION SERVICES

Priority:

Other Significant

Legal Authority:

PL 110–175

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007, is responsible for reviewing policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); reviewing compliance with FOIA by administrative agencies; and recommending policy changes to Congress and the President to improve the administration of FOIA.

Statement of Need:

The Office of Government Information Services (OGIS), established under the OPEN Government Act of 2007, may require implementing regulations.

Summary of Legal Basis:

The Open Government Act of 2007 (Pub. L. 110-175) requires the establishment of an Office of Government Information Services within NARA. OGIS will oversee Freedom of Information Act (FOIA) activities Governmentwide.

Anticipated Cost and Benefits:

OGIS, as an organization responsible for reviewing policies and procedures of administrative agencies under the Freedom of Information Act (FOIA); reviewing compliance with FOIA by administrative agencies; and recommending policy changes to Congress and the President to improve the administration of FOIA, is expected to increase the efficiency of the FOIA process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Agency Contact:

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RIN: 3095–AB62

NARA

159. DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

EO 13526

CFR Citation:

36 CFR 1260

Legal Deadline:

None

Abstract:

Executive Order 13526, Classified National Security Information, mandates changes to National Security Information declassification processes. NARA is updating its regulations to incorporate these changes.

Statement of Need:

Executive Order 13526, Classified National Security Information, mandates changes to National Security Information declassification processes including the establishment of the National Declassification Center (NDC). NARA is updating its regulations to incorporate these changes.

Summary of Legal Basis:

Executive Order 13526, Classified National Security Information, mandates changes to National Security Information declassification processes including the establishment of the National Declassification Center (NDC).

Anticipated Cost and Benefits:

Executive Order 13526 created the National Declassification Center (NDC) with a mission to align people, processes, and technologies to advance the declassification and public release of historically valuable permanent records while maintaining national security.

Timetable:

Action	Date	FR Cite
NPRM	12/00/10	
NPRM Comment Period End	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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BILLING CODE 7515–01–S

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management's mission is to ensure the Federal Government has an effective civilian workforce. OPM fulfills that mission by, among other things, providing human capital advice and leadership for the President and Federal agencies; delivering human resources policies, products, and services; and holding agencies accountable for their human capital practices. OPM's 2010 regulatory priorities are designed to support these activities.

Pay System for Senior Professionals (SL/ST)

OPM proposes to amend rules for setting and adjusting pay of senior-level (SL) and scientific and professional (ST) employees. The Senior Professional Performance Act of 2008 changed pay for these employees by eliminating their previous entitlement to locality pay and providing instead for rates of basic pay up to the rate payable for level III of the Executive Schedule (EX-III), or if the employee is under a certified performance appraisal system, the rate payable for level II of the Executive Schedule (EX-II). Consistent with this statutory emphasis on performance-based pay, these regulations will provide more flexible rules for agencies to set and adjust pay for SL and ST employees based primarily upon individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance appraisal system.

Sick Leave

OPM anticipates issuing final regulations to entitle an employee to use sick leave to provide care for a family member when the relevant health authorities or a health care provider have determined that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease. The final regulations would also permit agencies to advance a maximum of 240 hours (30 days) of sick leave to an employee if the employee's presence on the job would jeopardize the health of others because of exposure to a communicable disease and to advance a maximum of 104 hours (13 days) of sick leave to an employee to provide care for a family member who would jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.

Benefits for Reservists and their Family Members

Qualifying exigencies

OPM anticipates issuing proposed regulations to implement section 565(b)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111-84; Oct. 28, 2009) that amends the Family and Medical Leave Act (FMLA) provisions at 5 U.S.C. 6381 to 6383 to add qualifying exigencies to the circumstances or events that entitle Federal employees to up to 12 administrative workweeks of FMLA unpaid leave during any 12-month period. The proposed regulations would amend OPM's current regulations at part 630, subpart L, to cover qualifying exigencies when the spouse, son, daughter, or parent of the employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. OPM proposes eight categories of qualifying exigencies: Short-notice deployments, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities not encompassed in the other categories when the agency and employee agree they qualify as exigencies, including the timing and duration of the leave.

Reservist Differential

OPM will also continue to support Federal civilian employees called to active duty to further serve our Nation. OPM anticipates issuing proposed regulations to implement statutory changes that provide a new benefit to Federal civilian employees who are members of the Reserve or National Guard and who are called or ordered to active duty. Section 751 of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8; March 11, 2009) established a new provision in 5 U.S.C. 5538 that became effective on March 15, 2009. Under this new law, eligible Federal civilian employees called to active duty may receive a reservist differential. The reservist differential is equal to the amount by which an employee's projected civilian ''basic pay'' for a covered pay period exceeds the employee's actual military ''pay and allowances'' allocable to that pay period. While each employing civilian agency is responsible for making these payments, OPM, in consultation with the Department of Defense, is required to issue regulations to implement the new benefit.

Suitability Reinvestigations

OPM is reopening the comment period for proposed regulations published on November 3, 2009. The proposed rule modifies the suitability regulations in 5 CFR 731 to assist agencies in carrying out new requirements to reinvestigate individuals in public trust positions under Executive Order 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust*, to ensure their continued employment is appropriate. This reopener provides additional information relative to the scope of reinvestigations for public trust positions in order to allow for further comment as to reinvestigation frequency.

Designation of National Security Positions

OPM is proposing to revise its regulation regarding designation of national security positions. This proposed rule is one of a number of initiatives OPM has undertaken to simplify and streamline the system of Federal Government investigative and adjudicative processes to make them more efficient and as equitable as possible. The purpose of this revision is to clarify the requirements and procedures agencies should observe when designating national security positions as required under Executive Order 10450, *Security Requirements for Government Employment*. The proposed regulations clarify the categories of positions, which by virtue of the nature of their duties, have the potential to bring about a material adverse impact on the national security, whether or not the positions require access to classified information. The proposed regulations also acknowledge, for greater clarity, complementary requirements set forth in part 731, Suitability, so that every position is properly designated with regard to both public trust risk and national security sensitivity considerations. Finally, the proposed rule clarifies when reinvestigation of individuals in national security positions is required.

Personnel Investigations

OPM is participating in a review of the Federal Government's requirements for access to classified information and for suitability for employment. This review covers relevant statutes, Executive orders, and Governmentwide

regulations and is intended to determine whether a reengineered system that is cohesive, simplified, and equitable as possible can be developed. In particular, a reengineered system may require adjustments to OPM's regulations on personnel investigations.

Procedures for States and Localities to Request Indemnification

The Office of Personnel Management (OPM) is participating in a review of the Federal Government's requirements for access to classified information and for suitability for employment. This review covers relevant statutes, Executive orders, and Governmentwide regulations and is intended to determine whether a reengineered system that is cohesive, simplified, and equitable as possible can be developed. In particular, a reengineered system may require adjustments to OPM's regulations indemnification. OPM is also issuing a plain language rewrite of the regulation and the regulation will revise the part to be consistent with 5 U.S.C. 9101 (Pub. L. 99-169), as amended.

BILLING CODE 6325–44–S

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

The Pension Benefit Guaranty Corporation (PBGC) protects the pensions of about 44 million people in about 29,000 privately defined benefit plans. PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC issues regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, reporting and disclosure, and assessment and collection of employer liability. The Corporation is committed to issuing simple, understandable, and timely regulations to help affected parties.

PBGC's intent is to issue regulations that implement the law in ways that do not impede the maintenance of existing defined benefit plans or the establishment of new plans. Thus, the focus is to avoid placing burdens on plans, employers, and participants, wherever possible. PBGC also seeks to ease and simplify employer compliance whenever possible.

PBGC Insurance Programs

PBGC administers two insurance programs for privately defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program.

- *Single-Employer Program*. Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers.
- *Multiemployer Program*. The smaller multiemployer program covers about 1,500 collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are less than single-employer guaranteed benefits.

At the end of fiscal year 2010, PBGC had a $23 billion deficit in its insurance programs.

Regulatory Objectives and Priorities

As described below, PBGC's current regulatory objectives and priorities are to complete implementation of the Pension Protection Act of 2006 (PPA 2006) by issuing simple, understandable, and timely regulations that do not impose undue burdens that could impede maintenance or establishment of defined benefit plans. PBGC is also working on several regulatory projects not related to PPA 2006. These regulatory objectives and priorities are developed in the context of the Corporation's statutory purposes:

- To encourage voluntary private pension plans;
- To provide for the timely and uninterrupted payment of pension benefits; and
- To keep premiums at the lowest possible levels.

PBGC also attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, provide relief for small businesses, and assist plans to comply with applicable requirements.

Transparency

The Corporation seeks to improve transparency of information to plan participants, plan sponsors, and PBGC, in order to make disclosure and reporting more meaningful and to encourage more responsible funding of pension plans.

PPA 2006 affected certain provisions in the PBGC's reportable events regulation, which requires employers to notify PBGC of certain plan or corporate events. In November 2009, PBGC published a proposed rule to conform the regulation to the PPA 2006 changes. The proposed rule would also eliminate most of the automatic waivers and filing extensions currently provided and make other amendments to enhance the regulation as a regulatory tool. PBGC expects to finalize this regulation, taking into account public comments, in late 2010.

PBGC has issued final rules to implement other reporting and disclosure provisions of PPA 2006. In November 2008, PBGC issued a regulation that requires disclosure of certain information to participants regarding the termination of their underfunded plan. In March 2009, PBGC issued a final regulation making PPA 2006 changes to the plan actuarial and employer financial information required under section 4010 of ERISA to be reported to PBGC by employers with large amounts of pension underfunding.

Reducing burden through electronic filing

PBGC has simplified filing by increasing use of electronic filing methods. Electronic filing of premium information has been mandatory for all plans for plan years beginning on or after January 1, 2007. Filers have a choice of using private-sector software that meets PBGC's published standards or using PBGC's software. Electronic premium filing simplifies filers' paperwork, improves accuracy of PBGC's premium records and database, and enables more prompt payment of premium refunds. Most of the premium changes under PPA 2006 have now been incorporated into software so that it will be easy to comply with the premium changes under the new law.

Employers with large amounts of underfunding in their plans must file actuarial and financial information under section 4010 of ERISA electronically. Electronic filing reduces the filing burden, improves accuracy, and better enables PBGC to monitor and manage risks posed by these plans. PBGC incorporated the PPA 2006 changes to this reporting into software so that it will be easy to comply with the reporting changes under the new law.

Small businesses

PBGC gives consideration to the special needs and concerns of small businesses in making policy. A large percentage of the plans insured by PBGC are small or maintained by small employers. The first regulation PBGC published under PPA 2006 implemented the cap on the variable-rate premium for plans of small employers; the final regulation was published in December 2007. In early 2011, the Corporation expects to issue a proposed regulation implementing the expanded missing participants program under PPA 2006, which will also benefit small businesses.

Other PPA 2006 changes

Under PPA 2006, if a plan terminates while its sponsor is in bankruptcy, and the bankruptcy was initiated on or after September 16, 2006, the bankruptcy filing date is treated as the plan termination date for purposes of determining the amount of benefits

PBGC guarantees and the amount of assets allocated to participants who retired or have been retirement-eligible for 3 years. In 2008, PBGC published a proposed regulation to implement this statutory change; PBGC expects to finalize the regulation in late 2010.

PPA 2006 changes the rules for determining benefits upon the termination of a statutory hybrid plan, such as a cash balance plan. PBGC plans to publish a proposed regulation in late 2010 to implement those rules in both PBGC-trusteed plans and in plans that close out in the private sector.

Under PPA 2006, the phase-in period for the guarantee of a benefit payable solely by reason of an ''unpredictable contingent event,'' such as a plant shutdown, starts no earlier than the date of the shutdown or other unpredictable contingent event. PBGC plans to publish a proposed regulation implementing this statutory change in late 2010.

Compliance assistance

PBGC has initiated a regulatory project to assist plans to comply with requirements applicable to certain substantial cessations of operations. ERISA section 4062(e) provides for reporting of and liability for certain substantial cessations of operations by employers that maintain single-employer plans. In July 2010, PBGC published a proposed regulation that provides guidance as to what constitutes a section 4062(e) event, on the reporting of such an event to PBGC, and on the determination and satisfaction of liability arising from such an event. Issuance of the guidance is expected to improve 4062(e) reporting as a regulatory tool.

Reemployed service members' pension benefits

In 2010, PBGC published a final regulation that implementing provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA provides that an individual who leaves a job to serve in the uniformed services is generally entitled to reemployment by the previous employer and, upon reemployment, to receive credit for benefits, including employee pension plan benefits, that would have accrued but for the employee's absence due to the military service. The regulation provides that so long as a service member is reemployed within the time limits set by USERRA, even if the reemployment occurs after the plan's termination date, PBGC treats the participant as having satisfied the reemployment condition as of the termination date. This ensures that the pension benefits of reemployed service members, like those of other employees, will generally be guaranteed for periods up to the plan's termination date.

PBGC will continue to look for ways to further improve its regulations.

