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# FEDERAL REGISTER

Vol. 77 Monday,
No. 29 February 13, 2012

Pages 7517–8088

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Rural Utilities Service

### 7 CFR Part 4279

**RIN 0570–AA87**

## Definitions and Abbreviations

**AGENCY:** Rural Business-Cooperative Service, Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Business-Cooperative Service is amending its regulations for the Business and Industry Guaranteed Loan Program to clarify that the Agency guarantee does not cover default and penalty interest or late charges. The Agency's regulations are currently silent on this issue. However, it has always been the Agency's policy not to pay out additional cost for default interest, penalty interest, and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. The Agency does permit the lender to charge default interest with prior Agency approval. By defining ''interest'' in the definition section of the regulation and clarifying the Agency's policy as it relates to default interest, penalty interest, and late charge, this will avert any misunderstandings.

**DATES:** This rule will become effective April 13, 2012 without further action unless the Agency receives written adverse comments or written notices of intent to submit adverse comments on or before March 14, 2012. If the Agency receives adverse comments or notices, the Agency will publish a timely document in the **Federal Register** withdrawing the amendment.

Any adverse comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a postmark or equivalent no later than March 14, 2012.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lewis, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3221, Washington, DC 20250–3221; email: *david.lewis@wdc.usda.gov;* telephone (202) 690–0797.

**SUPPLEMENTARY INFORMATION:**

### Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

### Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the Business and Industry Guaranteed Loan Program is 10.768. The Catalog of Federal Domestic Assistance Program number assigned to the Biorefinery Assistance is 10.865. The Catalog of Federal Domestic Assistance Program number assigned to the Rural Energy for America Program is 10.868.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

### Executive Order 12372, Intergovernmental Consultation

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

### Executive Order 12988, Civil Justice

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its Agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with States is not required.

### Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will

not be impacted to a greater extent than large entity applicants.

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal Governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at *AIAN@wdc.usda.gov.*

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the information collection activities associated with this rule are covered under the Business and Industry Guaranteed Loan Program, OMB Number: 0570–0017.

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570–0017 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**E-Government Act Compliance**

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, to provide increased opportunities for citizens to access Government information and services electronically.

**I. Background**

The Agency reviewed 7 CFR 4279.2 which is composed of two paragraphs, the first of which is pertinent.

Section 4279.2(a) discusses the definitions, which has thirty-seven terms used in the Guaranteed Loanmaking. The definitions and abbreviations contained in § 4279.2 also apply to the Business and Industry Guaranteed Loan Servicing regulations and, unless otherwise noted, the Biorefinery Assistance Loan Program and the Rural Energy for America Program. Currently, the Agency regulations do not define or otherwise address ''interest'', ''default interest'', ''penalty interest'', or ''late charges''. However, it is the Agency's policy not to pay out additional cost for default interest, penalty interest, and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. However, lender's Promissory Note may contain provisions for default or penalty interest, or late charges with prior Agency approval.

**II. Discussion of Change**

The Agency is revising § 4279.2(a), to address the situation discussed in the ''Background'' section. Specifically, the Agency is adding a paragraph in § 4279.2(a), after the term ''Holder'' and before the term ''Interim Financing'', which will define ''Interest.'' The change being made by this rule is to clarify that ''interest'' does not include default or penalty interest, or late fees. The lender may charge the borrower these fees with prior Agency approval. Accordingly, the Agency is making the changes in this direct final rule.

**List of Subjects in 7 CFR Part 4279**

Business and industry, Loan programs, Rural development assistance.

For the reasons set forth in the preamble, chapter XLII, title 7, of the Code of Federal Regulations is amended as follows:

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

## PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

### Subpart A—General

■ 2. Paragraph (a) of § 4279.2 is amended by adding a new definition of *Interest,* to read as follows:

**§ 4279.2 Definitions and abbreviations.**

* * * * *

*Interest.* A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. ''Interest'' does not include default or penalty, or late fees or charges. The lender may charge these fees and interest with prior Agency approval, but they are not covered by the Loan Note Guarantee.

* * * * *

Dated: February 2, 2012.

**Dallas Tonsager,**

*Under Secretary, Rural Development.*

[FR Doc. 2012–3244 Filed 2–10–12; 8:45 am]

**BILLING CODE 3410–XY–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD; Amendment 39–16937; AD 2012–02–14]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by a report that the top 3 inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. This AD requires a one-time inspection to determine the part numbers of the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines, and replacing affected aero/fire seals with new, improved aero/fire seals. We are issuing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable fluid leakage zone), which could result in an uncontrolled fire.

**DATES:** This AD is effective March 19, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 19, 2012.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–

2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email: *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a third supplemental notice of proposed rulemaking to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That third supplemental NPRM was published in the **Federal Register** on October 11, 2011 (76 FR 62649). The original NPRM (71 FR 34025, June 13, 2006) proposed to require replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new improved aero/fire seals. The first supplemental NPRM (73 FR 51382, September 3, 2008) proposed to add airplanes to the applicability. The second supplemental NPRM (74 FR 34518, July 16, 2009) proposed to change the compliance time for the replacement of the aero/fire seals. The third supplemental NPRM (76 FR 62649, October 11, 2011) proposed to additionally prohibit the installation of certain non-fireproof thrust reverser seals.

**Comments**

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The Boeing Company and American Airlines both support the third supplemental NPRM (76 FR 62649, October 11, 2011).

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the third supplemental NPRM (76 FR 62649, October 11, 2011), for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the third supplemental NPRM (76 FR 62649, October 11, 2011).

**Costs of Compliance**

We estimate that this AD affects 803 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection for part number ..... | 1 work-hour × $85 per hour = $85 per inspection cycle. | None ..... | $85 per inspection cycle ..... | $68,255 per inspection cycle. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement ..... | 5 work-hours × $85 per hour = $425 ..... | $4,770 | $5,195 |

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2012–02–14 The Boeing Company:** Amendment 39–16937; Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD.

**(a) Effective Date**

This AD is effective March 19, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 78, Engine exhaust.

**(e) Unsafe Condition**

This AD was prompted by a report that the top 3 inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. We are issuing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable fluid leakage zone), which could result in an uncontrolled fire.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection To Determine Type of Aero/ Fire Seals**

For airplanes having an original airworthiness certificate issued before the effective date of this AD, and for airplanes on which the date of issuance of the original export certificate of airworthiness is before the effective date of this AD: Within 60 months or 8,200 flight cycles, whichever occurs first, after the effective date of this AD, perform a one-time detailed inspection to determine the color of the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines. For any aero/fire seal having a completely grey color (which is the color of seals with part number (P/N) 315A2245–1 or 315A2245–2), with no red at the upper end of the seal, do the actions specified in paragraph (i) of this AD. For any aero/fire seal having a red color at the upper end of the seal (which indicates installation of seals with P/N 315A2245–7 or 315A2245–8), no further action is required by this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if from that review the part number of the correct aero/fire seals (P/N 315A2245–7 or 315A2245–8) can be conclusively determined to be installed.

**(h) Definition**

For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

**(i) Replacement of the Aero/Fire Seals**

For any aero/fire seal identified during the inspection/records check required by paragraph (g) of this AD to have a non-fireproof seal: Within six months after doing the actions required by paragraph (g) of this AD, replace the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005. Replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005, is terminating action for the inspection required by paragraph (g) of this AD.

**(j) Parts Installation**

As of the effective date of this AD, no person may install a non-fireproof thrust reverser seal having P/N 315A2245–1 or P/N 315A2245–2 on any airplane.

**(k) Credit for Actions Accomplished in Accordance With Previous Service Information**

Replacements done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, dated April 7, 2005, are acceptable for compliance with the requirements of paragraph (i) of this AD.

**(l) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

**(m) Related Information**

For more information about this AD, contact Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov*.

**(n) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email: *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/ federal_register/code_of_federal_regulations/ ibr_locations.html.*

Issued in Renton, Washington, on January 12, 2012.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–2679 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2011–0571; Directorate Identifier 2010–NM–263–AD; Amendment 39–16950; AD 2012–03–09]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Model 747SP series airplanes. This AD was prompted by a report of a rudder hard-over event on a Model 747–400 series airplane, caused by a rudder power control module (PCM) manifold cracking and separating in the area of the yaw damper cavity end-cap. This condition could result in a hard-over of the rudder surface leading to an increase in pilot workload and a possible high-speed runway excursion upon landing, in the event of failure of the lower or upper rudder PCM manifold. This AD requires replacing or modifying the upper and lower rudder PCMs. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective March 19, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 19, 2012.

**ADDRESSES:** For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email: *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For Parker service information identified in this AD, contact Parker Aerospace, 14300 Alton Parkway, Irvine, California 92618; telephone 949–833–3000; Internet *http://www.parker.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 22, 2011 (76 FR 36390). That NPRM proposed to require replacing or modifying the upper and lower rudder PCMs.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

### Support for the NPRM (76 FR 36390, June 22, 2011)

The National Transportation Safety Board fully supports the NPRM (76 FR 36390, June 22, 2011).

### Request To Clarify the Discussion Section and Paragraph (e) of NPRM (76 FR 36390, June 22, 2011)

Boeing requested that we revise the Discussion section and paragraph (e) of the NPRM (76 FR 36390, June 22, 2011) to clarify that the corrective actions are not intended to prevent the manifold from cracking, but rather to prevent the cracking of the manifold from progressing to a rudder surface hard-over. Boeing pointed out that the secondary retention device incorporated in Boeing Alert Service Bulletin 747–27A2497, dated September 30, 2010, prevents the yaw damper modulating piston assembly from shifting after a manifold failure, therefore, preventing a rudder surface hard-over. Boeing suggested removing the phrase, ''if not corrected,'' from the sentence, ''Cracking in a rudder PCM manifold, if not corrected, could result in a failure of the upper or lower rudder PCM manifold which could result in a hard-over of the rudder surface leading to an increase in pilot workload and a possible high-speed runway excursion upon landing.'' In addition, Boeing suggested revising the sentence, ''Although commanding full retract, pilot pedal inputs were ineffective in moving the lower rudder back to the right,'' to replace the term ''retract'' with ''right rudder,'' and revising the sentence, ''These events did not result in a hard-over, but created the need for a retention feature solution specified in AD 2008–13–03, Amendment 39–15566, for Model 747–400, –400D, and –400F series airplanes,'' to clarify that the additional three events did not result in end-cap separation or a hard-over.

We agree that replacement or modification of the upper and lower rudder PCMs is intended to prevent the yaw damper modulating piston assembly from shifting after a manifold failure, consequently preventing a rudder surface hard-over. Therefore, we have revised paragraph (e) and the corresponding language in the Summary of this AD to clarify the intent. However, we cannot revise the Discussion section of this AD, because that section is not re-stated in this final rule.

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 36390, June 22, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 36390, June 22, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Costs of Compliance

We estimate that this AD affects 7 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace rudder PCM (P/N 241700–1007) | 11 work-hours × $85 per hour = $935 ..... | $5,856 | $6,791 | $47,537 |
| Replace rudder PCM (P/N 241700–1005) | 11 work-hours × $85 per hour = $935 ..... | 8,568 | 9,503 | 66,521 |
| Modify rudder PCM (P/N 241700–1007) .. | 3 work-hours × $85 per hours = $255 ..... | 1,374 | 1,629 | 11,403 |
| Modify rudder PCM (P/N 241700–1005) .. | 3 work hours × $85 per hour = $255 ..... | 4,086 | 4,341 | 30,387 |

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2012–03–09 The Boeing Company:** Amendment 39–16950; Docket No. FAA–2011–0571; Directorate Identifier 2010–NM–263–AD.

**(a) Effective Date**

This AD is effective March 19, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 747SP series airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight Controls.

**(e) Unsafe Condition**

This AD was prompted by a report of a rudder hard-over event on a Model 747–400 series airplane, caused by a rudder power control module (PCM) manifold cracking and separating in the area of the yaw damper cavity end-cap. We are issuing this AD to prevent a hard-over of the rudder surface leading to an increase in pilot workload and a possible high-speed runway excursion upon landing, in the event of failure of the lower or upper rudder PCM manifold.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Replace or Modify Rudder PCMs**

Within 24 months or 8,400 flight hours after the effective date of this AD, whichever occurs first, do the replacement specified in paragraph (g)(1) of this AD or the modification specified in paragraph (g)(2) of this AD for the upper and lower rudder PCMs, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2497, dated September 30, 2010.

