

Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 40 U.S.C. 3501, *et seq.* and assigned OMB control numbers 2040-0250 (General Permits) and 2040-0004 (Discharge Monitoring Reports).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under section 535 of the Administrative Procedures Act (APA) or any other law, and is, thus, not subject to the Regulatory Flexibility Act (RFA) requirement to prepare an Initial Reg Flex Analysis (IRFA).

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rulemaking but including licensing." APA section 551(6) (emphasis added). The APA

defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rulemaking" requirements. The APA defines "rulemaking" as "the agency process for formulating, amending, or repealing a rule." (APA section 551(5)). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and, thus, are not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 15, 2004.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

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FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 00-78; DA 04-2117]

Media Bureau Implements Mandatory Electronic Filing of FCC Forms 320, 322, 324, and 325 via COALS

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Notice the Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Forms 320 (Basic Signal Leakage), 322 (Cable Community Registration), 324 (Operator, Mail Address, and Operational Information Changes), and 325 (Annual Report of Cable Television Systems).

DATES: Effective February 1, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Lance at (202) 418-7000.

SUPPLEMENTARY INFORMATION: In this Notice the Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Forms 320 (Basic Signal Leakage), 322 (Cable Community Registration), 324 (Operator, Mail Address, and Operational Information Changes), and 325 (Annual Report of Cable Television Systems). Mandatory electronic filing will commence on February 1, 2005. Paper versions of these forms will not be accepted for filing after January 31, 2005, unless accompanied by a request for waiver of the electronic filing requirement. Users can access the electronic filing system for these forms via the Internet from the Commission's Web Site at <http://www.FCC.gov/coals>. Instructions for use of the COALS and assistance are available from <http://www.fcc.gov/coals> under "download instructions." Internet access to the COALS public access system requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. For technical assistance using the system or to report problems, please contact the Media Bureau, Engineering Division at (202) 418-7000 or COALS_help@fcc.gov.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

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