BILLING CODE 7709–01–S

SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

Overview

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses and by assisting in economic recovery of communities after disasters. In carrying out this mission, SBA strives to improve the economic and regulatory environment for small businesses, especially those in areas that have significantly higher unemployment and lower income levels than the Nation's averages and those in traditionally underserved markets. The Agency serves as a direct lender or guarantor of small business loans and provides management and technical assistance and contracting opportunities to small businesses. The Agency also provides direct financial assistance to communities that have experienced catastrophes. This assistance is a critical factor in rebuilding the devastated economy and community.

SBA's regulatory policy encompasses these goals and objectives and is implemented primarily through several core program offices: Office of Capital Access, Office of Government Contracting and Business Development, Office of Entrepreneurial Development, and Office of Disaster Assistance. Other offices, such as the Office of Veterans Business Development and Office of Native American Affairs also play a role in developing and shaping Agency regulatory policies that affect veterans, American Indians, Alaska Natives, Native Hawaiians, and the indigenous people of Guam and American Samoa. SBA's fall 2009 regulatory plan focused on a cross section of regulations that encompassed practically all of these program areas. To date SBA has successfully implemented all but one of the five regulatory priorities identified in that fall 2009 plan. The remaining regulatory priority, which impacts SBA's major small business development programs, is included in the SBA fall 2010 regulatory plan. The other fall 2010 regulatory rules are to implement the recently enacted Small Business Jobs Act of 2010.

Openness and Transparency

SBA is committed to developing regulations that are clear, simple, and easily understood. In addition, consistent with the President's mandate, SBA continues to promote transparency, collaboration, and public participation in its rulemakings. To that end, SBA routinely solicits comments on its regulations, even those that are not subject to the public notice and comment requirement under the Administrative Procedures Act, and where appropriate, the Agency consults with other Federal agencies or other entities that the regulation might affect. SBA's regulatory process also includes an assessment of the relative costs and benefits of the Agency's regulations as required by Executive Order 12866 ''Regulatory Planning and Review,'' as well as an analysis under the Regulatory Flexibility Act of whether regulations will have a significant economic impact on small businesses or entities.

Reducing Paperwork Burden on Small Businesses

SBA's various program offices are engaged in an ongoing effort to meet the goals of the Paperwork Reduction Act. The Agency develops regulations that, to the extent possible, reduce or eliminate the burden on the public. The Agency also endeavors to meet the requirements of the Government Paperwork Elimination Act, as well as the E-Government Act, by making available various electronic options for doing business with the Agency. These electronic options include applications for financial assistance, participation in government contracting and surety bond assistance programs, applications for grants, and transmittal of loan reporting data.

Regulatory Framework

The SBA recently released a new strategic plan that will serve as the foundation for the regulations that the Agency will develop during fiscal years 2011 through 2016. This plan is based on three primary strategic goals: Growing businesses and creating jobs; building an SBA that meets needs of today's and tomorrow's small businesses; and serving as the voice for small business. In order to achieve these goals SBA will, among other objectives, focus on:

- Expanding small business' access to capital through SBA's extensive lending network.
- Ensuring Federal contracting goals are met or exceeded by collaborating across the Federal Government to expand opportunities for small businesses and strengthen the integrity of the Federal contracting data and certification process.
- Ensuring that SBA's disaster assistance resources for businesses, non-profit organizations, homeowners, and renters can be deployed quickly, effectively, and efficiently.
- Strengthening SBA's relevance to high growth entrepreneurs and small businesses to more effectively drive innovation and job creation.
- Mitigating risk to taxpayers and improving program oversight.

Regulatory Priorities

As reported in the Agency's fall 2010 regulatory agenda, SBA plans to publish several regulations during the coming year that are designed to achieve these goals. Over the next 12 months, SBA's highest regulatory priorities will include implementation of new programs or changes to existing programs that are mandated by the recently enacted Small Business Jobs Act of 2010 (Jobs Act). SBA will focus particularly on issuing regulations for those programs that will provide increased access to capital and contract opportunities for small businesses. SBA also plans to make implementation of comprehensive changes to the regulations governing the SBA 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, one of the Agency's highest priorities.

(1) Implementation of Jobs Act:

(a) Small Business Access to Capital

One of SBA's top priorities will be to amend the Certified Development Company Program (commonly referred to as the 504 Program) regulations to implement section 1122 of the Jobs Act. This section authorizes SBA to conduct a 2-year program under which borrowers may use proceeds from an SBA guaranteed loan to refinance certain debt. On June 23, 2009, as authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act), SBA published a rule that permitted the use of proceeds from a 504 loan to refinance debt related to the expansion of a small business. This rule would provide an added benefit to small businesses by allowing them to refinance debt for purposes other than expansion of the business.

Section 1131 of the Jobs Act authorizes SBA to establish a Small Business Intermediary Lending Pilot Program. This 3-year pilot program is intended to provide funds to private non-profit entities to make loans to eligible small businesses that are suffering from a lack of credit as a result of poor economic conditions or changes in the financial market. In order to give full effect to this purpose, SBA will also

prioritize implementation of this lending program.

(b) Small Business Federal Contracting Opportunities:

The Jobs Act also makes several changes to SBA's contracting programs. These changes are intended to increase Federal procurement opportunities for small businesses and strengthen their ability to compete for such contracts. Among other things, the changes address the challenges small businesses face when attempting to subcontract with prime contractors and provide contracting officers with options for setting aside orders on multiple award contracts, place limitations on contract bundling by agencies, and establish a Governmentwide mentor-protégé program for participants in certain SBA programs. This regulatory plan highlights issuance of regulations to govern the terms and conditions for setting aside portions of multiple award contracts for small businesses. However, as identified in the Agency's regulatory agenda, SBA also plans to develop other regulations where necessary to establish guidelines for implementing other changes authorized by the Jobs Act.

(2) *Other Regulatory Priority*

In addition to implementing these Jobs Act provisions, SBA will also focus on implementing changes to the 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs. This major regulatory action signifies the first comprehensive amendment to the 8(a) BD program in more than a decade. Among other things, the changes are intended to prevent large businesses as well as other non-8(a) firms from being able to reap the benefits of sole source contracts intended for tribally owned or Alaska Native Corporation-owned 8(a) Participants. Through experience with the program and in listening to program participants or potential participants, SBA has learned that some program requirements are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, the requirements are deemed too expansive or indefinite. SBA will make changes that restrict or clarify such rules. Additional details regarding this regulation are described below in the Agency's regulatory plan.

In keeping with the President's call for a more open and transparent Government, during the development of this major regulation, SBA conducted several public meetings to engage the public in the rule formulation process. SBA also consulted with various tribal governments as required by Executive Order 13175 ''Tribal Consultations'' in several regions of the country. The final regulation will reflect these public discussions and tribal consultations and will benefit small business by clarifying SBA's requirements, removing confusion, and eliminating or easing restrictions that are unnecessary.

The 8(a)BD program serves as a good example of SBA's commitment to simplifying the process of conducting business with the Agency. The Agency has provided applicants for the 8(a)BD program the option of filing their applications and related documents for program participation electronically. This electronic option goes a long way to reduce the time and money applicants spend responding to Agency program requirements.

SBA

PROPOSED RULE STAGE

160. • SMALL BUSINESS JOBS ACT: MULTIPLE AWARD CONTRACTS AND SMALL BUSINESS SET–ASIDES

Priority:

Other Significant

Legal Authority:

PL 111–240, sec 1311, 1331

CFR Citation:

13 CFR 124 to 127, 134

Legal Deadline:

Final, Statutory, September 27, 2011, SBA, with Office of Federal Procurement Policy, must issue guidance by September 27, 2011 under section 1331.

Abstract:

The U.S. Small Business Administration (SBA) is proposing regulations that will establish guidance under which Federal agencies may set aside part of a multiple award contract for small business concerns, set aside orders placed against multiple award contracts for small business concerns and reserve one or more awards for small business concerns under full and open competition for a multiple award contract. These regulations will apply to small businesses, including those small businesses eligible for SBA's socio-economic programs.

Statement of Need:

The law recognizes that many small businesses were losing Federal contract opportunities when agencies issue multiple award contracts. This will improve small business participation in the acquisition process and provide clear direction to contracting officers by authorizing small business set asides in multiple-award contracts.

Summary of Legal Basis:

The Small Business Jobs Act of 2010, Public Law No. 111-240, section 1331, requires the SBA to issue regulations implementing this provision within one year from the date of enactment.

Alternatives:

SBA has not yet determined the costs resulting from this regulation.

Anticipated Cost and Benefits:

This provision will allow small businesses to gain access to multiple award contracts through prime contract awards or through set asides of the orders of the prime contracts. This should increase opportunities for small businesses.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	01/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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SBA

FINAL RULE STAGE

161. SMALL BUSINESS SIZE REGULATIONS; (8)A BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATION

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6), 636(j), 637(a) and (d)

CFR Citation:

13 CFR 124

Legal Deadline:

None

Abstract:

This rule proposes to make a number of changes to the regulations governing the 8(a) Business Development (8(a) BD) Program and several changes to SBA's size regulations. Some of the changes involve technical issues, such as changing the term ''SIC code'' to ''NAICS code'' to reflect the national conversion to the North American Industry Classification System. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, SBA has determined that a rule is too expansive or indefinite and has sought to restrict or clarify that rule. Changes are also being proposed to correct past public or agency misinterpretation. Also, new situations have arisen that were not anticipated when the current rules were drafted and the proposed rule seeks to cover those situations. Finally, one of the changes, implements statutory changes that impact Native Hawaiian Organizations.

Statement of Need:

Sections 8(a) and 7(j) of the Small Business Act authorize the SBA to administer the 8(a) BD program and assist eligible small disadvantaged business concerns compete in the American economy through business development. The 8(a) BD program provides procurement, financial, management and technical assistance to foster the business growth and development of 8(a) BD program participants. The proposed regulatory action is necessary to implement changes to the regulations governing the 8(a) BD program, the Small Disadvantaged Business (SDB) programs, and to the SBA size regulations. The changes are proposed as a result of the continuing need to ensure that SBA is effectively delivering the 8(a) BD program in accordance with the Small Business Act. In addition, the regulatory action is needed to enable SBA to institute the proper internal controls that will ensure effective monitoring and oversight of the 8(a) BD Program.

Summary of Legal Basis:

This rule proposes to make some changes that involve technical issues, correct some rules governing the 8(a) BD program that are too restrictive, and others that require clarification. The rule change will address new situations that have arisen that were not anticipated when the current rules were drafted. Finally, there is one change that implements a statutory change.

Alternatives:

SBA will analyze and consider the impact of any comments received from the public as a result of the proposed regulations being published in the Federal Register. Where relevant and appropriate, the regulations will be revised to incorporate these comments.

Anticipated Cost and Benefits:

It is difficult to estimate the costs and benefits to the various classes of firms affected by this rule as it is impossible to foresee which future contracts above the competitive thresholds would be awarded based on the various options available to contracting officers. SBA believes that the benefits of the proposed rule exceed its costs and exceed the benefits of continuing the status quo. SBA believes that increased clarity and easing of restrictions in the overall proposed changes set forth in this rule are beneficial to 8(a) applicants and Participants.

Risks:

Because the 8(a) Program is a business development program—not a contracting program—it is intended to foster the 8(a) firm's growth (through various forms of technical, management, procurement and financial assistance) and viability during the Participant's 9-year term.

The regulatory action is intended to mitigate any risks associated with program procedures and internal controls by ensuring clear and concise regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/28/09	74 FR 55694
NPRM Comment Period End	12/28/09	
NPRM Comment Period Extended	12/09/09	74 FR 65040
Hearing; Tribal Consultation	12/07/09	74 FR 64026
Hearing	12/14/09	74 FR 66176
Hearing	01/11/10	75 FR 1296
NPRM Comment Period End	01/28/10	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SBA

162. • SMALL BUSINESS JOBS ACT: 504 LOAN PROGRAM DEBT REFINANCING

Priority:

Other Significant

Legal Authority:

Pub L 111–240, sec 1122

CFR Citation:

13 CFR 120, subpart H

Legal Deadline:

Final, Statutory, September 27, 2012, Authority for program is repealed 2 years after date of enactment of Small Business Jobs Act of 2010.

Abstract:

The Small Business Jobs Act directs SBA to conduct a two-year program of debt refinancing in the 504 loan program. The rule sets forth the procedures for the refinancing of qualified debt and other statutory

requirements. The rule also conforms the job creation and retention goals of the 504 program to the Act.

Statement of Need:

Small businesses continue to struggle to gain access to the capital that would enable them to continue to pay their employees, pay vendors or expand their operations. The Jobs Act authorizes several financing options that are designed to strengthen the capacity of these small businesses to obtain the funds they need to create jobs and stimulate economic growth. Section 1122 of the Small Business Jobs Act is one such option that SBA is required to implement as soon as practicable in order to maximize the authority which expires on September 27, 2012.

Summary of Legal Basis:

Section 5(a)(6) of the Small Business Act authorizes SBA's Administrator to make such rules and regulations as deemed necessary to carry out any authorities vested in the Administrator.