(1) Replace any rudder PCM having Boeing part number (P/N) 60B80093–3 (Parker P/N 241700–1005) or Boeing P/N 60B80093–4 (Parker P/N 241700–1007) with rudder PCM having Boeing P/N 60B80093–104 (Parker P/N 241700–9007).

(2) Modify any rudder PCM having Boeing P/N 60B80093–3 (Parker P/N 241700–1005) or Boeing P/N 60B80093–4 (Parker P/N 241700–1007).

**Note 1 to paragraph (g):** Boeing Alert Service Bulletin 747–27A2497, dated September 30, 2010, refers to Parker Service Bulletin 241700–27–333, dated January 26, 2010, as an additional source of guidance for modifying the upper and lower rudder PCM manifold access caps provided in Option 2 of Work Packages 1 and 2 of Boeing Alert Service Bulletin 747–27A2497, dated September 30, 2010.

**(h) Parts Installation**

As of the effective date of this AD, no person may install a rudder PCM having Boeing P/N 60B80093–3 (Parker P/N 241700–1005) or Boeing P/N 60B80093–4 (Parker P/N 241700–1007), on any airplane.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

**(j) Related Information**

For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov.*

**(k) Material Incorporated by Reference**

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the

following service information on the date specified:

(1) Boeing Alert Service Bulletin 747–27A2497, dated September 30, 2010, approved for IBR March 19, 2012.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 27, 2012.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–3115 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0112; Directorate Identifier 2011–NM–055–AD; Amendment 39–16952; AD 2012–03–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A340–600 series airplanes. This AD requires modifying the fire extinguishing system from a three-bottles solution with 4 flow metering compact unit into a two-bottles solution with 2 flow metering systems equipped with upgraded water absorbing filter elements. This AD was prompted by reports of partial blockage of a certain water absorbing filter element. We are issuing this AD to prevent partial blockage of a certain water absorbing filter element, which could lead to reduction of the halon outflow, which leads to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this condition could result in an uncontrolled fire in the affected compartment.

**DATES:** This AD becomes effective February 28, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 28, 2012.

We must receive comments on this AD by March 29, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0255, dated December 6, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the qualification test campaign of the prototype Flow Metering Compact Unit (FMCU) Part Number (P/N) QA07907–03, partial blockage of the water absorbing filter element P/N QA06123 was observed several times. The blockage was created by carbon debris from the cartridge and from the burst disc of the Halon bottle.
>
> This water absorbing filter element is part of the FMCU, which are part of the Lower Deck Cargo Compartment (LDCC) fire extinguisher system used in some A340–600 aeroplanes.
>
> Blockage of the water absorbing filter element could lead to reduction of the Halon outflow, leading to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this condition could result in an uncontrolled fire in the affected compartment, which would constitute an unsafe condition.
>
> To avoid water absorbing filter element blockage, this [EASA] AD requires to convert the fire extinguishing system from the three-bottles-system with 4 FMCU into a two-bottles-system with 2 Flow Metering Systems (FMS) equipped with upgraded water absorbing filter elements.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–26–5020, including Appendix 01, dated June 3, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

**FAA's Determination of the Effective Date**

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0112; Directorate Identifier 2011–NM–055–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2012–03–10 Airbus:** Amendment 39–16952; Docket No. FAA–2012–0112; Directorate Identifier 2011–NM–055–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective February 28, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A340–642 airplanes, certificated in any category, all manufacturer serial numbers on which Airbus modification 47090 has been embodied in production; except those on which Airbus modification 51065 has been embodied in production.

**(d) Subject**

Air Transport Association (ATA) of America Code 26: Fire Protection.

**(e) Reason**

This AD was prompted by reports of partial blockage of a certain water absorbing filter element. We are issuing this AD to prevent partial blockage of a certain water absorbing filter element, which could lead to reduction of the halon outflow, which leads to incapacity to maintain fire extinguishing agent concentration. Combined with fire, this condition could result in an uncontrolled fire in the affected compartment.

**(f) Compliance**

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**(g) Actions**

Within 18 months after the effective date of this AD, modify the fire extinguishing system from a three-bottles solution with 4 flow metering compact unit, into a two-bottles solution with 2 flow metering systems equipped with upgraded water absorbing filter elements, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–26–5020, including Appendix 01, dated June 3, 2010.

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(i) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2010–0255, dated December 6, 2010; and Airbus Mandatory Service Bulletin A340–26–5020, including Appendix 01, dated June 3, 2010; for related information.

**(j) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Airbus Mandatory Service Bulletin A340–26–5020, including Appendix 01, dated June 3, 2010.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 3, 2012.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–3116 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0610; Airspace Docket No. 11–AWP–10]**

## Revision of Class D and Class E Airspace; Hawthorne, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Class D and Class E airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA. Additional controlled airspace is needed to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at the airport. Also, the airspace designations are revised to show a new city location. This action is a result of the FAA's biennial review, along with a study of the Jack Northrop Field/Hawthorne Municipal Airport airspace area that further enhances the safety and management of aircraft operations at the airport.

**DATES:** Effective date, 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

### History

On October 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Hawthorne, CA (76 FR 67103). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace and Class E airspace designations are published in paragraph 5000 and 6004, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by revising Class D airspace and Class E surface airspace designated as an extension to Class D surface area at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA, creating additional airspace necessary for IFR departures and arrivals at the airport. This action, initiated by FAA's biennial review of the Jack Northrop Field/Hawthorne Municipal Airport airspace area, and based on results of a study conducted by the Los Angeles Visual Flight Rules (VFR) Task Force, and the Los Angeles Class B Workgroup, enhances the safety and management of aircraft operations at the airport. This action also revises the airspace designation for Class D and Class E airspace, changing the city location from Los Angeles, CA, to Hawthorne, CA.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises controlled airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

*Paragraph 5000 Class D airspace.*

* * * * *

**AWP CA D Hawthorne, CA [Revised]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within 2.6-mile radius of the Jack Northrop Field/Hawthorne Municipal Airport, and that airspace 1.5 miles north and 2 miles south of the 229° bearing from the airport extending from the 2.6-mile radius to 3.8 miles southwest, and that airspace 2 miles north

and 1.5 miles south of the 096° bearing from the airport extending from the 2.6-mile radius to 3.9 miles east of the airport, excluding the Los Angeles Airport Class D airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.*

* * * * *

**AWP CA E4 Hawthorne, CA [Revised]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface within 2 miles north and 1.5 miles south of the 096° bearing from Jack Northrop Field/Hawthorne Municipal Airport, beginning 3.9 miles east of the airport extending to 6.3 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on February 1, 2012.

**Johanna Forkner,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–3149 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM10–5–000; Order No. 758]**

## Interpretation of Protection System Reliability Standard

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** On November 17, 2009, the North American Electric Reliability Corporation (NERC) submitted a petition (Petition) requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). On December 16, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR). In the NOPR, the Commission proposed to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard PRC–005–1, and proposed to direct NERC to develop modifications to the PRC–005–1 Reliability Standard through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard that were highlighted by the proposed interpretation. As a result of the comments received in response to the NOPR, in this order the Commission adopts the NOPR proposal to accept NERC's proposed interpretation. In addition, as discussed below, the Commission accepts, in part, NERC's commitment to address the concerns in the Protection System maintenance and testing standard that were identified by the NOPR within the Reliability Standards development process, and directs, in part, that the concerns identified by the NOPR with regard to reclosing relays be addressed within the reinitiated PRC–005 revisions.

**DATES:** *Effective Date:* This rule will become effective March 14, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Ron LeComte (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8405, *ron.lecomte@ferc.gov*.

Danny Johnson (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8892, *danny.johnson@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

### Final Rule (Issued February 3, 2012.)

1. On November 17, 2009, NERC submitted the Petition requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). NERC developed the interpretation in response to a request for interpretation submitted to NERC by the Regional Entities Compliance Monitoring Processes Working Group (Working Group).[1] In a December 16, 2010 Notice of Proposed Rulemaking (NOPR),[2] the Commission proposed to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard PRC–005–1, and proposed to direct NERC to develop modifications to the PRC–005–1 Reliability Standard through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard highlighted by the proposed interpretation. As a result of the comments received in response to the NOPR, in this order the Commission adopts the NOPR proposal to accept NERC's proposed interpretation. In addition, the Commission accepts, in part, NERC's commitments to address the concerns in the Protection System maintenance and testing standard that were identified by the NOPR within the Reliability Standards development process, and directs, in part, that the concerns identified by the NOPR with regard to reclosing relays be addressed within the reinitiated PRC–005 revisions.

### I. Background

2. Section 215 of the Federal Power Act (FPA) requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.[3] Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[4] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[5]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[6] and subsequently certified NERC.[7] On April 4, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a Final Rule, Order No. 693,[8] approving 83 of the 107 Reliability Standards, including Reliability

[1] The Working Group is a subcommittee of the Regional Entity Management Group which consists of the executive management of the eight Regional Entities.

[2] *Interpretation of Protection System Reliability Standard,* Notice of Proposed Rule Making, 75 FR 81,152 (Dec. 27, 2010), FERC Stats. & Regs. ¶ 32,669 (2010).

[3] 16 U.S.C. 824 (2006).

[4] *Id.* 824o(d)(2).

[5] *Id.* 824o(e)(3).

[6] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] *North American Electric Reliability Corp., 116 FERC ¶ 61,062, order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[8] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

Standard PRC–005–1. In addition, pursuant to section 215(d)(5) of the FPA,[9] the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards, including PRC–005–0.[10]

4. NERC's Rules of Procedure provide that a person that is ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[11] In response, the ERO will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules of Procedure provide that, within 45 days, the team will draft an interpretation of the Reliability Standard and submit it to the ballot pool. If approved by the ballot pool and subsequently by the NERC Board of Trustees (Board), the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authorities for approval.

## II. Reliability Standard PRC–005–1

5. The purpose of PRC–005–1 is to ''ensure all transmission and generation Protection Systems affecting the reliability of the Bulk Electric System (BES) are maintained and tested.'' In particular, Requirement R1, requires that:

R1. Each Transmission Owner and any Distribution Provider that owns a transmission Protection System and each Generator Owner that owns a generation Protection System shall have a Protection System maintenance and testing program for Protection Systems that affect the reliability of the BES. The program shall include:

R1.1. Maintenance and testing intervals and their basis.

R1.2. Summary of maintenance and testing procedures.

6. NERC currently defines ''Protection System'' as follows: ''Protective relays, associated communication systems, voltage and current sensing devices, station batteries and DC control circuitry.''[12]

## III. NERC Proposed Interpretation

7. In the NERC Petition, NERC explains that it received a request from the Working Group for an interpretation of Reliability Standard PRC–005–1, Requirement R1, addressing five specific questions. Specifically, the Working Group questions and NERC proposed interpretations include:

*Request 1:* ''Does R1 require a maintenance and testing program for the battery chargers for the 'station batteries' that are considered part of the Protection System?''

*Response:* ''While battery chargers are vital for ensuring 'station batteries' are available to support Protection System functions, they are not identified within the definition of 'Protection Systems.' Therefore, PRC–005–1 does not currently require maintenance and testing of battery chargers.''[13]

*Request 2:* ''Does R1 require a maintenance and testing program for auxiliary relays and sensing devices? If so, what types of auxiliary relays and sensing devices? (i.e., transformer sudden pressure relays).''

*Response:* ''The existing definition of 'Protection System' does not include auxiliary relays; therefore, maintenance and testing of such devices is not explicitly required. Maintenance and testing of such devices is addressed to the degree that an entity's maintenance and testing program for DC control circuits involves maintenance and testing of imbedded auxiliary relays. Maintenance and testing of devices that respond to quantities other than electrical quantities (for example, sudden pressure relays) are not included within Requirement R1.''

*Request 3:* ''Does R1 require maintenance and testing of transmission line re-closing relays?''

*Response:* ''No. 'Protective Relays' refer to devices that detect and take action for abnormal conditions. Automatic restoration of transmission lines is not a 'protective' function.''

*Request 4:* ''Does R1 require a maintenance and testing program for the DC circuitry that is just the circuitry with relays and devices that control actions on breakers, etc., or does R1 require a program for the entire circuit from the battery charger to the relays to circuit breakers and all associated wiring?''