Alternatives:

SBA currently has regulations governing debt refinancing. Regulations are necessary in order to conform those existing regulations to the additional debt refinancing authority provide by the Jobs Act.

Anticipated Cost and Benefits:

At this time SBA has not yet estimated the costs or benefits that may result from this rulemaking.

Risks:

Not Yet Determined

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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SBA

163. • SMALL BUSINESS JOBS ACT: SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM

Priority:

Other Significant

Legal Authority:

PL 111–240, sec 1131

CFR Citation:

13 CFR 120, subpart L

Legal Deadline:

Final, Statutory, March 26, 2011, sec 1131(b) of the Jobs Act requires SBA to issue implementing regulations no later than March 26, 2011.

Abstract:

The Small Business Jobs Act directs SBA to conduct a 3-year Small Business Intermediary Lending Pilot Program. SBA will provide loans to eligible intermediaries for the purpose of making loans to start-up, newly established, and growing small business concerns. The rule implements the statute and sets the terms and conditions of the loans made under the Program.

Statement of Need:

Due to higher underwriting requirements and resource constraints faced by banks, small business borrowers face significant gaps in the credit market. As a result of these gaps, more small business borrowers are turning to nonprofit lending intermediaries to provide low-cost alternatives to traditional bank financing. These nonprofit lending intermediaries have experience offering the financial products and services that banks, for various reasons, are unable or unwilling to offer. The ILPP will help to fill these credit gaps by providing very low interest loans to selected intermediaries. The intermediaries will then use the money to make loans to small businesses that have needs exceeding the limits of SBA's Microloan program but cannot obtain financing through a conventional lender, even with a 7(a) guaranty.

Summary of Legal Basis:

Section 1131(b) of the Jobs Act requires SBA to issue regulations no later than March 26, 2011, in order to implement the intermediary lending pilot program.

Alternatives:

Because the Jobs Act requires SBA to issue regulations, the Agency cannot consider other alternatives ways to carry out the lending program pilot authority.

Anticipated Cost and Benefits:

SBA has not yet analyzed the costs and benefits resulting from the implementation of the intermediary lending pilot program.

Risks:

Yet to be determined.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/11	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE 8025–01–S

SOCIAL SECURITY ADMINISTRATION (SSA)

Statement of Regulatory Priorities

We administer the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and the Special Veterans Benefits program under title VIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program under title XVII of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits and our procedures for administering these programs. Generally, our regulations do not impose burdens on the private sector or on State or local governments, except for the States' disability determination services.

The eight entries in our regulatory plan (plan) represent issues of major importance to the Agency. We describe the individual initiatives more fully in the attached plan.

Improving the Disability Process

Because the continued improvement of the disability program is of vital concern to us, we have eight initiatives in the plan addressing disability-related issues. They include:

- A proposed rule providing that we identify claimants with serious medical conditions as soon as possible, allowing us to grant benefits expeditiously to those claimants who meet Social Security disability standards;
- A proposed rule reestablishing Uniform National Disability Adjudication provisions in our Boston Region;
- Four proposed rules updating the medical listings used to determine disability—evaluating respiratory system disorders, mental disorders, hematological disorders, and endocrine disorders. The revisions reflect our adjudicative experience, advances in medical knowledge, diagnosis, and treatment.

Enhance Public Service

- We are proposing to revise our rules to establish a 12-month time limit for the withdrawal of an old-age benefits application. The proposed rule would permit only one withdrawal per lifetime.
- We will prepare a final rule to clarify and revise what we consider major life-changing events for the Medicare Part B income-related, monthly adjustment and what evidence we require to support a claim of a major life-changing event.

SSA

PROPOSED RULE STAGE

164. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 423; 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 3.00 and 103.00, Respiratory System, of appendix 1 to subpart P of part 404 of our regulations describe respiratory system disorders that are considered severe enough to prevent an individual from doing any gainful activity or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We are proposing to revise these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These proposed regulations are necessary to update the Respiratory System listings to reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders. The changes would ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating respiratory diseases and because of our adjudicative experience.

Anticipated Cost and Benefits:

Estimated costs—low.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	04/13/05	70 FR 19358
ANPRM Comment Period End	06/13/05	
NPRM	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

165. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGICAL DISORDERS (974P)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42

USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 423; 42 USC 902(a)5); 42 USC 1381a; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 7.00 and 107.00, Hematological Disorders, of appendix 1 to subpart P of part 404 of our regulations, describe hematological disorders that are considered severe enough to prevent a person from performing any gainful activity or that cause marked and severe functional limitation for a child claiming SSI payments under title XVI. We are proposing to revise the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These proposed regulations are necessary to update the hematological listings to reflect advances in medical knowledge, treatment, and methods of evaluating hematological disorders. The changes ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments.

Anticipated Cost and Benefits:

Estimated savings - low.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

FINAL RULE STAGE

166. REVISED MEDICAL CRITERIA FOR EVALUATING ENDOCRINE SYSTEM DISORDERS (436P)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 423; 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Sections 9.00 and 109.00, Endocrine System, of appendix 1 to subpart P of part 404 of our regulations describe endocrine system disorders that are considered severe enough to prevent an individual from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We will revise these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

We are revising the listings for endocrine disorders because, since we last published final rules making comprehensive revisions to the endocrine listings in 1985, medical science has made significant advances in detecting endocrine disorders at earlier stages, and new treatments have resulted in better management of these conditions. Consequently, most endocrine disorders do not reach listing-level severity because they do not become sufficiently severe or do not remain at a sufficient level of severity long enough to meet our 12-month duration requirement. For persons whose endocrine disorders are not controlled, we make individualized determinations about disability. We have determined that, with the exception of children under age 6 who have diabetes mellitus (DM) and require daily insulin, we should no longer have listings in section 9.00 and 109.00 based on endocrine disorders alone.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes and continuing to use our current criteria. However, we believe that finalizing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of disorders.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	08/11/05	70 FR 46792
ANPRM Comment Period End	10/11/05	
NPRM	12/14/09	74 FR 66069
NPRM Comment Period End	02/12/10	
Final Action	01/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

167. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 42 USC 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(h); 42 USC 421(i); 42 USC 423; 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation:

20 CFR 404.1500, app 1; 20 CFR 404.1520a; 20 CFR 416.920a; 20 CFR 416.934

Legal Deadline:

None

Abstract:

Sections 12.00 and 112.00, Mental Disorders, of appendix 1 to subpart P of part 404 of our regulations describe those mental impairments that are considered severe enough to prevent a person from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming SSI payments under title XVI. We are proposing to revise the criteria in these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment.

Statement of Need:

These regulations are necessary to update the listings for evaluating mental disorders to reflect advances in medical knowledge, treatment, and methods of evaluating these disorders. The changes will ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings or making only minor technical changes. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of disorders. We have not comprehensively revised the current listings in over 15 years. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Anticipated Cost and Benefits:

Savings estimates for fiscal years 2010 to 2018: (in millions of dollars) OASDI-315, SSI-370.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/03	68 FR 12639
ANPRM Comment Period End	06/16/03	
NPRM	08/19/10	75 FR 51336
NPRM Comment Period End	11/17/10	
Final Action	07/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

168. REESTABLISHING UNIFORM NATIONAL DISABILITY ADJUDICATION PROVISIONS (3502F)

Priority:

Other Significant

Legal Authority:

30 USC 923(b); 42 USC 401(j); 42 USC 402; 42 USC 404(f); 42 USC 405; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 405(s); 42 USC 405 note; 42 USC 416(i); 42 USC 421; 42 USC 421(a); 42 USC 421(i); 42 USC 421(m); 42 USC 421 note; 42 USC 422(c); 42 USC 423; 42 USC 423(i); 42 USC 423 note; 42 USC 425; 42 USC 432; 42 USC 902(a)(5); 42 USC 902 note; 42 USC 1320b–1; 42 USC 1320b–13; 42 USC 1381; 42 USC 1381a; 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1382h note; 42 USC 1383; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383(p); 42 USC 1383b

CFR Citation:

20 CFR 404.906; 20 CFR 404.930; 20 CFR 404.1502; 20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1519k; 20 CFR 404.1519m; 20 CFR 404.1519s; 20 CFR 404.1520a; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1601; 20 CFR 404.1616; 20 CFR 404.1624; 20 CFR 405; 20 CFR 416.902; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.919k; 20 CFR 416.919m; 20 CFR 416.919s; 20 CFR 416.920a; 20 CFR 416.924; 20 CFR 416.926; 20 CFR

416.926a; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1001; 20 CFR 416.1016; 20 CFR 416.1024; 20 CFR 416.1406; 20 CFR 416.1430; 20 CFR 422.130; 20 CFR 422.140; 20 CFR 422.201

Legal Deadline:

None

Abstract:

We are eliminating the remaining portions of part 405 of our rules, which we now use for initial disability claims in our Boston region. We will use the same rules for disability claims in the Boston region that we use for disability adjudications in the rest of the country, including those rules that apply to the administrative law judge (ALJ) and Appeals Council (AC) levels of our administrative review process in parts 404 and 416 of our rules.

Statement of Need:

To provide more consistent processing of appeals level claims for all regions.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

Continue existing process.

Anticipated Cost and Benefits:

Cost estimates for fiscal year 2009 to 2018: (in millions of dollars) OASDI-55, SSI-7.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/04/09	74 FR 63688
NPRM Comment Period End	02/02/10	
Final Action	02/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For Public Comments:

www.regulations.gov

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SSA

169. AMENDMENTS TO REGULATIONS REGARDING MAJOR LIFE–CHANGING EVENTS AFFECTING INCOME–RELATED MONTHLY ADJUSTMENTS AMOUNTS TO MEDICARE PART B PREMIUMS (3574F)

Priority:

Other Significant

Legal Authority:

42 USC 902(a)(5); 42 USC 1395r(i)

CFR Citation:

20 CFR 418.1205; 20 CFR 418.1210; 20 CFR 418.1230; 20 CFR 418.1255; 20 CFR 418.1265

Legal Deadline:

None

Abstract:

We are modifying our regulations in order to clarify and expand events considered life-changing events for the purposes of Medicare Part B income-related monthly adjustments as well as the types of evidence required to support claims of such events.

Statement of Need:

We are modifying our regulations to clarify and revise what we consider major life-changing events for the Medicare Part B income-related monthly adjustment amount (IRMA) and what evidence we require to support a claim of a major life-changing event. Recent changes in the economy and other unforeseen events have had a significant effect on many Medicare Part B beneficiaries. These changes we are making in this final rule will allow us to respond appropriately to circumstances brought about by the current economic climate and these other unforeseen events.

Summary of Legal Basis:

Discretionary. Not required by statute or court order.

Alternatives:

None.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/15/10	75 FR 41084
Interim Final Rule Comment Period End	09/13/10	
Final Action	03/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

URL For Public Comments:

www.regulations.gov

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SSA

170. AMENDMENTS TO REGULATIONS REGARDING WITHDRAWALS OF APPLICATIONS AND VOLUNTARY SUSPENSION OF BENEFITS (3573I)

Priority:

Other Significant

Legal Authority:

42 USC 402; 42 USC 402(i); 42 USC 402(j); 42 USC 402(o); 42 USC 402(p);

42 USC 402(r); 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 416; 42 USC 416(i)(2); 42 USC 423; 42 USC 423(b); 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.313; 20 CFR 404.640

Legal Deadline:

None

Abstract:

We propose to modify our regulations to establish a 12-month time limit for the withdrawal of an old age benefits application. We also propose to permit only one withdrawal per lifetime. These proposed changes would limit the voluntary suspension of benefits only to those benefits disbursed in future months.

Statement of Need:

This rule will allow us to establish a 12-month time limit for the withdrawal of an old age benefits application.

Summary of Legal Basis:

Discretionary

Alternatives:

None.

Anticipated Cost and Benefits:

Not yet determined.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/11	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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BILLING CODE 4191–02–S

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Statement of Regulatory Priorities

The Consumer Financial Protection Bureau is in a stand-up phase as it prepares to accept functions transferring from seven other Federal agencies on July 21, 2011, and employees from six of those agencies on or about the same date. The Agency will need to promulgate various housekeeping rules governing such topics as administrative procedures, data security and privacy protections, and enforcement procedures as part of the stand-up process.

With regard to substantive rules under Federal consumer financial laws that transfer to the CFPB's jurisdiction or become effective on July 21, 2011, much of the CFPB's immediate focus will be on implementing mandatory rulemakings under the Dodd-Frank Act concerning mortgages, remittances, and data reporting on consumer financial services. Other agencies such as the Federal Reserve Board may begin developing rules on some of these topics prior to the July 21 transfer date, at which time the CFPB will become responsible for completing Dodd-Frank Act mandates in accordance with statutory deadlines.

BILLING CODE 4810–25–S

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, the Commission:

- Develops mandatory product safety standards or banning rules when other, less restrictive, efforts are inadequate to address a safety hazard, or where required by statute;
- Obtains repair, replacement, or refund of the purchase price for defective products that present a substantial product hazard;
- Develops information and education campaigns about the safety of consumer products;
- Participates in the development or revision of voluntary product safety standards; and
- Follows congressional mandates to enact specific regulations.