*Response:* ''PRC–005–1 requires that entities (1) address DC control circuitry within their program, (2) have a basis for the way they address this item, and (3) execute the program. Specific additional requirements relative to the scope and/or methods are not established.''

*Request 5:* ''For R1, what are examples of 'associated communications systems' that are part of 'Protection Systems' that require a maintenance and testing program?''

*Response:* '' 'Associated communication systems' refer to communication systems used to convey essential Protection System tripping logic, sometimes referred to as pilot relaying or teleprotection. Examples include the following:

—Communications equipment involved in power-line-carrier relaying;
—Communications equipment involved in various types of permissive protection system applications;
—Direct transfer-trip systems;
—Digital communication systems * * *.''

8. In its Petition requesting that the Commission accept the proposed interpretation, NERC recognized that greater clarity to the requirement language in PRC–005–1a is necessary to provide a complete framework for maintenance and testing of equipment necessary to ensure the reliability of the Bulk Power System. In its Petition, NERC also stated that this activity is already underway in the scope of Project 2007–17—Protection System Maintenance and Testing, coupled with the revised definition of Protection System.

## IV. Commission NOPR

9. In the NOPR, the Commission proposed to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard PRC–005–1. In addition, the Commission proposed to direct NERC to develop modifications to the PRC–005–1 Reliability Standard through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard that were highlighted by the proposed interpretation. The specific modifications are discussed below.

## V. Comments

10. Comments on the Commission's proposed interpretation were received by the NERC, Edison Electric Institute (EEI), ISO/RTO Council (IRC), American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), Transmission Access Policy Study Group (TAPS), Cities of Anaheim and Riverside, California (Joint Cities), Northwest

[9] 16 U.S.C. 824o(d)(5).

[10] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1475.

[11] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 26–27 (2007).

[12] In Docket No. RD11–13–000, NERC has proposed to revise the definition of Protection System effective on the first day of the first calendar quarter twelve months from approval. The Commission is approving this revision in an order issued concurrently with this order. *See North American Electric Reliability Corp.,* 138 FERC ¶ 61,095 (2012).

[13] The revised definition of Protection System accepted in Docket No. RD11–13–000 includes battery chargers as an element of the Protection System and, as a result of that change, battery chargers must be maintained and tested. Thus, the modified definition of Protection System approved in Docket No. RD11–13–000, when effective, shall supersede the interpretation of Requirement R1 of Reliability Standard PRC–005–1 approved in this order.

Commenters,[14] International Transmission Company (ITC), PSEG Companies,[15] and MidAmerican Energy Holdings Company (MidAmerican), Constellation/CENG,[16] and Manitoba Hydro (Manitoba). In general, commenters support NERC's proposed interpretation, and oppose the further directives in the NOPR. Commenters also state that modifications to the Reliability Standards should be addressed within the NERC standards development process and that certain of the modifications are currently being addressed.

## VI. Discussion

11. As a result of the comments received in response to the proposal, the Commission adopts the NOPR proposal to accept NERC's proposed interpretation. As discussed below, [17] the Commission accepts, in part, NERC's commitments to address the concerns in the Protection System maintenance and testing standard that were identified by the NOPR within the Reliability Standards development process, and directs, in part, that the concerns identified by the NOPR with regard to reclosing relays be addressed within the reinitiated PRC–005 revisions.

### *A. Maintenance and Testing of Auxiliary and Non-Electrical Sensing Relays*

12. In the NOPR, the Commission noted a concern that the proposed interpretation may not include all components that serve in some protective capacity.[18] The Commission's concerns included the proposed interpretation's exclusion of auxiliary and non-electrical sensing relays. The Commission proposed to direct NERC to develop a modification to the Reliability Standard to include any component or device that is designed to detect defective lines or apparatuses or other power system conditions of an abnormal or dangerous nature, including devices designed to sense or take action against any abnormal system condition that will affect reliable operation, and to initiate appropriate control circuit actions.

13. In their comments NERC, EEI, Joint Cities, Manitoba, NRECA, ITC, MidAmerican, and PSEG expressed varying levels of disagreement with the NOPR's proposed directive. The disagreements are based on a concern that the proposed directive will create an increase in scope that will capture many items not used in BES protection. NERC is concerned the scope of this proposed directive is so broad that any device that is installed on the Bulk-Power System to monitor conditions in any fashion may be included.[19] NERC states that many of these devices are advisory in nature and should not be reflected within NERC Reliability Standards if they do not serve a necessary reliability purpose.[20] NERC does not believe it is necessary for the Commission to issue a directive to address this issue. Instead, NERC proposes to develop, either independently or in association with other technical organizations such as IEEE, one or more technical documents which:

1. Describe the devices and functions (to include sudden pressure relays which trip for fault conditions) that should address FERC's concern; and
2. Propose minimum maintenance activities for such devices and maximum maintenance intervals, including the technical basis for each.[21]

14. NERC states that these technical documents will address those protective relays that are necessary for the reliable operation of the Bulk-Power System and will allow for differentiation between protective relays that detect faults from other devices that monitor the health of the individual equipment and are advisory in nature (e.g., oil temperature). Following development of the above-referenced document(s), NERC states that it will ''propose a new or revised standard (e.g. PRC–005) using the NERC Reliability Standards development process to include maintenance of such devices, including establishment of minimum maintenance activities and maximum maintenance intervals.'' [22] Accordingly, NERC proposes to ''add this issue to the Reliability Standards issues database for inclusion in the list of issues to address the next time the PRC–005 standard is revised.'' [23]

15. The Commission accepts NERC's proposal, and directs NERC to file, within sixty days of publication of this Final Rule, a schedule for informational purposes regarding the development of the technical documents referenced above, including the identification of devices that are designed to sense or take action against any abnormal system condition that will affect reliable operation. NERC shall include in the informational filing a schedule for the development of the changes to the standard that NERC stated it would propose as a result of the above-referenced documents.[24] NERC should update its schedule when it files its annual work plan.

### *B. Reclosing Relays*

16. In the NOPR, the Commission noted that while a reclosing relay is not identified as a specific component of the Protection System, if it either is used in coordination with a Protection System to achieve or meet system performance requirements established in other Commission-approved Reliability Standards, or can exacerbate fault conditions when not properly maintained and coordinated, then excluding the maintenance and testing of these reclosing relays will result in a gap in the maintenance and testing of relays affecting the reliability of the Bulk-Power System.[25] Accordingly, the Commission proposed that NERC modify the Reliability Standard to include the maintenance and testing of reclosing relays affecting the reliability of the Bulk-Power System.

17. NERC, EEI, IRC, ITC MidAmerican, NRECA, and PSEG opposed the NOPR's directive to include reclosing relays. In general, commenters state that reclosing relays used for stability purposes are already included in maintenance and testing programs, and that reclosing relays that are primarily used to minimize customer outages times and maximize availability of system components should not be included. PSEG and MidAmerican contend that the NERC standards development process should be utilized to determine the maintenance and testing of those reclosing relays that affect the reliability of the Bulk-Power System.

18. ISO/RTO contends that the primary purpose of reclosing relays is to allow more expeditious restoration of lost components of the system, not to maintain the reliability of the Bulk-Power System. Therefore, ISO/RTO maintains that automatic reclosing

[14] Lincoln People's Utility District, Columbia River People's Utility District, Inland Power and Light Company, Northwest Public Power Association, Northwest Requirements Utilities, Pacific Northwest Generating Cooperative, Public Power Council, Public Utility District No. 1 of Snohomish County, and Tillamook People's Utility District.

[15] Public Service Electric and Gas Company, PSEG Fossil LLC, and PSEG Nuclear LLC.

[16] Constellation Energy Group, Inc., Baltimore Gas & Electric Company, Constellation Energy Commodities Group, Inc., Constellation Energy Control and Dispatch, LLC, Constellation NewEnergy, Inc., and Constellation Power Source Generation, Inc. (together, Constellation) and Constellation Energy Nuclear Group, LLC (CENG).

[17] *See infra,* P 15, P 18, P 20.

[18] NOPR at P 11–14.

[19] NERC February 25, 2011 Comments at 7.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 7, 8.

[25] NOPR at P 15.

relays should not be subject to the NERC Reliability Standard for relay maintenance and testing. MidAmerican states that there are only limited circumstances when a reclosing relay can actually affect the reliability of the Bulk-Power System. MidAmerican contends that it would be overbroad for the Commission to direct a modification to the standard that encompasses all reclosing relays that can ''exacerbate fault conditions when not properly maintained and coordinated,'' as this would improperly include many types of reclosing relays that do not necessarily affect the reliability of the Bulk-Power System.

19. ITC agrees with the Commission's proposal that reclosing relays that are required for system stability should be maintained and tested under Requirement R1 of PRC–005–1. However, ITC contends that since most bulk electric system automatic reclosing relay systems are applied to minimize customer outage times and to maximize availability of system components, only some ''high speed'' reclosing relays will affect the reliability of the Bulk-Power System. Therefore, ITC proposes that the Commission should direct NERC to draft specific requirements or selection criteria that should be used in identifying the types of re-closing relays for maintenance and testing under Requirement R1 of PRC–005–1.[26]

20. While NRECA notes that reclosing relays operate to restore, not protect a system, NRECA also notes that there are reclosing schemes that directly affect and are required for automatic stability control of the system, but that such schemes are already covered under Special Protection Schemes that are subject to reliability standards. NRECA, notes that some transmission operators do not allow reclosing relays on the bulk power system to remove the possibility of reclosing in on a permanent fault, thus avoiding further potential damage to the bulk power system.[27]

21. Similarly, NERC comments that in most cases reclosing relays cannot be relied on to meet system performance requirements because of the need to consider the impact of auto-reclosing into a permanent fault; however, NERC states that applications that may exist in which automatic restoration is used to meet system performance requirements following temporary faults. NERC comments that where reclosing relays are applied to meet performance requirements in approved NERC Reliability Standards, or where automatic restoration of service is fundamental to derivation of an Interconnection Reliability Operating Limit (IROL), it is reasonable to require maintenance and testing of auto-reclosing relays.[28] However, NERC does not believe it is necessary for the Commission to issue a directive.[29] NERC states that the proposed revisions to Reliability Standard PRC–005–1 that are under development include maintenance of reclosing devices that are part of Special Protection Systems.[30] NERC proposes ''to add the remaining concerns relating to this issue to the Reliability Standards issues database for inclusion in the list of issues to address the next time Reliability Standard PRC–005 is revised.'' [31]

22. As NERC and other commenters point out, reclosing relays are used in a broad range of applications; e.g., meet system performance requirements in approved Reliability Standards, derivation of IROLs, maintain system stability, minimize customer outage times, to maximize availability of system components, etc. While commenters acknowledge that reclosing relays have several applications, commenters also appear to be divided on which applications, if any, should be included in a maintenance and testing program.

23. The NOPR raised a concern that excluding the maintenance and testing of reclosing relays that can exacerbate fault conditions when not properly maintained and coordinated will result in a gap affecting Bulk-Power System reliability.[32] We agree with MidAmerican that while there are only limited circumstances when a reclosing relay can actually affect the reliability of the Bulk-Power System, there are some reclosing relays, e.g., whose failure to operate or that misoperate during an event due to lack of maintenance and testing, may negatively impact the reliability of the Bulk-Power System.[33] We agree with NERC that where reclosing relays are applied to meet performance requirements in approved NERC Reliability Standards, or where automatic restoration of service is fundamental to derivation of an Interconnection Reliability Operating Limit (IROL), it is reasonable to require maintenance and testing of auto-reclosing relays.

24. In the NOPR we stated that a misoperating or miscoordinated reclosing relay may result in the reclosure of a Bulk-Power System element back onto a fault or that a misoperating or miscoordinated reclosing relay may fail to operate after a fault has been cleared, thus failing to restore the element to service. As a result, the reliability of the Bulk-Power System would be affected. In addition, misoperated or miscoordinated relays may result in damage to the Bulk-Power System. For example, a misoperation or miscoordination of a reclosing relay causing the reclosing of Bulk-Power System facilities into a permanent fault can subject generators to excessive shaft torques and winding stresses and expose circuit breakers to systems conditions less than optimal for correct operation, potentially damaging the circuit breaker.[34]

25. While some commenters argue that reclosing relays do not affect the reliability of the Bulk-Power System, the record supports our concern. For example, we note NERC's concern regarding the ''* * * need to consider the impact of autoreclosing into a permanent fault.'' We also note NRECA's comments that ''* * * some transmission operators do not allow reclosing on the bulk electric system facilities to remove the opportunity of closing in on a permanent fault'' and ''* * * by its [automatic reclosing] use a utility understands the potential for further damage that may occur by reclosing.'' [35] Because the misoperation or miscommunication of reclosing relays can exacerbate fault conditions, we find that reclosing relays that may affect the reliability of the Bulk-Power System should be maintained and tested.[36]

26. For the reasons discussed above, we conclude that it is important to maintain and test reclosing relays that may affect the reliability of the Bulk-Power System. We agree with ITC that specific requirements or selection criteria should be used to identify reclosing relays that affect the reliability of the Bulk-Power System. As MidAmerican suggests, the standard should be modified, through the

[26] ITC Comments at 7.

[27] NRECA Comments at 13–14.

[28] NERC February 25, 2011 Comments at 9.

[29] TAPs urges the Commission to use its authority pursuant to section 215(d)(5) in circumstances where there is a clear need for such a directive.

[30] *Id.*

[31] *Id.*

[32] NOPR at P 15, noting one such outage resulting in the loss of over 4,000 MW of generation and multiple 765 kV lines.

[33] MidAmerican Comments at 6.

[34] NERC System Protection and Control Subcommittee, ''Advantages and Disadvantages of EHV Automatic Reclosing, ''December 9, 2009, p. 14.

[35] NRECA Comments at 13.

[36] As NERC notes, there may be applications of reclosing relays where the misoperation or miscommunication may does not have a detrimental effect on the reliability of the Bulk-Power System.

Reliability Standards development process, to provide the Transmission Owner, Generator Owner, and Distribution Provider with the discretion to include in a Protection System maintenance and testing program only those reclosing relays that the entity identifies as having an affect on the reliability of the Bulk-Power System.

27. We note that the original project to revise Reliability Standard PRC–005 failed a recirculation ballot in July of 2011. The project was subsequently reinitiated to continue the efforts to develop Reliability Standard PRC–005–2. Given that the project to draft proposed revisions to Reliability Standard PRC–005–1 continues in this reinitiated effort, and the importance of maintaining and testing reclosing relays, we direct NERC to include maintenance and testing of reclosing relays that can affect the reliable operation of the Bulk-Power System, as discussed above, within these reinitiated efforts to revise Reliability Standard PRC–005.[37]

*C. DC Control Circuitry and Components*

28. In the NOPR, the Commission explained its understanding that a maintenance and testing program for DC control circuitry would include all components of DC control circuitry necessary for ensuring Reliable Operation of the Bulk-Power System, and that not establishing the specific requirements of such a maintenance and testing program results in a gap in the maintenance and testing of Protection System components.[38]

29. Joint Cities, MidAmerican, and NRECA expressed concern that the NOPR's directive is too broad and unnecessarily burdensome. NERC agrees that maintenance and testing should be required for all DC control circuitry.[39] NERC further stated that draft standard PRC–005–2 being developed in Project 2007–17 ''includes extensive, specific maintenance activities (with maximum maintenance intervals) related to the DC control circuits.'' [40] The Commission accepts NERC's commitment to include the development of specific requirements of such a maintenance and testing program described above in Project 2007–17.[41]

**VII. Information Collection Statement**

30. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[42] The Commission submits reporting and recording keeping requirements to OMB under section 3507 of the Paperwork Reduction Act of 1995.[43]

31. As stated above, the Commission previously approved, in Order No. 693, the Reliability Standard that is the subject of the current Final Rule. This Final Rule accepts an interpretation of the currently approved Reliability Standard. The interpretation of the current Reliability Standard at issue in this final rule is not expected to change the reporting burden or the information collection requirements. The informational filing required of NERC is part of currently active collection FERC–725 and does not require additional approval by OMB.

32. We will submit this final rule to OMB for informational purposes only.

**VIII. Environmental Analysis**

33. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[44] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[45] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

**IX. Regulatory Flexibility Act**

34. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[46] The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[47] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[48] The RFA is not implicated by this Final Rule because the interpretation accepted herein does not modify the existing burden or reporting requirements. Because this Final Rule accepts an interpretation of the currently approved Reliability Standard, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

**X. Document Availability**

35. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

36. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

37. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

[37] On December 13, 2011, NERC submitted its Standards Development Plan for 2012–2014. NERC estimates that Project 2007–17 will be completed in the second quarter of 2012. By July 30, 2012, NERC should submit to the Commission either the completed project which addresses the remaining issues consistent with this order, or an informational filing that provides a schedule for how NERC will address such issues in the Project 2007–17 reinitiated efforts.

[38] NOPR at P 16.

[39] NERC February 25, 2011 Comments at 10.

[40] *Id.*

[41] As previously noted, NERC estimates that Project 2007–17 will be completed by the second quarter of 2012. By July 30, 2012, NERC should submit to the Commission either the completed project which addresses the remaining issues consistent with this order, or an informational filing that provides a schedule for how NERC will address such issues in the Project 2007–17 reinitiated efforts.

[42] 5 CFR 1320.

[43] 44 U.S.C. 3507.

[44] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[45] 18 CFR 380.4(a)(2)(ii).

[46] 5 U.S.C. 601–612.

[47] 13 CFR 121.201.

[48] *Id.* n.1.

## XI. Effective Date and Congressional Notification

38. This Final Rule is effective March 14, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

## List of Subjects in 18 CFR Part 40

Applicability, Mandatory reliability standards, Availability of reliability standards.

By the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–3272 Filed 2–10–12; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R08–OAR–2011–0100; FRL–9495–9]

# Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Exclusion for De Minimis Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to partially approve and partially disapprove State Implementation Plan (SIP) revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. The revisions contain new rules in Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources) that pertain to the issuance of Montana air quality permits, in addition to other minor administrative changes to other subchapters of the Administrative Rules of Montana (ARM). In this action, EPA is approving those portions of the rules that are approvable and disapproving those portions of the rules that are inconsistent with the Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

**DATES:** *Effective Date:* This final rule is effective March 14, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0100. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

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## I. What action is EPA taking?

### *A. Summary of Final Action*

EPA is taking final action to approve new rule ARM 17.8.745 as submitted by the State of Montana on June 25, 2010. Montana adopted this rule on May 14, 2010 and it became State effective on May 28, 2010. We are also taking final action to approve all references to ARM 17.8.745, submitted by Montana on May 28, 2003. Specifically, the following phrases in 17.8.740(8)(a) and (c), respectively, (1) ''except when a permit is not required under ARM 17.8.745'' and (2) ''except as provided in ARM 17.8.745,'' the phrase ''and 17.8.745'' in ARM 17.8.743(1) and the phrase ''the emission increase meets the criteria in ARM 17.8.745 for a *de minimis* change not requiring a permit in ARM 17.8.864(1)(b). These references were adopted on December 6, 2002, and became State effective on December 27, 2002. EPA is also taking final action to disapprove the phrase ''asphalt concrete plants, mineral crushers'' in new rule ARM 17.8.743(1)(b) as submitted by the State of Montana on May 28, 2003. This rule was adopted on December 6, 2002, and became State effective on December 27, 2002.

ARM 17.8.745, as submitted by the State of Montana on June 25, 2010, and all references to ARM 17.8.745, as submitted by the State of Montana on May 28, 2003, meet the requirements of the Act and EPA's minor New Source Review (NSR) regulations. ARM 17.8.743(1)(b), as submitted by the State of Montana on May 28, 2003, does not meet the requirements of the Act and EPA's minor NSR regulations.

EPA proposed an action for the above SIP revision submittals on September 26, 2011 (76 FR 59338). We accepted comments from the public on this proposal from September 27, 2011, until October 26, 2011. A summary of the comments received and our evaluation thereof is discussed in section III below. In the proposed rule, we described our basis for the actions identified above. The reader should refer to the proposed rule, and sections III and IV of this preamble, for additional information regarding this final action.

EPA reviews a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3). We evaluated the submitted Program based upon the regulations and associated record that have been submitted and are currently before EPA. In order for EPA to ensure that Montana has a Program that meets the requirements of the CAA, the State must demonstrate the Program is as stringent as the Act and the implementing regulations discussed in this notice. For example, EPA must have sufficient information to make a finding that the new Program will ensure protection of the NAAQS, and noninterference with the Montana SIP control strategies, as required by section 110(l) of the Act.

The provisions in these submittals were not submitted to meet a mandatory

requirement of the Act. Therefore, the final action to disapprove these submittals does not trigger a sanctions or Federal Implementation Plan clock. *See* CAA section 179(a).

*B. Other Relevant Actions Related to the Montana SIP Revision Submittals*

The Amended Consent Decree in *WildEarth Guardians* v. *EPA,* Case No. 09–cv–02148 (D. Col.), as amended, currently provides that EPA will take final action on the State's SIP revision submittals by October 31, 2011. *See* Stipulation to Extend the Deadline for EPA's Final Action of Item Number 11 on Exhibit A to the Consent Decree, filed with the Court on March 30, 2011 (Doc. 33).

**II. What is the background?**

*A. Brief Discussion of Statutory and Regulatory Requirements*

The CAA (section 110(a)(2)(C)) and 40 CFR 51.160 requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Such minor NSR programs are for pollutants from stationary sources that do not require *Prevention of Significant Deterioration (PSD)* or *nonattainment NSR* permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: ''[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.''

The States' obligation to comply with each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this SIP revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide ($SO_2$), lead, nitrogen oxides ($NO_X$) or any other requirement of the Act. Montana's demonstration of noninterference (see docket), as submitted to EPA on June 25, 2010, and our Technical Support Document (see docket) provide sufficient basis that new section ARM 17.8.745 submitted by Montana on June 25, 2010, will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA. Further details are provided in sections IV and V of this action.

*B. Summary of the Submittals Addressed in This Final Action*

The State's May 28, 2003 submittal included ARM 17.8.743, which was a new rule. ARM 17.8.743(1) describes those sources that are required to obtain a Montana air quality permit. ARM 17.8.743(1) provides that any new or modified facility or emitting unit that has the potential to emit more than 25 tons per year of any airborne pollutant, except lead,[1] must obtain a Montana air quality permit except as provided in ARM 17.8.744 and ARM 17.8.745 before constructing, installing, modifying or operating. ARM 17.8.431(1)(b) also requires asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, to obtain a Montana air quality permit.

This notice contains EPA's final action on Montana rules relating to the permitting threshold for asphalt concrete plants and mineral crushers in ARM 17.8.743(1)(b). In our July 8, 2011 rulemaking, EPA approved of all of new section ARM 17.8.743(1), except for the phrase ''asphalt concrete plants and mineral crushers'' where the *de minimis* permitting threshold for those sources was changed from five tons per year to 15 tons per year. During the State's rulemaking process we expressed concerns with the new permit threshold for asphalt concrete plants and mineral crushers. (See October 9, 2002, letter from EPA to the State of Montana in the docket.) Since for asphalt concrete plants and mineral crushers this revision (ARM 17.8.743(1)(b)) reduces the stringency of the current SIP approved regulations, which has a threshold of five tons, we stated that Montana must provide an analysis showing that this new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or RFP, as defined in Section 171 of the CAA, or any other applicable requirement of the CAA. Montana did not provide any analysis or demonstration that the increased permit threshold, from five tons per year to 15 tons per year, for asphalt concrete plants and mineral crushers meets these criteria. At the request of the State, we took no action on the phrase ''asphalt concrete plants, mineral crushers'' in ARM 17.8.743(1)(b) in 76 FR 40237. EPA is taking final action to disapprove the May 28, 2003, SIP revision request for 17.8.743(1)(b) in this action. If the State submits a new SIP with the appropriate 110(l) analysis, we would evaluate such a new SIP and analysis.

The State's June 25, 2010 submittal included new rule ARM 17.8.745. This revision request for ARM 17.8.745, which supercedes the State's May 28, 2003 submittal for ARM 17.8.745, creates an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than five tons per year, when conditions specified in the rule were met.