When deciding which of these approaches to take in any specific case, the Commission gathers and analyzes the best available data about the nature and extent of the risk presented by the product. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- Frequency and severity of injury;
- Causality of injury;
- Chronic illness and future injuries;
- Costs and benefits of Commission action;
- Unforeseen nature of the risk;
- Vulnerability of the population at risk; and
- Probability of exposure to the hazard.

If the Commission proposes a mandatory safety standard for a particular product, the Commission is generally required to make statutory cost/benefit findings and adopt the least burdensome requirements that adequately protect the public.

Additionally, the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314 (Aug. 14, 2008), requires numerous rules and notices to be completed on a specific schedule. One such regulatory action pertains to the testing, certification, and labeling of certain consumer products. Section 102(d)(2) of the CPSIA requires the Commission to initiate by regulation: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler. This regulatory action will constitute a ''significant regulatory action'' under the definition in Executive Order 12866 ''Regulatory Planning and Review'' (Oct. 4, 1993).

CPSC

FINAL RULE STAGE

171. TESTING, CERTIFICATION, AND LABELING OF CERTAIN CONSUMER PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 110–314, sec 102

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, November 14, 2009.

Abstract:

Section 102(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314 (Aug. 14, 2008), requires the Commission to initiate by regulation, no later than 15 months after the date of enactment: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler. In May 2010, the Commission published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. The proposed rule defined a reasonable testing program for non-children's products subject to a rule, ban, standard, or regulation enforced by the Commission and additional third-party testing requirement for children's products.

Statement of Need:

Section 102(d) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Consumer Product Safety Commission (CPSC) to engage in rulemaking to establish requirements pertaining to the testing, certification, and labeling of certain consumer products. CPSC also has elected to issue regulations regarding a ''reasonable testing program'' under section 102(a) of the CPSIA to establish the elements of such a program.

Summary of Legal Basis:

Section 102(b) of the CPSIA requires the Commission to initiate by regulation: (1) A program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of section 102(a) of the CPSIA; (2) protocols and standards (i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts; (ii) for the testing of random samples to ensure continued compliance; (iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and (iv) for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer or private labeler.

Section 102(a) of the CPSIA requires manufacturers of certain products to certify, based on a test of each product or upon a reasonable testing program, that such product comports with all rules, bans, standards, or regulations applicable to the product under laws enforced by CPSC. Section 3 of the CPSIA authorizes the Commission to issue regulations, as necessary, to implement the CPSIA and the amendments made by the CPSIA.

Alternatives:

The preamble to the proposed rule invited comment on alternatives such as: (1) Establishing different compliance or reporting requirements that take into account the resources available to small businesses; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities to the extent statutorily permissible under section 14 of the CPSA. However, the proposal would give firms considerable discretion to determine the precise nature of their testing programs (including the number of samples to be tested and testing frequency). As for exemptions, the statute does not appear to give the Commission the authority to exempt firms from the testing or certification requirements, so it may not be possible to exempt firms within section 14 of the CPSA.

Anticipated Cost and Benefits:

The congressional mandate to issue this regulation does not require the Consumer Product Safety Commission to do a cost/benefit analysis for this regulation. Therefore, a cost/benefit analysis is not available for this regulatory action.

Risks:

Congress determined a need for testing, and in the case of children's products, third-party testing to ensure compliance with the Agency's standards. The Agency's standards address unreasonable risks of injury associated with consumer products; testing and certification to these standards provide an extra assurance that the consumer products are free from those unreasonable risks of injury; and through such testing programs, encourage manufacturers to address possible risks in the early stages of product manufacture. Given the breadth of the risks of injury the Agency's standards address and the number of products that are subject to testing or third-party testing, it is not possible to provide an analysis of the magnitude of the risk this regulatory action addresses.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to the Commission	04/01/10	
Commission Decision	05/05/10	
NPRM	05/20/10	75 FR 28336
NPRM Comment Period End	08/03/10	
Staff Sends Briefing Package to Commission	01/00/11	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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BILLING CODE 6355–01–S

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I.Regulatory Priorities

Background

The Federal Trade Commission (''FTC'' or ''Commission'') is an independent agency charged by its enabling statute, the Federal Trade Commission Act, with protecting American consumers from ''unfair methods of competition'' and ''unfair or deceptive acts or practices'' in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that competition, based on truthful and non-misleading information about products and services, brings the best choice of products and services at the lowest prices for consumers.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. Unfair or deceptive acts or practices injure both consumers and honest competitors alike and undermine competitive markets. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, truthful, and non-misleading information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. In addition, the Commission is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Most notably, pursuant to the FTC Act, the Commission currently has in place 16 trade regulation rules. Other examples include the regulations enforced pursuant to credit and financial statutes[1] and to energy laws.[2] The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Commission Initiatives

The Commission vigorously protects consumers through a variety of tools including both regulatory and non-regulatory approaches. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

As detailed below, information privacy and security, the evolving nature of technology, health care, consumer credit and finance issues, and marketing to children continue to be at the forefront of the Commission's consumer protection and competition programs. By subject area, we discuss the major workshops, reports,[3] and initiatives the FTC has pursued since the 2009 Regulatory Plan was published.

(a)Medical and Health Care. On January 13, 2010, FTC staff released a report entitled ''Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions.''[4] The study found that settlement deals featuring payments by branded drug firms to a generic competitor kept generics off the market for an average of 17 months longer than agreements that do not include a payment and cost consumers an estimated $3.5 billion per year—or $35 billion over 10 years.

In a speech to the American Medical Association in June 2010, Chairman Jon Leibowitz noted that the new health care reform law establishes programs for Medicare called ''accountable care organizations,'' or ACOs, as possible devices to improve quality and lower the cost of health care. On October 5, 2010, the Commission held a public workshop on health care competition policy, payment reform, and the new models for delivering health care that seek to incentivize high-quality, cost-effective care. The FTC workshop focused on how ACOs could affect competition in commercial health care markets.

(b) Assistance to Consumers in Financial Distress. Historic levels of consumer debt, increased unemployment, and an unprecedented downturn in the housing and mortgage markets have contributed to high rates of consumer bankruptcies and mortgage loan delinquency and foreclosure. Debt relief services have proliferated in recent years as the economy has declined and greater numbers of consumers hold debts they cannot pay. During the summer of 2010, the Commission issued a final rule amending the Telemarketing Sales Rule to address the telemarketing of debt relief services offered to consumers.[5] The amendments are necessary to protect consumers from deceptive or abusive practices in the telemarketing of debt relief services.

The recent national mortgage crisis has launched an industry of companies purporting, for a fee, to obtain mortgage loan modifications or other relief for consumers facing foreclosure. The Commission and other law enforcement have also taken action against mortgage companies that harm consumers through their advertising and servicing practices. The Commission initiated active rulemakings to protect distressed homeowners, one relating to Mortgage Assistance Relief Services (''MARS'') and another relating to Mortgage Acts and Practices (''MAP'') through the life cycle of the mortgage loan.[6] The MAP proceeding has since been split into rulemakings on MAP-Advertising and MAP-Servicing.

In February 2009, the FTC issued ''Collecting Consumer Debts: The Challenges of Change.''[7] The report noted that the FTC lacked sufficient information on debt collection proceedings. In the summer and fall of 2009, the Commission convened three public roundtables at which it examined consumer protection issues involving

[1]For example, the Fair Credit Reporting Act (15 U.S.C. sections 1681 to 1681(u), as amended) and the Gramm-Leach-Bliley Act (Pub. L.106-102, 113 Stat.1338, codified in relevant part at 15 U.S.C. sections 6801 to 6809 and sections 6821 to 6827, as amended).

[2]For example, the Energy Policy Act of 1992 (106 Stat. 2776, codified in scattered sections of the U.S. Code, particularly 42 U.S.C. section 6201 et seq. and the Energy Independence and Security Act of 2007 (EISA).

[3]The FTC also prepares a number of annual and periodic reports on the statutes it administers. These are not discussed in this plan.

[4]This report can be found at http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf.

[5]Go to Final Actions and see *Debt Relief Services TSR Rule*.

[6]Go to Rulemakings and Studies Required by Statute and see *Mortgage Loans Rule*.

[7]This can be found at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.

debt collections, both in litigation and arbitration proceedings.

In July 2010, the Commission issued a report entitled ''Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration.''[8] The report concluded that the system for resolving consumer debt collection disputes is broken and recommended significant litigation and arbitration reforms to improve efficiency and fairness to consumers. The Commission's principal recommendations to address these concerns in litigation included requiring States to adopt measures to make it more likely that consumers will defend themselves in litigation and taking steps to make it less likely that collectors will sue on debt on which the statute of limitations has run, as well as changing Federal and State laws to prevent the freezing of a specified amount in a bank account including funds exempt from garnishment. The report also addresses concerns about requiring consumers to resolve debt collection disputes through binding arbitration without meaningful choice, bias, or the appearance of bias in arbitration proceedings, and procedural unfairness in arbitration proceedings.

(c) Privacy Challenges to Consumers Posed by Technology and Business Practices. The Commission is exploring the privacy challenges posed by technological and business practices that collect and use consumer data. The FTC has held three public roundtables[9] at which it considered the following issues:

- On December 7, 2009, the FTC focused on the benefits and risks of information-sharing practices, consumer expectations regarding such practices, behavioral advertising, information brokers, and the adequacy of existing legal and self-regulatory frameworks.
- The second roundtable on January 28, 2010, focused on how technology affects consumer privacy, including its role in both raising privacy concerns and enhancing privacy protections and included specific discussions on cloud computing, mobile computing, and social networking.
- On March 17, 2010, a third roundtable addressed Internet architecture and privacy issues, health and other sensitive consumer information, and lessons that have been learned from the three roundtables and possible ways forward.

The Commission accepted written comments and original research in connection with all three workshops. The Commission expects to release recommendations for public comment during the latter part of 2010.

(d) Food Marketing to Children. In 2008, the FTC issued a report entitled ''Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation.''[10] As a followup to this report, the Commission held a forum on December 15, 2009, where participants presented new research on the impact of various food advertising techniques on children, discuss the statutory and constitutional issues surrounding governmental regulation of food marketing, and addressed the food and entertainment industries' self-regulatory efforts and implementation of the recommendations in the FTC's 2008 report. The Commission is also a member of an Interagency Working Group on Food Marketed to Children, composed of members of the FTC, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Department of Agriculture. The working group was established in response to a provision in the FY 2009 Omnibus Appropriations Act (H.R. 1105) and is charged with conducting a study and developing recommendations for nutritional standards for foods marketed to children ages 17 and under. During the fall of 2010, the agencies plan to seek comments on proposed nutrition and marketing standards. Findings and recommendations will be submitted in a report to Congress.

Following receipt of OMB approval on July 8, 2010, on August 12, 2010, the Commission issued information requests to 48 major food and beverage manufacturers, distributors, and marketers, as well as quick-service restaurant companies, about spending and marketing activities targeting children and adolescents and nutritional information for food and beverage products that the companies market to these consumers. The study will advance the Commission's efforts to understand how food industry promotional dollars targeted to children and adolescents are allocated, the types of activities and marketing techniques the food industry uses to market its products to children and adolescents, and the extent to which self-regulatory efforts are succeeding in improving the nutritional quality of foods advertised to children and adolescents.

(e) Other Children's Initiatives. On December 16, 2009, the Commission, along with other Government agencies, released a cybersafety booklet, ''Net Cetera: Chatting with Kids About Being Online.''[11] This publication provides information to parents and teachers about how to talk to kids about issues like cyberbullying, sexting, mobile phone safety, and protecting the family computer. As of September 12, 2010, the Commission had distributed 4.4 million copies of the English language version and 462,000 copies of the Spanish language version of this publication, as well as 2.7 million related bookmarks.

In the fall of 2009, the Commission contributed a report to the White House Council on Women and Girls.[12] The report highlights five areas, describing, for each, recent FTC law enforcement actions or policy initiatives, as well as available consumer and business education materials. The areas are health care for women and children, marketing to children and adolescents, consumer credit, entrepreneurship and business opportunities, and family pocketbook issues.

On April 28, 2010, the Commission launched ''Admongo,'' a campaign to raise advertising literacy among the Nation's youth. The campaign is targeted to ''tweens'' aged 8 to 12, and includes a game-based website at Admongo.gov, a curriculum tied to national standards of learning in language arts and social studies that teachers can use to ''ad-ucate'' students, a library of fictional ads that can be used as teaching tools, and activities for parents and kids to do together. All these materials are free and in the public domain.

Regarding the marketing of violent entertainment to children, the Commission continues to encourage industry groups to improve their self-regulatory programs to discourage the marketing to children of movies, games, and music that the industries' rating or labeling systems indicate are inappropriate for children or warrant parental caution due to their violent

[8]The report is available at http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.

[9]See http://www.ftc.gov/bcp/workshops/privacyroundtables/index.shtml.

[10]The report is available at http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf.

[11]The booklet can be accessed at http://www.onguardonline.gov/pdf/tec04.pdf.

[12]The report is available at http://www.ftc.gov/os/2010/05/100528cwg-rpt.pdf.

content. Since the FTC issued its first report on marketing violent entertainment to children in 2000, the Agency has called on the entertainment industry to be more vigilant in three areas: Restricting the marketing of mature-rated products to children, clearly and prominently disclosing rating information, and restricting children's access to mature-rated products at retail.

The FTC's seventh and most recent report concluded that marketers of violent music, movies, and video games can do more to restrict the promotion of these products to children.[13] This latest report found areas for improvement among music, movie, and video game marketers but credited the game industry with outpacing the other two industries in all three areas. Since 1999, the Commission has issued seven reports on these three industries, examining the industries' compliance with their own voluntary marketing guidelines.

Regarding advertising for beverage alcohol products, the Commission issued on September 8, 2010, orders requiring three mid-sized suppliers to provide information about advertising and marketing practices and compliance with self-regulatory guidelines. In the coming year, the Commission will review the three companies' responses and consult with these companies in light of the information provided. This procedure is consistent with a 2008 commitment by the Commission to conduct small studies of industry self-regulation in years when no major study was underway. Further, in early 2011, the Commission will begin the process of seeking Office of Management and Budget approval, under the Paperwork Reduction Act, to conduct another major study of alcohol marketing and self-regulation; that study will evaluate the advertising practices of the major alcohol suppliers. The Commission will also continue to promote the ''We Don't Serve Teens'' consumer education program, supporting the legal drinking age.[14]

(f) Horizontal Merger Guidelines. In December 2009 and January 2010, the Commission and the Department of Justice (DOJ) solicited public comments and held five joint public workshops to explore the possibility of updating the Horizontal Merger Guidelines that are used by both agencies to evaluate the potential competitive effects of mergers and acquisitions. On April 20, 2010, the Commission released for public comment proposed revisions to the guidelines designed to more accurately reflect the way the FTC and DOJ currently conduct merger reviews. The comment period was extended through June 4, 2010, at the request of several organizations that planned to submit comments.

On August 19, 2010, the two agencies issued revised Horizontal Merger Guidelines, marking the first major revision of the merger guidelines in 18 years and giving businesses a better understanding of how the agencies evaluate proposed mergers. A primary goal of the 2010 guidelines is to help the agencies identify and challenge competitively harmful mergers while avoiding unnecessary interference with mergers that either are competitively beneficial or likely will have no competitive impact on the marketplace. To accomplish this, the guidelines detail the techniques and main types of evidence the agencies typically use to predict whether horizontal mergers may substantially lessen competition. The updated guidelines are available on the FTC's website at http://www.ftc.gov/os/2010/08/100819hmg.pdf and the DOJ's website at http://www.justice.gov/atr/public/guidelines/hmg-2010.html.

(g) *Fraud Forum Report and Surveys.* The FTC hosted a ''Fraud Forum'' on February 25-26, 2009. The first day was open to the public and addressed the many aspects of fraud today. The second day was open only to domestic and international law enforcement officials and focused on improving interagency coordination in consumer fraud cases. In December 2009, the FTC staff issued a ''Fraud Forum'' report.[15] The report recommended extending the FTC's outreach to under-served communities, improving victim assistance, combating fraud by enlisting the help of third-parties and targeting third-party enablers and facilitators, expanding contributors to the FTC's Consumer Sentinel database, and making data available to law enforcers.

Separately, the FTC, through its Bureau of Economics, will continue to conduct fraud surveys and related research on consumer susceptibility to fraud. For example, pending approval from the Office of Management and Budget, the FTC will conduct an exploratory study during 2011 on consumer susceptibility to fraudulent and deceptive marketing. This research would be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. It is the first of two such studies that the FTC anticipates conducting. Should the FTC pursue the second study, it will seek clearance for it at the appropriate later time. The study is not intended to lead to enforcement actions; rather, study results may aid the FTC's efforts to better target its enforcement actions and consumer education initiatives, and improve future fraud surveys.

(h) Protecting Consumers from Cross-Border Harm. In December 2009, the Commission issued a report examining how the Agency has used the expanded law enforcement authority Congress provided in the U.S. SAFE WEB Act to protect American consumers.[16] This statute authorizes the FTC to share information and work cooperatively with foreign law enforcement agencies to protect consumers from cross-border harm. The report ''The U.S. SAFE WEB Act: The First Three Years''[17] provides data on the number of cross-border complaints received by the Commission and a description of specific cases in which the FTC has worked cooperatively with foreign agencies. The Commission recommends that Congress take action to repeal a ''sunset'' provision that would cause the act to expire in 2013.

On May 6-7, 2010, as part of its ongoing effort to combat cross-border fraud, the Commission hosted counterparts from more than 40 countries to discuss enforcement strategies and emerging consumer protection issues. Agenda topics include decentralized global scams, electronic transactions, emerging trends and risks associated with social networking sites, and advance-fee fraud. During the conference, the FTC and participants in the International Consumer Protection Enforcement Network launched an updated version of the econsumer.gov website, a portal for consumers to file cross-border complaints and find

[13]For the most recent report, see ''Federal Trade Commission, Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries a Report to Congress'' (Dec. 2009), available at http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf.

[14]More information can be found at http://www.dontserveteens.gov/.

[15]The report is available at http://www.ftc.gov/os/2009/12/091229fraudstaffreport.pdf.

[16]The formal title of the act is the ''Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act of 2006'' (Pub. L. No. 109-455, amending the FTC Act, 15 U.S.C. sections 41 *et seq.*).

[17]This report can be found at http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf.

information about possible ways to resolve their complaints.

(i) Journalism and the Internet. The FTC hosted a series of three workshops entitled ''From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?'' The workshops considered the following issues.

- The December 1-2, 2009, workshop broadly considered the economics of journalism; the wide variety of new business and non-profit models for journalism; the financial, technological, and other challenges facing the news industry; and a variety of Government policies, including antitrust, copyright, and tax policy, bearing on journalism.
- The second workshop, held on March 9-10, 2010, addressed proposals by workshop participants to better support and lower the costs of journalism. The topics included changes to copyright, tax, and other laws; the potential advantages and disadvantages of combining the interests of for-profit and non-profit investors in hybrid entities; efforts to make Government data more accessible and easily managed in ways that may lower the costs of journalism; and collaborations that news organizations may use to lower their costs and better support journalism.
- On June 15, 2010, the FTC held its final workshop at which experienced journalists, publishers, academics, economists, and other policy experts compared, contrasted, and evaluated the ideas for sustaining journalism that have been set forth by participants in the previous workshops and in a wide variety of reports and conferences. In connection with the third workshop, the FTC staff prepared and posted a discussion draft summarizing the state of journalism today and setting forth the proposals made to date. The document was designed to prompt discussion of whether to recommend policy changes and, if so, which specific proposals would be most useful, feasible, platform-neutral, resistant to bias, and unlikely to cause unintended consequences in addressing emerging gaps in news coverage.

The Commission has received comments in connection with its workshops and intends to release a report during the fall of 2010.

(j) Intellectual Property. The Commission held a series of five hearings on the ''Evolving Intellectual Property (IP) Marketplace.'' The hearings generally focused on examining changes in intellectual property law, patent-related business models, and new information regarding the operation of the IP marketplace since the issuance of the FTC's October 2003 report, '' To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy.''

- Overview Hearing. On December 5, 2008, three panels provided an overview of developing business models, recent and proposed changes in IP remedies law, and changes in legal doctrines affecting the value and licensing of patents.
- Remedies. On February 11-12, 2009, the Commission held hearings on damages in patent cases and changes in permanent injunction and willful infringement standards in the wake of recent court decisions.
- Operation of IP Markets. The hearings on March 18-19, 2009, explored how different industries use patents, the economic and legal perspectives on IP and technology markets, and the notice role of patents.
- Markets for Intellectual Property. This April 17, 2009, hearing addressed new business models in the IP market; strategies for buying, selling, and licensing patents; and the role of secondary markets.
- Industry Focus. A May 4-5, 2009, hearing, held in conjunction with the Berkeley Center for Law and Technology and the Berkeley Center for Competition Policy, focused on how markets for patents and technology operate in different industries and how patent policy might be adjusted to respond to problems and better promote innovation and competition.

The Commission is working on a report related to these hearings.

(k) Patent and Competition Policy: Implications for Promoting Innovation. The FTC, the DOJ, and the Department of Commerce's U.S. Patent and Trademark Office held a joint public workshop on May 26, 2010, to explore the intersection of patent policy and competition policy and its implications for promoting innovation. The workshop addressed ways in which careful calibration and balancing of patent policy and competition policy can best promote incentives to innovate.

(l) Self-Regulatory and Compliance Initiatives with Industry.

Additionally, in the industry self-regulation area, the Commission continues to apply the Textile Corporate Leniency Policy Statement for minor and inadvertent violations of the Textile or Wool Rules that are self-reported by the company. 67 FR 71566 (Dec. 2, 2002). Generally, the purpose of the Textile Corporate Leniency Policy is to help increase overall compliance with the rules while also minimizing the burden on business of correcting (through relabeling) inadvertent labeling errors that are not likely to cause injury to consumers. Since the Textile Corporate Leniency Program was announced, 177 companies have been granted ''leniency'' for self-reported minor violations of FTC textile regulations.

Finally, the Commission also has engaged industry in compliance partnerships in at least two areas involving the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program, conducted in partnership with the National Funeral Directors Association, is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR 453, so that they can meet the rule's disclosure requirements. Nearly 350 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR 436, in complying with the rule. Violations involving fraud or other section 5 violations are not candidates for referral to the program. The IFA teaches the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program offers franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, 21 companies have agreed to participate in the program.

Effect of the Consumer Financial Protection Act of 2010

On July 21, 2010, President Obama signed into law the ''Dodd-Frank Wall Street Reform and Consumer Protection Act,'' Public Law No. 111-203. Title X of the statute, known as the Consumer Financial Protection Act of 2010 (or the Consumer Financial Protection Act), creates a new Bureau of Consumer Financial Protection within the Board of

Governors of the Federal Reserve System (''Federal Reserve Board''). Most of the Commission's rulemaking authority under certain ''enumerated consumer laws'' will be transferred to the new bureau within 6 to 18 months after enactment. These laws include all or most of the rulemaking authority under the Truth in Lending Act, the Fair Credit Reporting Act (including the Fair and Accurate Credit Transactions Act of 2003 (''FACTA'')), the Gramm-Leach-Bliley Act (''GLB Act''), the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA''), and the Omnibus Appropriations Act of 2009. While the FTC retains its general authority to conduct research and studies, it loses some of its authority to conduct studies under an ''enumerated consumer law.'' The Act also expands the Commission's authority in certain areas—for example, with regard to automobile dealers. The impact of the Consumer Financial Protection Act on the Commission's rulemakings, studies, and guidelines is discussed below.

Rulemakings and Studies Required by Statute

The Congress has enacted laws requiring the Commission to undertake rulemakings and studies. This section discusses required rules and studies. The Final Actions section below describes actions taken on the required rulemakings and studies since the 2009 Regulatory Plan was published.

FACTA Rules. The Commission has already issued nearly all of the rules required by FACTA. These rules are codified in several parts of 16 CFR 600 *et seq*. The remaining active FACTA rulemakings are:

1. Furnisher Rules. On July 1, 2009, the Commission and other Federal agencies issued an advance notice of proposed rulemaking (''ANPRM'') that seeks to obtain information that would assist in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date, or any other types of information, to a consumer reporting agency to promote the integrity of the information. 74 FR 31529. The comment period closed on August 31, 2009.
2. Model Forms. The Fair Credit Reporting Act (the ''FCRA'') requires the Commission to prescribe a model summary of consumers' rights under the FCRA and notices of responsibilities for users and furnishers of credit report information distributed by the consumer reporting agencies. The FTC originally issued these model notices in 1997 and issued revisions in 2004 to reflect FACTA changes. On August 6, 2010, the Commission issued proposed revisions to these models to reflect new rules that have been finalized under FACTA and to improve the clarity and usefulness of the documents. The comment period closed on September 21, 2010. The Commission anticipates that it will publish final revised forms no later than February 2011.

These rulemakings are affected by the Consumer Financial Protection Act, which provides that the Federal Reserve Board's Bureau of Consumer Financial Protection assumes responsibility for these matters on July 21, 2011 (the ''designated transfer date'' as determined by the Secretary of the Treasury).

FACTA Studies. On March 27, 2009, the Commission issued Amended Orders to File a Special Report amending the compulsory process resolution dated May 16, 2008, entitled ''Resolution Directing Use of Compulsory Process To Study the Effects of Credit Scores and Credit-Based Insurance Scores Under Section 215 of the FACT Act.'' This Amended Order requires certain insurance companies to produce information for a study on the use and effect of credit-based insurance scores on consumers of homeowner's insurance. The Amended Orders were served on nine of the largest private providers of homeowner's insurance on or about April 6, 2009. The insurers have submitted responses to the requests. This study is not affected by the Consumer Financial Protection Act. Staff continues to review the data produced by the insurers and expects to identify a sample set of data to be used for the study by late fall 2010.