During the State's 1996 and 1999 rulemaking process we expressed concerns with the *de minimis* level specified in the earlier versions of the regulation we are proposing action on today (see letters from EPA to the State of Montana dated July 25, 1996, April 1, 1999 and October 9, 2002 in the docket.) ARM 17.8.745 created an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than 15 tons per year, when conditions specified in the rule were met. Since this new rule reduced the stringency of the current SIP approved regulations, EPA indicated that the State must provide an analysis showing that the new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or RFP, as defined in section 171 of the CAA, or any other applicable requirement of the CAA. Montana's May 28, 2003 submittal did not provide any analysis or demonstration that the new rule (ARM 17.8.745) meets these requirements. In EPA's final July 8, 2011 rulemaking (76 FR 40237), which approved revisions to ARM 17.8.7, no action was taken on Montana's *de minimis* provision in ARM 17.8.745.

[1] Facilities or emitting units that emit airborne lead must obtain a Montana air quality permit if they are new and emit greater than five tons per year of airborne lead, or if they are an existing facility or emitting unit and a modification results in an increase of airborne lead by an amount greater than 0.6 tons per year.

Since EPA took no action on ARM 17.8.745 in our 76 FR 40237 notice, we took no action on all references to ARM 17.8.745 in ARM 17.8.7.

## III. Response to Comments

EPA did not receive comments on our September 26, 2011 **Federal Register** proposed action regarding the partial approval and partial disapproval of Montana's SIP revisions to ARM 17.8.745 as submitted by the State of Montana on June 25, 2010, all references to ARM 17.8.745 as submitted by the State of Montana on May 28, 2003 and ARM 17.8.743(1)(B) as submitted by the State of Montana on May 28, 2003.

## IV. What are the grounds for this approval action?

We evaluated ARM 17.8.745 using the following: (1) The statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor New Source Review (NSR) program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved; (2) the regulatory requirements under 40 CFR 51.160, including section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and (3) the statutory requirements under CAA section 110(l), which provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (''noninterference'') with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

EPA retains the discretion to adopt approaches on a case-by-case basis to determine what the appropriate demonstration of noninterference with attainment of the NAAQS, rate of progress, RFP or any other applicable requirement of the CAA should entail. In this instance, EPA asked the State to submit an analysis showing that the approval of new section ARM 17.8.745 would not violate section 110(l) of the CAA (see docket number EPA–R08–OAR–2011–0100); this is also referred to as a ''demonstration of noninterference'' with attainment and maintenance under CAA section 110(l). In addition to the State's demonstration submitted on June 25, 2010, EPA conducted its own analysis utilizing SIP-approved attainment plans, past rulemakings, stipulations, consent decrees, air modeling data and air monitoring data. In EPA's proposed notice (76 FR 59338), we considered the State's demonstration of noninterference, our own analysis, the nature of the permitting requirement, its potential impact on the air quality in the area and the air quality of the area in which the permitting requirements apply. We analyzed this information pollutant by pollutant in order to make a determination that new rule 17.8.745 is consistent with CAA requirements; in particular, it's impact on compliance with NAAQS standards. The scope and rigor of the demonstration of noninterference conducted in this notice is appropriate given the air quality status of the State, and the potential impact of the revision on air quality and the pollutants affected.

The State's technical support document (TSD) (see docket) contains the State's regulatory history of the *de minimis* rule, effects of the *de minimis* rule on attainment and reasonable further progress of the NAAQS and assesses air quality trends, current air quality conditions and future projected air quality conditions. The demonstration analyses the effects of the new rule pollutant by pollutant in past and current nonattainment areas utilizing monitoring data, maintenance plans, modeling data, emission inventories, federal implementation plan requirements and past and future projected permits.

## V. What are the grounds for this disapproval action?

EPA is disapproving the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted by the State of Montana on May 28, 2003. Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to PSD and nonattainment, respectively, address major NSR programs for stationary sources, and the permitting program for ''nonmajor'' (or ''minor'') stationary sources is addressed by section 110(a)(2)(C) of the Act. We generally refer to the latter program as the ''minor NSR'' program. A minor stationary source is a source whose ''potential to emit'' is lower than the major source applicability threshold for a particular pollutant defined in the applicable major NSR program.

Therefore, we evaluated the submitted revisions and new rules using the federal regulations under CAA section 110(a)(2)(C), which require each state to include a minor NSR program in its SIP.

In addition, we reviewed the State's regulations for compliance with the Act. Generally, SIPs must be enforceable (see section 110(a) of the Act) and must not relax existing SIP requirements (see section 110(l) and 193 of the Act).

EPA is disapproving the revision to ARM 17.8.743(1)(b), which contains a modification size cutoff (15 tons per year) that the State proposes as *de minimis* for asphalt concrete plants and mineral crushers. Fifteen tons per year represents the major modification significance level for one criteria pollutant ($PM_{10}$) and exceeds the significance level for another criteria pollutant ($PM_{2.5}$) as well as for several non-criteria pollutants. It also exceeds the major source threshold for hazardous air pollutants (HAPs). Because of these reasons, EPA determines that the revision to ARM 17.8.743(1)(b) is not *de minimis* in the sense of having a trivial environmental effect. EPA has agreed in several rulemaking actions that certain activities with emissions of five tons per year or less may be considered ''insignificant.'' However, EPA never before denoted emissions increases as high as 15 tons per year as *de minimis.* Since the State did not provide an analysis as to why emission increases as high as 15 tons per year should be considered as having a trivial environmental effect, EPA finds no basis for approving this revision. Therefore, EPA lacks sufficient available information to determine that the requested revision to increase the *de minimis* permitting threshold for asphalt concrete plants and mineral crushers from five tons per year to 15 tons per year would not interfere with attainment and RFP of the NAAQS as required by CAA Section 110(l), or any other requirement of the Act.

## VI. Final Action

Based on the above discussion, EPA finds that the addition of new rule ARM 17.8.745 would not interfere with attainment or maintenance of any of the NAAQS in the State of Montana and would not interfere with any other applicable requirement of the Act (see proposed notice for this action and TSD for basis); and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve ARM 17.8.745 as submitted on June 25, 2010 by the State of Montana.

We are approving new section ARM 17.8.745; and thus, we are also approving all references to ARM 17.8.745. This includes: The phrases in 17.8.740(8)(a) and (c), respectively, (1) ''except when a permit is not required under ARM 17.8.745'' and (2) ''except as provided in ARM 17.8.745'' and the phrase ''and 17.8.745'' in 17.8.743(1), submitted on May 28, 2003; and the phrase ''the emission increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit'' in 17.8.764(1)(b) and (4), submitted on May 28, 2003.

Based on the above discussion, EPA is finds no basis to determine that the addition of new rule ARM 17.8.743(1)(b) would not interfere with attainment or maintenance of any of the NAAQS in the State of Montana and would not interfere with any other applicable requirement of the Act; and thus, is not approvable under CAA section 110(l). Therefore, we are taking final action to disapprove the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted on May 28, 2003.

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 28, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(72) to read as follows:

### § 52.1370 Identification of plan.

* * * * *

(c) * * *

(72) On May 28, 2003 the State of Montana submitted revisions to the Administrative Rules of Montana (ARM), 17.8.740, *Definitions;* 17.8.743, *Montana Air Quality Permits—When Required;* and 17.8.764, *Administrative Amendment to Permit.* On June 25, 2010, the State of Montana submitted revisions to the ARM, 17.8.745, *Montana Air Quality Permits—Exclusion for De Minimis Changes.*

(i) Incorporation by reference.

(A) Administrative Rules of Montana, 17.8.740, *Definitions;* 17.8.743, *Montana Air Quality Permits—When Required,* except for the phrase in 17.8.743(1)(b), ''asphalt concrete plants, mineral crushers, and''; and 17.8.764, *Administrative Amendment to Permit,* effective 12/27/2002.

(B) Administrative Rules of Montana, 17.8.745, *Montana Air Quality Permits—Exclusion for De Minimis Changes,* effective 5/28/2010.

[FR Doc. 2012–3245 Filed 2–10–12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2011–0800; FRL–]**

## Revisions to the California State Implementation Plan, California Air Resources Board—Consumer Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 6, 2011 and concern volatile organic compound (VOC) emissions from consumer products. We are approving a State rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on March 14, 2012.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0800 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On October 6, 2011 (76 FR 62004), EPA proposed to approve the following rule into the California SIP.

| Regulation | Regulation title | Amended | Submitted |
|---|---|---|---|
| California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products. | Article 2—Consumer Products | 08/06/10 | 01/28/11 |

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment as follows.

Carla D. Takemoto, California Air Resources Board, letter dated October 7, 2011 clarified that while amendments to CARB Test Method 310 was included in the January 28, 2011 submittal package to EPA, CARB did not intend for Method 310 to be acted on as a SIP revision. The amended test method replaces a previous version of Method 310 that was separately approved from the SIP process by EPA.

EPA agrees with CARB's clarification that the August 6, 2010 version of Method 310 replaces the previously approved Method 310. We also agree that the revised test method can be used to show compliance with California's Consumer Products rule. EPA plans to approve the revised test method in a separate action that does not incorporate it into the SIP.

### III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52 [AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(406) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(406) New and amended regulations were submitted on January 28, 2011, by the Governor's designee.

(i) Incorporation by Reference.

(A) California Air Resources Board.

(*1*) Submittal letter from Robert D. Fletcher (California Air Resources Board) to Jared Blumenfeld (Environmental Protection Agency), stating the submission does not include the second tier emission limits for Multi-purpose Solvent and Paint Thinner, dated January 28, 2011.

(*2*) Executive Order R–10–013, dated August 6, 2010.

(*3*) ''Final Regulation Order, Regulation for Reducing Emissions from Consumer Products,'' California Code of Regulations, Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 8.5 (Consumer Products), Article 2 (Consumer Products), adopted August 6, 2010, effective October 20, 2010.

* * * * *

[FR Doc. 2012–3169 Filed 2–10–12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0761; FRL–9501–6]**

## Revisions to the California State Implementation Plan, Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 6, 2011 and concern volatile organic compound (VOC) emissions from Motor Vehicle and Motor Equipment Coating Operations and Adhesives and Sealants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on March 14, 2012.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0761 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On October 6, 2011 (76 FR 62002), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4612 | Motor Vehicle and Mobile Equipment Coating Operations | 10/21/10 | 4/5/11 |
| SJVUAPCD | 4653 | Adhesives and Sealants | 09/16/10 | 4/5/11 |

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

### III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the

Act, EPA is fully approving these rules into the California SIP.

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 18, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(388)(i)(B)(*2*)and(*3*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(388) * * *

(i) * * *

(B) * * *

(*2*) Rule 4612, ''Motor Vehicle and Mobile Equipment Coating,'' amended on October 21, 2010.

(*3*) Rule 4653, ''Adhesives and Sealants,'' amended on September 16, 2010.