The FTC is also conducting a national study of the accuracy of consumer reports in connection with section 319 of the FACTA. This study is a follow-up to the Commission's two previous pilot studies that were undertaken to evaluate a potential design for a national study. Section 319 requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 of the Act also requires the Commission to issue a series of biennial reports to Congress over a period of 11 years.[18] This study is also not affected by the Consumer Financial Protection Act.

Mortgage Loans Rule. Section 626 of the Omnibus Appropriations Act of 2009 directed the Commission to initiate a rulemaking proceeding with respect to mortgage loans and prescribed that any violation of the rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices. On June 1, 2009, the Commission published an ANPRM in two parts: (1) Mortgage Acts and Practices (''MAP'') through the life cycle of the mortgage loan (i.e., loan advertising, marketing, origination, appraisals, and servicing), 74 FR 26118, and (2) Mortgage Assistance Relief Services (''MARS'') (i.e., practices of entities providing assistance to consumers in modifying mortgage loans or avoiding foreclosure), 74 FR 26130. The Commission issued an NPRM for MAP-Advertising on September 30, 2010 (74 FR 60352) and the comment period closes on November 15, 2010. The Commission anticipates issuing an NPRM for MAP-Servicing during early 2011. The Commission's rulemaking authority in this area will be transferred on July 21, 2011, to the Bureau of Consumer Financial Protection under the provisions of the Consumer Financial Protection Act.

The Commission issued an NPRM in the MARS rulemaking on March 9, 2010. 75 FR 10707. The proposed rule would prohibit providers of these services from making false or misleading claims; mandate that providers disclose certain information about these services; bar the collection of advance fees for these services; prohibit persons from providing substantial assistance or support to an entity they know or consciously avoid knowing is engaged in a violation of these Rules; and impose recordkeeping and compliance requirements. The Commission plans to issue a final MARS rule by the end of 2010.

Emergency Technology for Use with ATMs. Section 508 of the ''Credit Card Accountability Responsibility and Disclosure Act of 2009'' (''Credit CARD Act''), Public Law No. 111-24, mandates

[18]Reports to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2006 and 2008. The reports may be accessed at the FTC's Web site. December 2006 Report: (http://www.ftc.gov/reports/FACTACT/FACT__Act__Report__2006.pdf); December 2008 Report: (http://www.ftc.gov/opa/2008/12/factareport.shtm).

that the Commission prepare a report on emergency PIN and alarm button devices at automated teller machines (ATMs) to automatically alert police about crimes at ATMs. The report entitled ''Report on Emergency Technology for Use with ATMs'' was issued in April 2010.[19] The report discusses the available information about crimes at ATMs and the costs and benefits of the emergency technologies specified in the act.

Do Not Call Report. Section 4(b) of the ''Do-Not-Call Registry Fee Extension Act of 2007'' (''Fee Extension Act''), Public Law 110-188, directs the FTC, in consultation with the Federal Communications Commission, to submit a report to Congress on the effectiveness of do-not-call (''DNC'') outreach and enforcement efforts with regard to senior citizens and immigrant communities, the impact of the exceptions to the DNC registry on businesses and consumers, and the impact of abandoned calls made by predictive dialing devices on DNC enforcement. The report, which was submitted to Congress in December 2009, discusses these issues, related changes to the FTC's Telemarketing Sales Rule, and the enforcement initiatives of both agencies.[20]

Ten-Year Review Program and Calendar Year 2009 to 2010 Reviews

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. 601 to 612. Under the Commission's program, rules have been reviewed on a 10-year schedule as resources permit. For many rules, this has resulted in more frequent reviews than is generally required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a ''significant economic impact upon a substantial number of small entities.'' 5 U.S.C. 610. The program's goal is to ensure that all of the Commission's rules and guides remain in the public interest. It complies with the Small Business Regulatory Enforcement Act of 1996, Public Law No. 104-121. This program is consistent with the Administration's ''smart'' regulation agenda to streamline regulations and reporting requirements and section 5(a) of Executive Order 12866, 58 FR 51735 (Sep. 30, 1993).

As part of its continuing 10-year review plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews may lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary nor in the public interest. Most of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

In March 2010, the Commission determined that it would initiate three reviews. 74 FR 12715. On April 5, 2010, the Commission initiated an additional review for the Children's Online Privacy Protection Rule. Discussion of these four reviews follows.

Children's Online Privacy Protection Rule(''COPPA Rule''), 16 CFR 312. The COPPA Rule requires commercial websites and online service providers (operators), with certain exceptions, to obtain verifiable parental consent before collecting, using, or disclosing personal information from or about children under the age of 13. An operator must make reasonable efforts, in light of available technology, to ensure that the person providing consent is the child's parent. The Commission issued an ANPRM requesting comments on the economic impact and benefits of the rule; possible conflict between the rule and other Federal, State, and local laws and regulations; and the effect on the rule of technological, economic, and other industry changes. 75 FR 17089. The Commission held a public roundtable on the rule on June 2, 2010; and the comment period, as extended, ended on July 12, 2010. Staff anticipates sending a recommendation for next action to the Commission by the end of 2010.

Rule on Retail Food Store Advertising and Marketing Practices(''Unavailability Rule''), 16 CFR 424. The Unavailability Rule states that it is a violation of section 5 of the Federal Trade Commission Act for retail stores of food, groceries, or other merchandise to advertise products for sale at a stated price if those stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly discloses that supplies of the advertised products are limited or are available only at some outlets. The rule is intended to benefit consumers by ensuring that advertised items are available, that advertising-induced purchasing trips are not fruitless, and that store prices accurately reflect the prices appearing in the ads. Staff is reviewing the rule and intends to forward a recommendation to the Commission before the end of 2010.

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule(''Alternative Fuel Rule''), 16 CFR 309. The Alternative Fuel Rule, which became effective on November 20, 1995, and was last reviewed in 2004, requires disclosure of appropriate cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons between non-liquid alternative fuels as well as alternative-fueled vehicles. By November 2010, staff anticipates that the Commission will request comments on the rule.

Preservation of Consumers' Claims and Defenses Rule(''Holder-in-Due Course Rule''), 16 CFR 433. Issued in 1975, the Holder-in-Due Course Rule requires sellers to include language in consumer credit contracts that preserves consumers' claims and defenses against the seller. This rule eliminated the holder-in-due course doctrine as a legal defense for separating a consumer's obligation to pay from the seller's duty to perform by requiring that consumer credit and loan contracts contain one of two clauses to preserve the buyer's right to assert sales-related claims and defenses against a ''holder'' of the contracts. This rule was initially scheduled to be reviewed during 2010 as part of the periodic review process. However, that prospective review has been put on hold until the Commission can consult with the new Bureau of Consumer Financial Protection that was created pursuant to the Consumer Financial Protection Act about Holder in Due Course issues.

Ongoing Reviews

Since the publication of the 2009 Regulatory Plan, the Commission has

[19]The report is available at http://www.ftc.gov/os/2010/05/100504creditcardreport.pdf.

[20]This report can be found at http://www.ftc.gov/os/2010/01/100104dncadditionalreport.pdf. At that time, the Commission also released a biennial report discussing the National DNC Registry.

initiated three new rulemaking proceedings and is continuing review of a number of rules and guides. The new rulemaking proceedings are discussed first under *(a)* Rules, followed by the other rule reviews, and then *(b)* Guides.

(a) Rules

Mail Order Rule. The Mail Order Rule, 16 CFR 435, requires that, when sellers advertise merchandise, they must have a reasonable basis for stating or implying that they can ship within a certain time. The Commission sought comments about non-substantive changes to the rule to bring it into conformity with changing conditions; including consumers' usage of means other than the telephone to access the Internet when ordering, consumers paying for merchandise by demand draft or debit card, and merchants using alternative methods to make prompt rule-required refunds. 72 FR 51728 (Sep. 11, 2007). Staff has reviewed the comments and anticipates sending a recommendation to the Commission by the end of 2010.

Business Opportunity Rule. The proposed Business Opportunity Rule stems from the recently concluded review of the Franchise Rule, where staff recommended that the rule be split into two parts: One part addressing franchise issues (16 CFR 436) and another part addressing business opportunity issues (16 CFR 437).[21] After reviewing the comments from an NPRM, 71 FR 19054 (Apr. 12, 2006), the Commission issued a revised NPRM on March 26, 2008, that would require business opportunity sellers to furnish prospective purchasers with specific information that is material to the consumer's decision as to whether to purchase a business opportunity and which should help the purchaser identify fraudulent offerings. 73 FR 16110. The revised NPRM comment period ended on May 27, 2008, and the rebuttal comment period ended on June 16, 2008. A public workshop was held on June 1, 2009, to explore changes to the proposed rule and a related comment period closed on June 30, 2009. On October 28, 2010, the Commission released a staff report[22] recommending that coverage of the Business Opportunity Rule be expanded to include work-at-home opportunities such as envelope stuffing, medical billing, and product assembly, many of which have not been covered before. FTC staff also recommends streamlining the disclosures require by the business opportunity rule so that companies or individuals selling business opportunities make important disclosures to consumers on a simple, easy-to-read document. If adopted, the changes will make it less burdensome for legitimate sellers to comply with the Rule, while still protecting consumers from ''widespread and persistent'' business opportunity fraud. Public comments on the staff report will be accepted until January 18, 2011.

Hart-Scott-Rodino Rules. For the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801 to 803, Bureau of Competition staff is continuing to review various HSR Rule provisions. On August 13, 2010, the Commission announced it was seeking public comments on proposed changes designed to streamline the HSR form and focus on the information most needed by the agencies in their initial merger review. 75 FR 57110. The proposal eliminates requests for unnecessary information. The new form, however, would require additional information that is needed to help the FTC and DOJ during their initial review of transactions. The comment period closed on October 18, 2010.

Used Car Rule. The Used Motor Vehicle Trade Regulation Rule (''Used Car Rule''), 16 CFR 455, sets out the general duties of a used vehicle dealer, requires that a completed Buyers Guide be posted at all times on the side window of each used car a dealer offers for sale, and mandates disclosure of whether the vehicle is covered by a warranty and, if so, the type and duration of the warranty coverage, or whether the vehicle is being sold ''as is—no warranty.'' The Commission published a notice seeking public comments on the effectiveness and impact of the rule. 73 FR 42285 (Jul. 21, 2008). The notice seeks comments on a range of issues including, among others, whether a bilingual Buyers Guide would be useful or practicable, as well as what form such a Buyers Guide should take. Second, the notice seeks comments on possible changes to the Buyers Guide that reflect new warranty products, such as certified used car warranties, that have become increasingly popular since the rule was last reviewed. Finally, the notice seeks comments on other issues including the continuing need for the rule and its economic impact, the effect of the rule on deception in the used car market, and the rule's interaction with other regulations. The comment period, as extended and then reopened, ended on June 15, 2009. Staff anticipates sending a recommendation to the Commission by November 2010.

Cooling-Off Rule. The Cooling-Off Rule requires that a consumer be given a 3-day right to cancel certain sales greater than $25.00 that occur at a place other than a seller's place of business. The rule also requires a seller to notify buyers orally of the right to cancel; to provide buyers with a dated receipt or copy of the contract containing the name and address of the seller and notice of cancellation rights; and to provide buyers with forms which buyers may use to cancel the contract. An ANPRM seeking comment was published on April 21, 2009. 74 FR 18170. The comment period was supposed to close on June 22, 2009, but was extended to September 25, 2009. 74 FR 36972 (Jul. 27, 2009). Staff is reviewing comments as they are received and expects to prepare a recommendation for the Commission by the end of 2010.

Fuel Ratings Rule. The Fuel Ratings Rule sets out a uniform method for determining the octane rating of gasoline from the refiner through the chain of distribution to the point of retail sale. The rule enables consumers to buy gasoline with an appropriate octane rating for their vehicle and establishes standard procedures for determining, certifying, and posting octane ratings. On March 3, 2009, the Commission published an ANPRM and requested comments on the rule as part of its systematic periodic review of current rules and guides. 74 FR 9054. On March 16, 2010, the Commission issued an NPRM proposing to adopt rating, certification, and labeling requirements for certain ethanol fuels; revise the labeling requirements for fuels with at least 70 percent ethanol; and allow the use of an alternative octane rating method. 75 FR 12470. The comment period has ended. Staff anticipates that the Commission will issue a final rule by the end of 2010.

Negative Option Rule. The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise automatically to their subscribers and bill them for the merchandise within a prescribed time. The rule protects consumers by requiring the disclosure of the terms of membership clearly and conspicuously and establishes procedures for administering the subscription plans. An ANPRM was published on May 14,

[21] Pending completion of the proceeding initiated with this notice, business opportunities presently covered by the requirements of the original Rule will remain covered, as set forth as part 437 of the final amended Rule. 72 FR 15444 (March 30, 2007).