* * * * *

[FR Doc. 2012–3172 Filed 2–10–12; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8217]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program

regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region II** | | | | |
| New York: | | | | |
| Cobleskill, Town of, Schoharie County. | 361573 | February 17, 1976, Emerg; January 19, 1983, Reg; February 16, 2012, Susp. | February 16, 2012 ..... | February 16, 2012. |
| Richmondville, Town of, Schoharie County. | 361197 | September 12, 1975, Emerg; January 1, 1988, Reg; February 16, 2012, Susp. | *.....do ..... | Do. |
| Seward, Town of, Schoharie County. | 361199 | October 3, 1975, Emerg; September 1, 1988, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| **Region IV** | | | | |
| Florida: | | | | |
| Fort Pierce, City of, Saint Lucie County. | 120286 | January 16, 1974, Emerg; December 1, 1977, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Port Saint Lucie, City of, Saint Lucie County. | 120287 | May 7, 1975, Emerg; March 15, 1982, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Saint Lucie County, Unincorporated Areas. | 120285 | May 31, 1974, Emerg; August 17, 1981, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Saint Lucie Village, Town of, Saint Lucie County. | 120288 | September 2, 1975, Emerg; April 1, 1980, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Mississippi: | | | | |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Yazoo City, City of, Yazoo County | 280189 | December 11, 1973, Emerg; April 15, 1980, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| **Region V** | | | | |
| Illinois: | | | | |
| Carmi, City of, White County ..... | 170681 | May 2, 1975, Emerg; January 2, 1981, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Crossville, Village of, White County. | 170682 | May 23, 1975, Emerg; December 18, 1984, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Grayville, City of, White County ... | 170683 | June 17, 1975, Emerg; August 24, 1984, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Maunie, Village of, White County | 170684 | February 11, 1998, Emerg; N/A, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| White County, Unincorporated Areas. | 170906 | March 26, 1980, Emerg; April 3, 1985, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Minnesota: | | | | |
| Avon, City of, Stearns County ..... | 270443 | November 26, 1976, Emerg; January 3, 1985, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Clearwater, City of, Stearns County. | 270536 | July 30, 1975, Emerg; November 1, 1979, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Cold Spring, City of, Stearns County. | 270444 | January 19, 1973, Emerg; August 1, 1977, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Melrose, City of, Stearns County | 270450 | March 11, 1974, Emerg; May 19, 1981, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Paynesville, City of, Stearns County. | 270452 | June 3, 1974, Emerg; August 16, 1994, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Rockville, City of, Stearns County | 270454 | April 8, 1975, Emerg; July 16, 1979, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Sauk Centre, City of, Stearns County. | 270459 | April 16, 1974, Emerg; May 19, 1981, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Saint Cloud, City of, Stearns County. | 270456 | March 31, 1972, Emerg; April 1, 1977, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Stearns County, Unincorporated Areas. | 270546 | March 23, 1973, Emerg; March 1, 1979, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Waite Park, City of, Stearns County. | 270461 | June 13, 1975, Emerg; May 17, 1989, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| **Region VI** | | | | |
| Oklahoma: | | | | |
| Nowata County, Unincorporated Areas. | 400504 | September 8, 2008, Emerg; N/A, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| Nowata, City of, Nowata County .. | 400136 | August 28, 1975, Emerg; January 3, 1986, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| South Coffeyville, Town of, Nowata County. | 400411 | May 9, 1978, Emerg; September 14, 1982, Reg; February 16, 2012, Susp. | .....do ..... | Do. |
| **Region VII** | | | | |
| Missouri: Alexandria, City of, Clark County. | 290080 | March 13, 1974, Emerg; May 2, 1977, Reg; February 16, 2012, Susp. | .....do ..... | Do. |

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: January 31, 2012.

**Edward L. Connor,**

*Deputy Associate Administrator for Federal Insurance.*

[FR Doc. 2012–3209 Filed 2–10–12; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2011–0002]**

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| **Sebastian County, Arkansas, and Incorporated Areas Docket No. FEMA–B–1171** | | | |
| Massard Creek | Approximately 155 feet upstream of Rogers Avenue | +406 | City of Fort Smith, Unincorporated Areas of Sebastian County. |
| | Approximately 720 feet upstream of State Highway 255 (Zero Street). | +420 | |
| Mill Creek | Approximately 200 feet downstream of South 28th Street | +477 | City of Fort Smith. |
| | Approximately 1.05 miles upstream of Jenny Lind Road | +521 | |
| No Name Creek | Approximately 0.33 mile upstream of the Sunnymede Creek confluence. | +409 | City of Fort Smith. |
| | Approximately 185 feet downstream of the No Name Creek Tributary confluence. | +456 | |
| No Name Creek Tributary | At the No Name Creek confluence | +456 | City of Fort Smith. |
| | Approximately 970 feet upstream of South 46th Street | +518 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| Spivey Creek. | At the Massard Creek confluence | +411 | City of Fort Smith, Unincorporated Areas of Sebastian County. |
| | Approximately 0.44 mile upstream of Industrial Drive | +477 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Fort Smith**
Maps are available for inspection at the Engineering Department, 623 Garrison Avenue, Suite 409, Fort Smith, AR 72901.

**Unincorporated Areas of Sebastian County**
Maps are available for inspection at the Sebastian County Courthouse, 35 South 6th Street, Fort Smith, AR 72901.

**Sharkey County, Mississippi, and Incorporated Areas Docket No. FEMA–B–1159**

| | | | |
|---|---|---|---|
| Deer Creek | Approximately 9.8 miles upstream of the confluence with Rolling Fork Creek. | +103 | Town of Anguilla, Unincorporated Areas of Sharkey County. |
| | Approximately 10.8 miles upstream of the confluence with Rolling Fork Creek. | +103 | |
| Steele Bayou | An area bounded by the county boundary to the north, west, south, and east; approximately 3 miles south of the northern county boundary. | +100 | City of Rolling Fork, Town of Anguilla, Town of Cary, Unincorporated Areas of Sharkey County. |
| Yazoo River | At the county boundary | +105 | Unincorporated Areas of Sharkey County. |
| | Approximately 300 feet upstream of the county boundary | +105 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Rolling Fork**
Maps are available for inspection at 130 Walnut Street, Rolling Fork, MS 39159.

**Town of Anguilla**
Maps are available for inspection at 22 Rolling Fork Road, Anguilla, MS 38924.

**Town of Cary**
Maps are available for inspection at 30 Oak Circle, Cary, MS 39054.

**Unincorporated Areas of Sharkey County**
Maps are available for inspection at 120 Locust Street, Rolling Fork, MS 39159.

**Lewis County, Missouri, and Incorporated Areas Docket No. FEMA–B–1170**

| | | | |
|---|---|---|---|
| Artesian Branch (backwater effects from Mississippi River). | From approximately 1,000 feet downstream of the Artesian Branch Tributary 1 confluence to approximately 270 feet downstream of U.S. Route 61. | +493 | Unincorporated Areas of Lewis County. |
| Artesian Branch Tributary 1 (backwater effects from Mississippi River). | From the Artesian Branch confluence to approximately 240 feet downstream of U.S. Route 61. | +493 | Unincorporated Areas of Lewis County. |
| Doe Run (overflow effects from Mississippi River). | Approximately 475 feet downstream of the Doe Run Tributary 4 confluence. | +494 | Unincorporated Areas of Lewis County. |
| | Approximately 1.0 mile upstream of County Road 494 | +495 | |
| Doe Run Tributary 4 (backwater effects from Mississippi River). | From the Doe Run confluence to approximately 360 feet downstream of U.S. Route 61. | +494 | Unincorporated Areas of Lewis County. |
| Durgens Creek (backwater effects from Mississippi River). | From the Mississippi River confluence to approximately 0.4 mile downstream of U.S. Route 61. | +488 | Unincorporated Areas of Lewis County. |
| Mississippi River | Approximately 3.0 miles downstream of the Durgens Creek confluence. | +487 | City of Canton, City of La Grange, Unincorporated Areas of Lewis County. |
| | At the Clark County boundary | +495 | |
| Oyster Branch (backwater effects from Mississippi River). | From the Mississippi River confluence to approximately 630 feet downstream of U.S. Route 61 Business. | +489 | Unincorporated Areas of Lewis County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| Wyaconda River (backwater effects from Mississippi River). | From the Mississippi River confluence to approximately 410 feet upstream of U.S. Route 61 Business. | +489 | City of La Grange, Unincorporated Areas of Lewis County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Canton**
Maps are available for inspection at City Hall, 106 North 5th Street, Canton, MO 63435.

**City of La Grange**
Maps are available for inspection at City Hall, 118 South Main Street, La Grange, MO 63448.

**Unincorporated Areas of Lewis County**
Maps are available for inspection at the Lewis County Courthouse, 100 East Lafayette Street, Monticello, MO 63457.

**Bedford County, Pennsylvania (All Jurisdictions) Docket No. FEMA–B–1158**

| | | | |
|---|---|---|---|
| Georges Creek | Approximately 1,932 feet downstream of Simple Road | +1278 | Township of West St. Clair. |
| | Approximately 1,562 feet downstream of Simple Road | +1284 | |
| Little Wills Creek | Approximately 1.0 mile upstream of the confluence with Wolf Camp Run. | +1200 | Township of Harrison. |
| | Approximately 1.32 miles upstream of the confluence with Wolf Camp Run. | +1215 | |
| Little Wills Creek | At the confluence with Wills Creek | +932 | Township of Londonderry. |
| | Approximately 280 feet upstream of the confluence with Wills Creek. | +935 | |
| Raystown Branch Juniata River | Approximately 380 feet downstream of Ritchie Bridge Road. | +927 | Township of Hopewell. |
| | Approximately 100 feet downstream of Ritchie Bridge Road. | +928 | |
| Raystown Branch Juniata River | Approximately 0.46 mile downstream of Six Mile Run Road. | +858 | Township of Liberty. |
| | Approximately 180 feet downstream of Six Mile Run Road | +860 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Township of Harrison**
Maps are available for inspection at the Harrison Township Municipal Building, 4747 Milligans Cove Road, Manns Choice, PA 15550.

**Township of Hopewell**
Maps are available for inspection at the Township Building, 1402 Norris Street, Hopewell, PA 16650.

**Township of Liberty**
Maps are available for inspection at the Liberty Township Building, 504 17th Street, Saxton, PA 16678.

**Township of Londonderry**
Maps are available for inspection at the Londonderry Township Building, 4303 Hyndman Road, Hyndman, PA 15545.

**Township of West St. Clair**
Maps are available for inspection at the West St. Clair Township Office, Chestnut Ridge Ambulance Building, 4037 Quaker Valley Road, Alum Bank, PA 15521.

**Blair County, Pennsylvania (All Jurisdictions) Docket No. FEMA–B–1174**

| | | | |
|---|---|---|---|
| Bells Gap Run | At the downstream side of Becker Road | +1044 | Borough of Bellwood. |
| | At the upstream side of Becker Road | +1067 | |
| Blair Gap Run | Approximately 0.59 mile upstream of Mill Road | +1136 | Township of Allegheny. |
| | Approximately 0.69 mile upstream of Mill Road | +1141 | |
| Blair Gap Run | Approximately 975 feet upstream of the railroad | +1019 | Township of Allegheny. |
| | Approximately 890 feet downstream of 2nd Avenue | +1022 | |
| Brush Run | At the upstream side of 17th Street | +1096 | Township of Logan. |
| | Approximately 149 feet upstream of 17th Street | +1098 | |
| Burgoon Run | Approximately 405 feet upstream of Oak Avenue | +1132 | Township of Logan. |
| | Approximately 585 feet upstream of Oak Avenue | +1135 | |
| Cabbage Creek | Approximately 745 feet upstream of Main Street | +1222 | Township of Taylor. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| | Approximately 975 feet upstream of Main Street | +1223 | |
| Clover Creek | Approximately 130 feet upstream of Private Drive | +1072 | Township of Huston, Township of Woodbury. |
| | Approximately 700 feet upstream of Private Drive | +1074 | |
| Frankstown Branch Juniata River. | Approximately 1,855 feet downstream of State Route 36 (Woodbury Pike). | +995 | Township of Freedom. |
| | Approximately 1,050 feet downstream of State Route 36 (Woodbury Pike). | +998 | |
| Halter Creek | Approximately 709 feet downstream of Mountain Street | +1144 | Borough of Roaring Spring. |
| | Approximately 479 feet downstream of Mountain Street | +1146 | |
| Laurel Run | Approximately 1,025 feet upstream of Clite's Road | +1016 | Township of Snyder. |
| | Approximately 1,045 feet upstream of Clite's Road | +1017 | |
| Little Juniata River | Approximately 1,415 feet downstream of the Homer Gap Run confluence. | +1081 | Township of Logan. |
| | Approximately 1,205 feet downstream of the Homer Gap Run confluence. | +1081 | |
| Mill Run | At the downstream side of 58th Street | +1052 | City of Altoona. |
| Poplar Run | Approximately 550 feet upstream of Poplar Run Road | +1234 | Township of Freedom. |
| | Approximately 780 feet upstream of Poplar Run Road | +1239 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Borough of Bellwood**
Maps are available for inspection at the Borough Hall, 400 North 1st Street, Bellwood, PA 16617.

**Borough of Roaring Spring**
Maps are available for inspection at the Borough Building, 616 Spang Street, Roaring Spring, PA 16673.

**City of Altoona**
Maps are available for inspection at City Hall, 1301 12th Street, Suite 300, Altoona, PA 16601.

**Township of Allegheny**
Maps are available for inspection at the Allegheny Township Building, 3131 Colonial Drive, Duncansville, PA 16635.

**Township of Freedom**
Maps are available for inspection at the Freedom Township Building, 131 Municipal Street, East Freedom, PA 16637.

**Township of Huston**
Maps are available for inspection at the Huston Township Office, 1538 Sportsman Road, Martinsburg, PA 16662.

**Township of Logan**
Maps are available for inspection at the Logan Township Building, 100 Chief Logan Circle, Altoona, PA 16602.

**Township of Snyder**
Maps are available for inspection at the Snyder Township Building, 108 Baughman Hollow Road, Tyrone, PA 16686.

**Township of Taylor**
Maps are available for inspection at the Taylor Township Municipal Building, 1002 Route 36, Roaring Spring, PA 16673.

**Township of Woodbury**
Maps are available for inspection at the Woodbury Township Building, 6385 Clover Creek Road, Williamsburg, PA 16693.

**Roane County, West Virginia, and Incorporated Areas**
**Docket No. FEMA–B–1158**

| | | | |
|---|---|---|---|
| Goff Run | Approximately 0.41 mile upstream of Williams Drive | +734 | Unincorporated Areas of Roane County. |
| | Approximately 0.53 mile upstream of Williams Drive | +739 | |
| Reedy Creek | Approximately 940 feet downstream of Mill Street | +678 | Unincorporated Areas of Roane County. |
| | Approximately 214 feet upstream of Mill Street | +679 | |
| Reedy Creek | Approximately 1,890 feet upstream of Center Street | +678 | Unincorporated Areas of Roane County. |
| | Approximately 0.40 mile upstream of Center Street | +678 | |
| Reedy Creek | Approximately 1,230 feet upstream of Mill Street | +679 | Unincorporated Areas of Roane County. |
| | Approximately 1,810 feet upstream of Mill Street | +679 | |
| Spring Creek | Approximately 1,784 feet downstream of Roane Avenue | +724 | Unincorporated Areas of Roane County. |
| | Approximately 1,519 feet downstream of Roane Avenue | +724 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| Spring Creek | Approximately 355 feet downstream of Spring Creek Dam | +727 | Unincorporated Areas of Roane County. |
| | Approximately 352 feet downstream of Clary Road | +728 | |
| Tanner Run | Approximately 510 feet upstream of Main Street | +726 | Unincorporated Areas of Roane County. |
| | Approximately 0.51 mile upstream of Main Street | +733 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Roane County**

Maps are available for inspection at the Roane County Courthouse, 200 Main Street, Spencer, WV 25276.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 30, 2012.

**Sandra K. Knight,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2012–3202 Filed 2–10–12; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 395

**[Docket No. FMCSA–2004–19608]**

**RIN 2126–AB26**

### Hours of Service of Drivers: Correction

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** FMCSA corrects the hours of service (HOS) final rule published on December 27, 2011 (76 FR 81143). This correction notice corrects the amendatory language or guidance to legal editors of the Code of Federal Regulations (CFR) on the proper codification of the December 27, 2011 rule. This notice does not change, in any manner, the regulatory text.

**DATES:** This final rule is effective February 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4325.

**SUPPLEMENTARY INFORMATION:** The amendatory instruction for paragraph (b) *Driving conditions* in § 395.1 *Scope of the rules in this part* incorrectly referenced revising paragraph (b)(1)'s introductory text. FMCSA intended to completely revise paragraph (b)(1). An unintended edit to the instruction made just before publication caused the instruction to be inaccurate. FMCSA intended for the current paragraph's subparagraphs (b)(1)(i) through (b)(1)(iv) to be removed entirely. See the discussion of the Agency's intentions in the section-by-section analysis on 76 FR 81165 col. 3. This correction notice corrects the instruction for publishers of public and private editions of title 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations (FMCSRs). Correcting the amendatory language provides guidance to legal editors of the FMCSRs on the proper codification of the December 27, 2011 rule. This notice does not change, in any manner, the regulatory text intended.

In FR Doc. 2011–32696, appearing on page 81134 in the **Federal Register** of Tuesday, December 27, 2011, the following correction is made.

**§ 395.1 [Corrected]**

On page 81186, in the third column, in Part 395—Hours of Service of Drivers, in amendment 8a, the instruction, ''8. Amend § 395.1 as follows: a. Revise the paragraph (b) heading and paragraph (b)(1) introductory text;'' is corrected to read, ''8. Amend § 395.1 as follows: a. Revise the paragraph (b) heading and revise paragraph (b)(1);''

Issued on: February 7, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–3305 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 0808041037–1649–02]**

**RIN 0648–AX05**

### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a mistake in the amendatory language in the final rule for Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

**DATES:** Effective March 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Aja Szumylo, Fishery Policy Analyst, 978–281–9195.

**SUPPLEMENTARY INFORMATION:**

### Background

The final rule for Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan was published in the **Federal Register** on November 7, 2011 (76 FR

68642). The final measures in that action included: A tiered limited access program for the Atlantic mackerel fishery; an open access incidental catch permit for mackerel; an update to essential fish habitat designations for all life stages of mackerel, longfin squid, *Illex* squid, and butterfish; and the establishment of a recreational allocation for mackerel. Details regarding the measures in Amendment 11 are in the final rule and are not repeated here.

The final regulations in Amendment 11 revised portions of 50 CFR 648.4; the new regulatory text will be effective on March 1, 2012. The amendatory language for § 648.4 on page 68653 of the final rule has instructions for a revision of paragraph § 648.4 (a)(5)(iii). However, the amendatory language should have also included instructions for a revision of § 648.4 (a)(5)(iv) and the addition of § 648.4 (a)(5)(v). The text for these paragraphs is listed on page 68655 of the final rule. As published, the error in the amendatory language would result in the removal of § 648.4 (a)(5)(iv) and § 648.4 (a)(5)(v) on March 1, 2012. These paragraphs describe the Atlantic mackerel incidental catch permit and the MSB party and charter boat permit. This correction adjusts the amendatory instruction 2 for § 648.4 to allow for the designation of paragraphs (a)(5)(iv) and (v) in time for the March 1, 2012, effective date. This correction does not change the intent or application of the measures described in the proposed and final rule.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment for this action because notice and comment would be unnecessary, impracticable, and contrary to the public interest. Notice and comment are unnecessary, impracticable, and contrary to the public interest because this action simply makes the text of the codified regulations consistent with the text in the final rule, and makes corrections to accurately reflect the intent of the final rule. This correction eliminates inconsistencies between the regulatory text contained in the final rule and the codified regulations, and therefore eliminates any confusion that the inconsistency might create for the public. No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in the final rule.

For the same reasons, pursuant to 5 U.S.C. 553(d), the AA finds good cause to waive the 30-day delay in effective date. If this rule is not implemented by March 1, 2012, two paragraphs of regulations regarding permit requirements would be removed, which could cause confusion and would be inconsistent with the final rule.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

## Correction

In the **Federal Register** of November 7, 2011, in FR Doc. 2011–28772, on page 68653, in the second column, amendatory instruction 2 is corrected to read as follows:

### § 648.4 [Corrected]

''2. In § 648.4, paragraphs (a)(5)(iii) and (a)(5)(iv) are revised, and paragraphs (a)(5)(v), and (c)(2)(vii) are added to read as follows:''

Dated: February 8, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2012–3304 Filed 2–10–12; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 77, No. 29
Monday, February 13, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Rural Utilities Service

### 7 CFR Part 4279

**RIN 0570–AA87**

## Definitions and Abbreviations

**AGENCY:** Rural Business-Cooperative Service, Rural Utilities Service, USDA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Rural Business-Cooperative Service is amending its regulations for the Business and Industry Guaranteed Loan Program to clarify that the Agency guarantee does not cover default and penalty interest or late charges. The Agency's regulations are currently silent on this issue. However, it has always been the Agency's policy not to pay out additional cost for default interest, penalty interest, and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. The Agency does permit the lender to charge default interest with prior Agency approval. By defining ''interest'' in the definition section of the regulation and clarifying the Agency's policy as it relates to default interest, penalty interest, and late charge, this will avert any misunderstandings.

**DATES:** Comments on this proposed rule must be received on or before March 14, 2012.

**ADDRESSES:** You may submit comments to this proposed rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lewis, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3221, Washington, DC 20250–3221; email: *david.lewis@wdc.usda.gov;* telephone (202) 690–0797.

**SUPPLEMENTARY INFORMATION:**

### Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

### Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the Business and Industry Guaranteed Loan Program is 10.768. The Catalog of Federal Domestic Assistance Program number assigned to the Biorefinery Assistance is 10.865. The Catalog of Federal Domestic Assistance Program number assigned to the Rural Energy for America Program is 10.868.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

### Executive Order 12372, Intergovernmental Consultation

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

### Executive Order 12988, Civil Justice

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

### Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

### Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies

that have tribal implications or preempt tribal laws. Rural Development has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at *AIAN@wdc.usda.gov*.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the information collection activities associated with this rule are covered under the Business and Industry Guaranteed Loan Program, OMB Number: 0570–0017.

This rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**E-Government Act Compliance**

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and other purposes.

**I. Background**

The Agency reviewed 7 CFR 4279.2 which is composed of two paragraphs, the first of which is pertinent. Section 4279.2(a) discusses the definitions, which has thirty seven terms use in the Guaranteed Loanmaking. The definitions and abbreviations contained in § 4279.2 also apply to the Business and Industry Guaranteed Loan Servicing regulations and, unless otherwise noted, the Biorefinery Assistance Loan Program and the Rural Energy for America Program. Currently, the Agency regulations do not define ''interest'', ''default interest'', ''penalty interest'' or ''late charges''. However, it is the Agency's policy not to pay out additional cost for default interest, penalty interest and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. However, the lender's Promissory Note may contain provisions for default, penalty interest, or late charges with prior Agency approval. These charges must be customary and reasonable. Accordingly, the Agency is making the proposed changes in this rule.

**II. Discussion of Change**

The Agency is revising § 4279.2(a), to address the situation discussed in the ''Background'' section. Specifically, the Agency is adding a paragraph in § 4287.2(a), after the term ''Holder'' and before the term Interim Financing, which will define ''Interest.'' The change being made by this rule is to clarify that ''interest'' does not include default or penalty interest, or late fees. The lender may charge the borrower these fees with prior Agency approval.

**List of Subjects in 7 CFR Part 4279**

Business and industry, Loan programs, Rural development assistance.

For the reasons set forth in the preamble, chapter XLII, title 7, of the Code of Federal Regulations is proposed to be amended as follows:

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

## PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

### Subpart A—General

2. Paragraph (a) of § 4279.2 is amended by adding a new definition of *Interest,* to read as follows:

**§ 4279.2 Definitions and abbreviations.**

* * * * *

*Interest.* A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. ''Interest'' does not include default or penalty interest or late fees or charges. The lender may charge these fees and interest with prior Agency approval, but they are not covered by the Loan Note Guarantee.

* * * * *

Dated: February 2, 2012.

**Dallas Tonsager,**

*Under Secretary, Rural Development.*

[FR Doc. 2012–3242 Filed 2–10–12; 8:45 am]

BILLING CODE 3410–XY–P

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[Docket No. EERE–2011–BT–STD–0043]**

**RIN 1904–AC51**

## Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products: Public Meeting and Availability of the Framework Document

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of the framework document.

**SUMMARY:** The U.S. Department of Energy (DOE) is considering establishing energy conservation standards for residential wine chillers and other residential refrigeration products. DOE will hold an informal public meeting to discuss and receive comments on its planned analytical approach and issues that it will address in this proceeding. DOE welcomes written comments and relevant data from the public on any subject within the scope of this notice. To inform stakeholders and facilitate this process, DOE has prepared a framework document that details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comments. The framework document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/refrigerators_freezers.html.*

**DATES:** DOE will hold a public meeting on February 22, 2012, from 9 a.m. to 5 p.m. in Washington, DC. Additionally, DOE plans to conduct the public meeting via webinar. To participate via webinar, participants must notify DOE no later than Wednesday, February 15, 2012. Registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site *https://www1.gotomeeting.com/register/270198257*. Participants are responsible for ensuring that their systems are compatible with the webinar software. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statements to be given at the public meeting before 4 p.m., Wednesday, February 15, 2012. Written comments are welcome, especially following the public meeting, and should be submitted by March 14, 2012.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Any comments submitted must identify the framework document for Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, and provide docket number EERE–2011–BT–STD–0043 and/or Regulation Identifier Number (RIN) 1904–AC51. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Email: WineChillers-2011-STD-0043@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Wine Chillers and Miscellaneous Refrigeration Products, EERE–2011–BT–STD–0043 and/or RIN 1904–AC51, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed original paper copy. No telefacsimilies (faxes) will be accepted.