[22] The report is available at http://www.ftc.gov/opa/2010/10.businessopp.shtm

2009, 74 FR 22720, and the comment period closed on July 27, 2009. On August 7, 2009, the Commission reopened and extended the comment period until October 13, 2009. 74 FR 40121. Staff anticipates sending a recommendation to the Commission by December 2010.

Pay-Per-Call Rule. The Commission's review of the Pay-Per-Call Rule, 16 CFR 308, is continuing. The Commission has held workshops to discuss proposed amendments to this rule, including provisions to combat telephone bill ''cramming''—inserting unauthorized charges on consumers' phone bills—and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone based information and entertainment services. The most recent workshop focused on the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the rule, the dispute resolution process, the requirements for a pre-subscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. The review record has remained open to encourage additional comments on expansion of the rule's coverage. Staff expects to prepare a recommendation for the Commission by December 2011.

(b) Guides

Fuel Economy Guide. The Fuel Economy Guide for new automobiles, 16 CFR 259, was adopted in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. As part of its regular review of all rules and guides, the Commission issued a request for comments on May 9, 2007, on whether to retain or amend the guide. 72 FR 26328. The Commission sought comments on, among other things, whether there is a continuing need for the guide and, if so, what changes should be made to it, if any, in light of Environmental Protection Agency amendments to fuel economy labeling requirements for automobiles. On April 28, 2009, the Commission published proposed amendments to the Guide. 74 FR 19148. The deadline for comments was June 16, 2009. Staff is reviewing the comments and expects to make a recommendation by the end of 2010.

Green Guides. The Green Guides, 16 CFR 260, outline general principles that apply to all environmental marketing claims and provide guidance regarding specific environmental claims. The Commission sought comment on the need for the guides and their economic impact, the effect of the guides on the accuracy of various environmental claims, and the interaction of the guides with other environmental marketing regulations. 72 FR 66091 (Nov. 27, 2007). As part of its review, during 2008, the Commission held workshops and received comments in three specific areas: 1) Carbon offsets and renewable energy certificates (Jan. 8, 2008); 2) environmental packaging claims and green packaging (Apr. 30, 2008); and 3) developments in green building and textiles claims and consumer perception of such claims (Jul. 15, 2008). After reviewing the , the transcripts of the three public workshops that explored the emerging issues, and the results of its additional consumer perception research, the Commission proposed on October 15, 2010, several modifications and additions to the Guides that aim to respond to changes in the marketplace and help marketers avoid making unfair or deceptive environmental marketing claims. 75 FR 63552. The proposed changes to the Green Guides include new guidance on marketers' use of product certifications and seals of approval, ''renewable energy'' claims, ''renewable materials'' claims, and ''carbon offset'' claims. The Commission seeks public comment by December 10, 2010.

Fair Debt Collection Practices Act (FDCPA) Enforcement Policy Statement Regarding Communications in Connection With Collection of a Decedent's Debt. The Commission requests public comment on a proposed statement of enforcement policy regarding communications in connection with collection of a decedent's debts. The statement addresses three issues pertaining to debt collectors who attempt to collect on the debts of deceased debtors. First, the proposed statement announces that the FTC will not bring enforcement actions for violations of Section 805(b) of the FDCPA, 15 USC, 1692c(b), against collectors, who, in connection with the collection of a decedent's debt, communicate with a person who has authority to pay the decedent's debt from the assets of the decedent's estate. Second, the proposed statement clarifies how a debt collector may locate the appropriate person with whom to discuss the decedent's debt. Third, the proposed statement emphasizes to collectors that misleading consumers about their personal obligation to pay a decedent's debt is a violation of the FDCPA and Section 5 of the FTC Act, 15 USC 45. Public comments must be received by November 8, 2010.

Vocational Schools Guides. The Commission is seeking public comments on its Private Vocational and Distance Education Schools Guides, commonly known as the Vocational Schools Guides. 74 FR 37973 (Jul. 30, 2009). Issued in 1972 and most recently amended in 1998 to add a provision addressing misrepresentations related to post-graduation employment, the guides advise businesses offering vocational training courses—either on the school's premises or through distance education, such as correspondence courses or the Internet—how to avoid unfair and deceptive practices in the advertising, marketing, or sale of their courses. The comment period closed on October 16, 2009. Staff is reviewing comments and anticipates sending a recommendation for next action to the Commission by the end of 2010.

Final Actions

Since the publication of the 2009 Regulatory Plan, the Commission has issued the following final rules or taken other actions to terminate rulemaking proceedings.

Telemarketing Sales Rule (TSR) - Debt Relief Services. The Commission issued an NPRM seeking comments on a proposal to amend the TSR to address the sale of debt relief services, including: For-profit credit counselors; debt settlement companies that promise to obtain substantially reduced, lump sum settlements of consumers' debts; and debt negotiators that offer to obtain interest rate reductions or other concessions to lower consumers' monthly payments. 74 FR 41988 (Aug. 19, 2008). The comment period, as extended, closed on October 26, 2009, and the Commission held a public forum in November 2009. This rulemaking was not affected by the Consumer Financial Protection Act.

On July 29, 2010, the Commission announced a final rule providing that telemarketers of for-profit companies that sell debt relief services over the telephone may no longer charge a fee before they settle or reduce a customer's credit card or other unsecured debt. The rule also imposes conditions on accounts that debt relief companies may establish for consumers to set aside their fees and savings for payment to creditors. The rule also requires certain disclosures to consumers related to the fundamental aspects of their services (time to see results, cost) and prohibits misrepresentations related to success rates and non-profit status. With the exception of the advance fee ban which is effective October 27, 2010, the rule's

provisions are effective September 27, 2010. 75 FR 48458. On October 27, 2010, the Commission announced an enforcement policy for the TSR Debt Relief Services Rule: the Commission will defer enforcement of the new rule for tax debt relief services until further notice. The Enforcement policy states, however, that tax debt relief services must comply with the other portions of the FTS's Telemarketing Sales Rule during the enforcement deferral period. Companies that sell other kinds of debt relief services over the telephone continue to be subject to enforcement of the TSR Debt Relief Services Rule, including the prohibition against charging fees before settling or reducing a consumer's credit card or other unsecured debt.

Free Credit Reports: Deceptive Marketing Practices. Section 205 of the Credit CARD Act required the Commission to issue a rule to prevent deceptive marketing of ''free credit reports.'' On October 15, 2009, the Commission issued an NPRM to amend the Free Credit Reports Rule to require prominent disclosures in advertising for ''free credit reports'' and to address practices that interfere with consumers' ability to obtain file disclosures from consumer reporting agencies. 74 FR 52915. As required by statute, the Commission issued a final rule on February 22, 2010, which was published in the Federal Register. 75 FR 9726. With the exception of disclosure provisions related to television and radio advertisements effective September 1, 2010, the rule became effective on April 2, 2010.

FACTA Risk-Based Pricing Rule. The Commission, jointly with the Federal Reserve, published a risk-based pricing proposal for comment on May 19, 2008. 73 FR 28966. The comment period ended on August 18, 2008. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. This statutorily required rulemaking would address the form, content, time, manner, definitions, exceptions, and model of a risk-based pricing notice.

The agencies issued final rules on January 15, 2010. 75 FR 2724. The final rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The final rules also provide two alternative means by which creditors can determine when they are offering credit on terms that are materially less favorable and include certain exceptions to the general rule, including exceptions for creditors that a disclose a consumer's credit score in conjunction with additional information providing context for the credit score disclosure. The rules are effective January 1, 2011.

FDICIA Rule. The Federal Deposit Insurance Corporation Improvement Act of 1991 assigned to the Commission responsibilities for certain non-federally insured depository institutions (''DIs'') and private deposit insurers of such DIs. The FTC is required to prescribe, by regulation or order, the manner and content of certain disclosures required of DIs that lack Federal deposit insurance. From 1993 to 2003, the Commission was statutorily barred on an annual basis from appropriating funds for purposes of complying with FDICIA. The Consolidated Appropriations Act of 2004 and yearly appropriations thereafter have not imposed the same funding prohibition, and the Commission issued an NPRM on March 16, 2005. 70 FR 12823. Subsequently, Congress passed the Financial Services Regulatory Relief Act of 2006 (''FSRRA'') amending FDICIA and addressing several aspects of the FTC's proposed rule. A revised NPRM consistent with the FSRRA was issued on March 14, 2009. 74 FR 10843. The Commission issued a final rule on June 4, 2010, effective July 6, 2010. 75 FR 31682.

Gramm-Leach-Bliley Rule. Pursuant to section 728 of the Financial Services Relief Act of 2006, Public Law No.109-351, which added section 503(e) to the GLB Act, the Commission together with seven other Federal agencies[23] was directed to propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB. The 2006 amendment provided that the agencies must propose the model form within 280 days after enactment or by April 11, 2007. On March 29, 2007, the GLB agencies issued an NPRM proposing as the model form the prototype privacy notice developed during the consumer testing research project undertaken by first six, and then seven, of these agencies. 72 FR 14940. On November 19, 2009, the Commission and the seven agencies announced a model form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rule. 74 FR 62890 at 62965-74 (amendments to FTC rules). With the exception of certain amendments effective January 1, 2012, the rules became effective December 31, 2009.

Energy Labeling Rule for Light Bulbs. Section 321 of the Energy Security and Independence Act (ESIA) required the Commission to conduct a rulemaking to consider the effectiveness of current energy labeling for light bulbs and to consider alternative labeling approaches. In response to that directive, the Commission issued an ANPRM on July 17, 2008, seeking comments on the effectiveness of current labeling requirements for lamp packages and possible alternatives to those requirements. 73 FR 40988. After reviewing the comments, the Commission issued an NPRM on November 10, 2009, proposing a two-panel labeling format for light bulb packages and mandatory disclosures including brightness, energy cost, bulb life, color appearance, wattage, and mercury content. 74 FR 57950. On July 19, 2010, the Commission issued a final rule adopting the two-panel labeling format and the brightness, energy-cost, and other disclosure requirements. 75 FR 41696. With the exception of certain amendments that will be become effective on August 18, 2010, the new labeling requirements become effective on July 19, 2011. The Commission also sought further comment by September 20, 2010, on several issues for consideration in any subsequent rulemaking.

Consumer Electronics Rule. The Commission has authority under section 325 of ESIA to promulgate energy labeling rules for consumer electronic (Consumer Electronics Rule). On March 16, 2009, the Commission published an ANPRM seeking comments on whether it should require labels for consumer electronics, including televisions, computers, video recorder boxes, and certain other equipment; the disclosures, need, and format or labels, and appropriate test procedures. 74 FR 11045. On March 11, 2010, the Commission issued an NPRM that would require EnergyGuide labels and disclose requirement for televisions. The Commission did not propose requirements for other consumer electronics but it did seek comments on the subject. 75 FR 11483. The comment period closed on May 14, 2010. As part

[23]The agencies are the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Corporation.

of this effort the Commission scheduled a public meeting on April 16, 2010. On October 27, 2010, the Commission announced it was issuing a final rule that will require televisions manufactured after May 10, 20100, to display EnergyGuide labels that include information on estimated yearly energy and the cost range compared to similar models.

Amplifier Rule. The Amplifier Rule, 16 CFR 432, assists consumers in purchasing by standardizing the measurement and disclosure of various performance attributes of power amplification equipment for home entertainment purposes. The rule makes it an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency, or distortion characteristics. The rule also sets out standard test conditions for performing the measurements that support the required performance disclosures. On February 27, 2008, the Commission published a request for comments including a number of specific issues related to changes in technology and products. 73 FR 10403. The comment period ended on May 12, 2008. On January 26, 2010, the Commission announced it was retaining the rule as currently written but issued guidance concerning testing requirements for measuring power ratings of multichannel amplifiers. 75 FR 3985.

Smokeless Tobacco Regulations. The Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Regulations''), 16 CFR 307, has been completed. The Smokeless Tobacco Regulations govern the format and display of statutorily mandated health warnings on all packages and advertisements for smokeless tobacco. On June 22, 2009, Congress enacted the ''Family Smoking Prevention and Tobacco Control Act,'' Public Law No. 111-31, which imposed new requirements for smokeless tobacco health warnings and transferred authority over these warnings to the Department of Health and Human Services. As a result, the Commission closed both the regulatory review and a separate NPRM (published in 1993). 75 FR 3664. On September 28, 2010, the Commission rescinded its smokeless tobacco regulations, concluding they no longer serve any purpose and actually conflict with the new statutory provisions. 75 FR 59609. Indeed, retention of these regulations could generate confusion if some smokeless tobacco manufacturers and importers mistakenly believe that they reflect current legal requirements.

Endorsements and Testimonials in Advertising Guides. On January 16, 2007, the Commission requested public comments on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR 255. The Commission also released consumer research it commissioned regarding the messages conveyed by consumer endorsements and sought comment both on this research and upon several other specific endorsement-related issues. 72 FR 2214 (Jan. 18, 2007). After reviewing the comments, the Commission proposed changes to the guides and requested public comments. 73 FR 72374 (Nov. 28, 2008). The initial comment period ended on January 30, 2009, but was subsequently extended to March 2, 2009. 74 FR 5810 (Feb. 2, 2009). On October 5, 2009, the Commission announced revisions to the guides effective December 1, 2009. 74 FR 53214. Under the revised Guides, advertisements that feature a consumer and convey his or her experience with a product or service as typical when that is not the case will be required to clearly disclose the results that consumers can generally expect. In contrast to the prior version of the Guides, which allowed advertisers to describe unusual results in a testimonial as long as they included a disclaimer such as ''results not typical,'' the revised Guides no longer contain this safe harbor. The revised Guides also add new examples (i.e., bloggers or celebrity endorsers) to illustrate the long standing principle that ''material connections'' (sometimes payments or free products) between advertisers and endorsers—connections that consumers would not expect—must be disclosed.

Guides for Jewelry, Precious Metals and Pewter Industries. After issuing a staff advisory opinion indicating that the Commission's current guidelines for Jewelry, Precious Metals and Pewter Industries, 16 CFR part 23, do not address descriptions of new platinum alloy products, the Commission issued a Request for Public Comments on Whether the platinum section of the Guides for Jewelry, Precious Metals and Pewter Industries, should be amended to provide guidance on how to non-deceptively mark or describe products containing between 500 and 850 parts per thousand pure platinum and no other platinum group metals. 70 FR (July 5. 2005). After reviewing the comments, the Commission issued a notice on February 20, 2008, seeking comment on proposals to amend the platinum section of the Guides to address the new platinum alloys. 73 FR 10190. The extended comment period ended on August 25, 2008. 73 FR 22848 (April 28, 2008).

Summary

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers, while minimizing the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's 10-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's 10-year program also is consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. 58 FR 51735 (Sep. 30, 1993). In addition, the final rules issued by the Commission continue to be consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia,* required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

The Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of ''private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' E.O. 12866, section 1.

II. Regulatory Actions

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

The Commission has no proposed rules that would be a ''significant regulatory action'' under the definition in Executive Order 12866.[24]

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[24]Section 3(f) of the Executive Order defines a regulatory action to be ''significant'' if it is likely to result in a rule that may:

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub. L. 100-497, 102 Stat. 2475) in 1988. A primary purpose of the Act is to ''provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.'' The Act established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, among other things, as a means of generating tribal revenue.

At its core, Indian gaming is a function of sovereignty exercised by tribal governments. In addition, the Federal Government maintains a government-to-government relationship with the tribes—a responsibility of the NIGC. Thus, while the Agency is committed to strong regulation of Indian gaming, the Commission is committed to strengthening government-to-government relations by engaging in meaningful consultation with tribes to fulfill the intent of the IGRA. Our vision is to adhere to principles of good government, including transparency to promote Agency accountability and fiscal responsibility, to operate consistently to ensure fairness and clarity in the administration of the IGRA, and to respect the responsibilities of each sovereign in order to fully promote tribal economic development, self-sufficiency, and strong tribal governments. The NIGC is committed to working with tribes to ensure the integrity of the industry by exercising its regulatory responsibilities through assistance, compliance, and enforcement activities.

The Commission intends to review its current regulations and guidance for effectiveness and to consult with tribes about relevancy, consistency in application, and limitations or barriers to implementation, based upon their experiences, to identify areas of improvement and any needed amendments. Accordingly, the Commission has added a regulatory review action to this semiannual regulatory agenda. Regarding those regulatory actions identified in spring 2010, the Commission has maintained those descriptions but extended the timetable of each regulatory action by 1 year to reflect this review. The Commission is withdrawing the notice regarding Indian hiring preference because it will implement the preference through internal policy. The Commission recently began an initial series of government-to-government consultations with tribes seeking their views on how to prioritize its review of the regulations. The Commission will continue with government-to-government consultation on this issue as it develops a regulatory review schedule.

NIGC

PROPOSED RULE STAGE

172. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

Priority:

Other Significant

Legal Authority:

25 USC 2706(b)(3); 25 USC 2706(b)(10); 25 USC 2710(b)(2)(F)(ii); 25 USC 2710(c)(1)–(2); 25 USC 2710(d)(2)(A)

CFR Citation:

25 CFR 556; 25 CFR 558

Legal Deadline:

None

Abstract:

It is necessary for the National Indian Gaming Commission (NIGC) to modify certain regulations concerning background investigations and licensing to streamline the process for submitting information, ensure that the process complies with the Indian Gaming Regulatory Act (IGRA), and distinguish the requirements for temporary and permanent licenses.

Statement of Need:

Modifications to specific background investigation and licensing regulations are needed to ensure compliance with the Indian Gaming Regulatory Act (IGRA), which mandates that certain notifications be submitted to the Commission. Modifications are also needed to reduce the quantity of documents submitted to the Commission under these regulations and to distinguish the requirements for temporary and permanent licenses.

Summary of Legal Basis:

It is the goal of NIGC to provide regulation of Indian gaming to shield it from organized crime and other corrupting influences as well as to assure that gaming is conducted fairly and honestly. (25 U.S.C. 2702). The Commission is charged with the responsibility of monitoring gaming conducted on Indian lands. (25 U.S.C. 2706(b)(1)). IGRA expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the (Act).'' (25 U.S.C. 2706(b)(10)). Sections 2710(b)(2)(F) and 2710(d)(A) require tribes to have an adequate system for background investigations of primary management officials and key employees and inform the Commission of the results of those investigations. Under section 2710(c), the Commission may also object to licenses or require a tribe to suspend a license. The Commission relies on these sections of the statute to authorize the modification of the background and licensing regulations to ensure compliance with IGRA, reduce the quantity of documents submitted to the Commission, and distinguish the requirements for temporary and permanent licenses.

Alternatives:

If the Commission does not modify these regulations to reduce the quantity of documents submitted under them, tribes will continue to be required to submit these documents to the Commission. Further, to ensure compliance with IGRA, the modifications mandating notifications to the Commission regarding the results of background checks and the issuance of temporary and permanent gaming licenses must be made.

Anticipated Cost and Benefits:

These modifications to the background investigation and licensing regulations will reduce the cost of regulation to the Federal Government by reducing the amount of documents received from tribes that must be processed and retained. Further, these modifications will reduce the quantity of documents that tribes are required to submit to the NIGC, which will result in a cost savings to the tribes. There are minimal anticipated cost increases to tribal governments due to additional notifications to the NIGC.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Tribal

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NIGC

173. CLASS II AND CLASS III MINIMUM INTERNAL CONTROL STANDARDS

Priority:

Other Significant

Legal Authority:

25 USC 2706(b)(10); 25 USC 2706(b)(1)–(4); 25 USC 2710(d)(3)(C)(vi); 25 USC 2710(d)(7)(B)(vii)

CFR Citation:

25 CFR 542; 25 CFR 543

Legal Deadline:

None

Abstract:

The National Indian Gaming Commission is revising the existing minimum internal control standards (MICS) to reflect the changing technologies in the industry. The Commission will routinely revise the MICS in response to these changes. It is also continuing with its plan to clarify the regulatory structure by segregating Class II MICS from Class III.

Statement of Need:

The rapid evolution of gaming technology and regulatory structures in Indian gaming brings new risks and requires a distinction between the control standards for Class II and Class III gaming. Periodic review and revision of existing standards are necessary to ensure that they remain relevant and continue to adequately protect tribal gaming assets and the interests of stakeholders and the gaming public.

Summary of Legal Basis:

It is the goal of NIGC to provide regulation of Indian gaming to shield it from organized crime and other corrupting influences as well as to assure that gaming is conducted fairly and honestly. (25 U.S.C. 2702). Congress authorized NIGC to promulgate regulations and guidelines to implement IGRA's provisions. 25 U.S.C. 2706(b)(10). Federal MICS are perhaps the single most important tool for ensuring IGRA's purposes are carried out. The Commission is charged with monitoring gaming conducted on Indian lands (25 U.S.C. 2706(b)(1)), and this monitoring takes different forms depending on the class of gaming being conducted. With regard to Class II gaming, NIGC's responsibility includes inspecting and examining the premises located on Indian lands on which Class II gaming is conducted and auditing all papers, books, and records respecting gross revenues of Class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under IGRA. (25 U.S.C. 2706(b)(2),(4)). Therefore, NIGC is amending its Class II MICS regulations to set standards for inspections, contents of records, etc. With regard to Class III MICS, however, the NIGC's role is to provide guidance that tribes and states may then include in ordinances, compacts, or procedures or use as a model. Pursuant to 25 U.S.C. 2710(d)(3)(C)(vi), some states compact with tribes to require either the standards set forth in NIGC's Class III MICS, or others at least as stringent. (See, for example: Model Tribal Gaming Compact, Oklahoma, Part 5(B); Class III Gaming Compact Between the Fort Belknap Indian Community and the State of Montana, App. (A)(III), approved November 9, 2007; and Compact Between the Omaha Tribe and State of Iowa, Section 11, approved January 19, 2007.) Moreover, several tribes have voluntarily adopted NIGC's Class III MICS into their ordinances, and thus granted NIGC authority pursuant to the enforcement provisions of 25 U.S.C. 2713. The Commission relies on these sections to authorize promulgations of MICS to ensure integrity in tribal gaming.

Alternatives:

If the Commission does not periodically update the MICS, the regulations that govern tribal gaming will not address changing technology and gaming methods.

Anticipated Cost and Benefits:

Updated MICS will aid tribal governments in the regulation of their gaming activities.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
First NPRM	12/01/04	69 FR 69847
First NPRM Comment Period End	01/18/05	
Second NPRM	03/10/05	70 FR 11893
Second NPRM Comment Period End	04/25/05	
Final Action on First Rule	05/04/05	70 FR 23011
Final Action on Second Rule	08/12/05	70 FR 47097
Third NPRM	11/15/05	70 FR 69293
Third NPRM Comment Period End	12/30/05	
Final Action on Third Rule (1)	05/11/06	71 FR 27385
Fourth NPRM	09/00/11	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Tribal

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POSTAL REGULATORY COMMISSION (PRC)

Statement of Regulatory Priorities

The Postal Regulatory Commission serves as the primary regulator of the United States Postal Service. Its primary mission is to ensure accountability and transparency of the Postal Service to Congress, stakeholders, and the general public on issues such as financial operations, pricing policies, and delivery performance.

In fiscal year 2011, the Commission will evaluate its existing regulations with the goal of improving and streamlining them to ensure that the Postal Service is in full compliance with applicable law. The Commission's principal regulatory priority for fiscal year 2011 is to complete its review of proposed exceptions to recently adopted service performance measurement reporting requirements.

PRC

FINAL RULE STAGE

174. ● PERIODIC REPORTING EXCEPTIONS

Priority:

Other Significant

Legal Authority:

39 USC 3652(a)(2)(B); 39 USC 3652(e); 39 USC 3651

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Pursuant to section 3652(e) of the Postal Accountability and Enhancement Act (PAEA) of 2006, the Commission has completed a comprehensive rulemaking addressing service measure performance and customer satisfaction reporting on the part of the United States Postal Service (Postal Service). These regulations allow the Postal Service to request that a product or component of a product be excluded from service performance measurement reporting if certain conditions (set out in the regulations) are met. The Commission has established rulemaking to address the Postal Service's formal mail request for semi-permanent exceptions for service performance measurement of Standard Mail High Density, Saturation, and Ca Route Parcels, Inbound International Surface Parcel Post (at Universal Postal Union Rates), hard-copy Address Correction Service, various Special Services, within County Periodicals, and various negotiated service agreements.

This rulemaking will assess the need to balance the responsibilities of the Commission and the Postal Service under the PAEA with time and resource constraints, and thereby, advance an efficient implementation of the 2006 law.

Statement of Need:

The Commission recognizes that exceptions to new service performance reporting requirements may be appropriate, assuming certain conditions are met. Therefore, it has established this rulemaking to address the Postal Service's request for exceptions for certain products and services.

Summary of Legal Basis:

39 U.S.C. 3652(a)(2)(B) and 3651 require the United States Postal Service to prepare and submit to the Postal Regulatory Commission periodic reports, which provide, in part, measures of the quality of service afforded each market dominant product. Practical implementation of these provisions requires that the Postal Service be given an opportunity to apply for certain exceptions to new reporting requirements under certain conditions. This rulemaking allows the Postal Service's proposed exceptions to be considered.

Alternatives:

There are no alternative methods of complying with the requirements of 39 U.S.C. 3652(a)(2)(B) and 3651 other than by issuing regulations.

Anticipated Cost and Benefits:

The United States Postal Service is expected to incur somewhat fewer costs with respect to measuring and reporting if its proposal is adopted, in whole or in part. The Commission will not incur any additional costs to review Postal Service reports and may incur fewer costs.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	07/06/10	75 FR 38757
NPRM Comment Period End	07/16/10	
Final Action	12/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

URL For More Information:

www.prc.gov (usually linked to the program office)

URL For Public Comments:

www.regulations.gov

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RIN: 3211–AA06

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