*Docket:* The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, the framework document, comments, and other supporting documents and materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at *www.regulations.gov.* The *www.regulations.gov* Web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, please contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov* or Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–9507. Email: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Title III, Part B[1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 291–6309, as codified), established an energy conservation program for major household appliances, which includes residential refrigeration products. This program authorizes DOE to establish technologically feasible, economically justified energy efficiency regulations for certain consumer products that would be likely to result in substantial national energy savings, and for which both natural market forces and voluntary labeling programs have been and/or are expected to be ineffective in promoting energy efficiency. (42 U.S.C. 6295(l)(1))

The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA and established energy conservation standards for refrigerators, refrigerator-freezers, and freezers (residential refrigeration products), as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(b)) On November 17, 1989, DOE published a final rule in the **Federal Register** updating the energy conservation standards. The new standards became effective on January 1, 1993. 54 FR 47916. Subsequently, DOE determined that new standards for some of the product classes were based on incomplete data and incorrect analysis. As a result, DOE published a correction that amended the new standards for the following three product classes: (1) Refrigerators and refrigerator-freezers with manual defrost, (2) refrigerator-freezers with automatic defrost with a bottom-mounted freezer but without through-the-door (TTD) ice service, and (3) chest freezers and all other freezers. 55 FR 42845. DOE updated the performance standards once again for residential refrigeration products by publishing a final rule in the **Federal Register** on April 28, 1997. 62 FR 23102. The new standards became effective on July 1, 2001. By completing a second standards rulemaking, DOE had fulfilled its legislative requirement to conduct two cycles of standards rulemakings.

After the completion of these two rulemaking cycles, stakeholders submitted a petition in 2004 requesting that DOE conduct another rulemaking to amend the standards for residential refrigerator-freezers. In April 2005, DOE granted the petition and conducted a limited set of analyses to assess the potential energy savings and potential economic benefit of new standards. DOE issued a report in October 2005 detailing the analyses, which examined the technological and economic feasibility of new standards set at ENERGY STAR levels effective in 2005 for the two most popular product classes of refrigerators: top-mount refrigerator-freezers without TTD features and side-mount refrigerator-freezers with TTD features.[2] DOE confined its updated analysis to these two classes because they accounted for a majority of current product shipments. Depending on assumptions regarding the impact that standards would have on market efficiency, DOE estimated that amended standards at the 2005 ENERGY STAR levels would yield savings between 2.4 to 3.4 quadrillion British thermal units (Btu), with an associated economic impact to the Nation ranging from a burden or cost of $1.2 billion to a benefit or savings of $3.3 billion.

In October 2005, DOE published draft data sheets containing the projected energy savings potential for refrigerator-freezers as part of its fiscal year 2006 schedule-setting process. The data sheets were based on the October 2005 draft technical report analyzing potential new amended energy conservation standards for residential refrigerator-freezers described above. The analysis was not extended to all refrigerator, refrigerator-freezer, and freezer product classes because of the large proportion of the market represented by the two product classes analyzed in detail (i.e. refrigerator-

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] U.S Department of Energy, ''Analysis of Amended Energy Conservation Standards for Residential Refrigerator-Freezers'', October 2005, *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refrigerator_report_1.pdf.*

freezer—automatic defrost with top-mounted freezer without through-the-door ice service (product class 3) and refrigerator-freezer—automatic defrost with side-mounted freezer with through-the-door ice service (product class 7)) and because DOE expected that results for these product classes would be representative for all of the product classes. DOE had this expectation because these two product classes represent a large majority of refrigerator-freezers, which in turn represent the majority of energy use of refrigeration products. (See pages 5–9 and 2–1 of the 2005 report). The technical report and the associated data sheets helped direct the priorities for DOE's rulemaking activities. As a result, other products were given a higher priority, and limited rulemaking work on refrigerators and freezers was carried out in the following years prior to the enactment of the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007) (EISA).

EISA required DOE to publish a final rule to determine whether to amend the standards in effect for residential refrigeration products manufactured starting in 2014. Consistent with this requirement, DOE issued a notice of proposed rulemaking on September 27, 2010. 75 FR 59470. Subsequently, on September 15, 2011, DOE issued a final rule that established energy conservation standards for over 40 classes of residential refrigeration products. *See* 76 FR 57516 and 76 FR 70865 (November 16, 2011) (date correction notice). The standards adopted in that final rule were largely based on a consensus agreement that a coalition of energy efficiency advocates and industry representatives submitted to DOE in July 2010, *see* DOE Docket No. EERE–2008–BT–STD–0012, Comment 49,[3] and provided manufacturers with the requisite three-year lead time contemplated by EPCA. *See* 42 U.S.C. 6295(m).

In the preamble to the final rule, DOE discussed the issue of wine chiller coverage. See, e.g. 76 FR at 57534. The test procedure final rule and interim final rule distinguished between those products designed to safely store fresh food and those that were not. See 75 FR 78810, 78817 (Dec. 16, 2010). Wine chillers are not treated as refrigerators because they are not designed to be capable of achieving compartment temperatures below the 39 °F limit specified in the definition for ''electric refrigerator.'' *See* 10 CFR 430.2. DOE indicated that it would consider the coverage of wine chillers as part of a separate future rulemaking. Today's notice begins that process of examining the coverage of those residential refrigeration products, including wine chillers, that are not yet addressed by any Federal energy conservation standards. Under EPCA, refrigerators, refrigerator-freezers, and freezers are limited to those products that can be operated by alternating current electricity, but excluding (A) any type designed to be used without doors; and (B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly. *See* 42 U.S.C. 6292(a)(1).

The framework document explains the issues, analyses, and process that DOE is considering for the development of energy efficiency standards for wine chillers and miscellaneous refrigeration products. An accompanying public meeting will be held that will focus on the analyses and issues contained in various sections of the framework document. DOE plans to present and solicit discussion regarding these issues. DOE will also make a brief presentation on the process that it plans to follow when evaluating potential standards for these products.

DOE encourages anyone who wishes to participate in the public meeting to obtain and review the framework document and to be prepared to discuss its contents. A copy of the draft framework document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/refrigerators_freezers.html.*

However, public meeting participants need not limit their comments to the topics identified in the framework document. DOE is also interested in receiving views on other relevant issues that participants believe would affect energy conservation standards for these products. DOE invites all interested parties, whether or not they participate in the public meeting, to submit in writing by March 14, 2012, comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for wine chillers and miscellaneous refrigeration products.

DOE will conduct the public meeting in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the minutes of the meeting, after which a transcript will be available for purchase from the court reporter and placed on the DOE Web site at *www1.eere.energy.gov/buildings/appliance_standards/residential/refrigerators_freezers.htm.*

After the public meeting and the close of the comment period for the framework document, DOE will begin collecting data, conducting the analyses as discussed at the public meeting, and reviewing public comments.

Anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about wine chillers and miscellaneous refrigeration products should contact Ms. Brenda Edwards at (202) 586–2945.

Issued in Washington, DC, on February 6, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012–3261 Filed 2–10–12; 8:45 am]

BILLING CODE 6450–01–P

[3] **Note:** In the regulations.gov Web site, this is listed as comment 52, although it was originally comment 49, and its header identifies it as comment 49.

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**[Docket No. SSA–2010–0078]**

**RIN 0960–AH28**

## Revised Medical Criteria for Evaluating Visual Disorders

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise and reorganize the criteria in the Listing of Impairments (listings) that we use to evaluate cases involving visual disorders in adults and children under titles II and XVI of the Social Security Act (Act). The proposed revisions reflect our program experience and address adjudicator questions we have received since we last revised these criteria in 2006. These proposed revisions reflect guidance we have issued in response to adjudicator questions and will ensure more timely adjudication of claims in which we evaluate visual impairments that involve a loss of visual acuity or loss of visual fields.

**DATES:** To ensure that your comments are considered, we must receive them by no later than April 13, 2012.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0078 so that we may

associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2010–0078. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

## Why are we proposing to revise the listings for evaluating visual disorders?

We last published final rules revising the criteria that we use to evaluate visual disorders in the **Federal Register** on November 20, 2006.[1] Although these listings do not expire until February 20, 2015, we are proposing to revise them now to reflect our program experience and to address adjudicator questions that we have received since 2006. We intend to publish revisions that would update the criteria for evaluating hearing disorders and speech and language disorders separately.

## What changes are we proposing to the introductory text of the adult listings for evaluating visual disorders?

Most of the proposed introductory text is substantively the same as the current introductory text. We propose to clarify, simplify, and reorganize the introductory text. We also propose to expand some sections to clarify the existing guidance and to include additional acceptable testing for evaluating a person's visual field loss. In the following paragraphs, we describe the significant changes we propose to make to the introductory text of the adult listings for evaluating visual disorders in part A of appendix 1 to subpart P of part 404, using the titles of the proposed sections.

*Section 2.00A2, How do we define statutory blindness?*

In proposed 2.00A2a, we would add the word ''central'' before ''visual acuity'' to correct the definition of statutory blindness in current 2.00A2. We would also add a reference to proposed 2.00A5, which explains visual acuity testing requirements. In proposed 2.00A2b, we would add a reference to proposed 2.00A6, which explains our visual field testing requirements. In proposed 2.00A2c, we would add proposed listings 2.04A and 2.04B to our guidance in current 2.00A2, which explains that if your visual disorder medically equals the criteria of 2.02 or 2.03A, or meets or medically equals 2.03B, 2.03C, or 2.04, we will find that you have a disability if your visual disorder also meets the duration requirement.

*Section 2.00A4, What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?*

In proposed 2.00A4, we would remove current 2.00A4b, which describes cortical visual disorders, because it does not provide useful guidance to adjudicators on how to evaluate vision loss due to cortical visual disorders. While we added current 2.00A4b when we last published final rules making comprehensive revisions to section 2.00 on November 20, 2006,[2] it is not our intention to list in these rules every visual disorder that may result in vision loss. We propose to include cortical visual disorders as an example of a disorder that may result in abnormalities that do not appear on a standard eye examination. We also intend to provide guidance for evaluating a person's vision loss due to cortical visual disorders and any other disorders that may result in vision loss or a loss in visual functioning (for example, blepharospasm) in our internal operating instructions and training.

*Section 2.00A5, How do we measure your best-corrected central visual acuity?*

We propose to make the following changes to current 2.00A5:

- Provide guidance in proposed 2.00A5a(ii) that explains how we use visual acuity measurements not recorded in Snellen notation, such as counts fingers (CF) or no light perception (NLP), to evaluate your vision loss. This guidance is in response to questions from our adjudicators.
- Add the guidance in current 2.00A8a, which explains how we use test charts that measure visual acuity between 20/100 and 20/200, to proposed 2.00A5b.
- Provide guidance in proposed 2.00A5d, which we currently provide in our internal operating instructions, that explains how we use the results of cycloplegic refraction.

*Section 2.00A6, How do we measure your visual fields?*

We propose to make the following changes to current 2.00A6:

- Combine the guidance in current 2.00A6a(i) and 2.00A6a(ii) in proposed 2.00A6a, with one exception. As we explain below, we would move the guidance that explains our requirements for acceptable perimeters in current 2.00A6a(ii) to proposed section 2.00A8.
- Move the guidance on visual field testing requirements in current 2.00A6a(iii), (vi), and (vii), to proposed 2.00A6b(i), (ii), and (iii), respectively.
- Revise our guidance on automated static threshold perimeters to remove specific references to perimeter manufacturers. In the preamble to our final rules published in the **Federal Register** on November 20, 2006, we explained that while the National Research Council (NRC) 2002 report, *Visual Impairments: Determining Eligibility for Social Security Benefits,* cited both the Humphrey Field Analyzer and the Octopus perimeter as acceptable perimeters, we were not including the Octopus perimeter as an example of an acceptable perimeter. We decided not to include the Octopus perimeter at that time because we did not intend to list every acceptable perimeter in our rules. However, since the publication of those rules, we have received numerous questions from adjudicators on the acceptability of the tests performed on Octopus and other perimeters. We have determined that other tests (including the Octopus 32) and perimeters

[1] 71 FR 67037.

[2] 71 FR 67040, 67045, 67046, and 67049.

(including the Octopus 300 Series), meet our requirements for acceptable testing and acceptable perimeters.

• Move the guidance in current 2.00A6a(iv), which explains how we evaluate vision loss under 2.03A, to proposed 2.00A6c, and add the Octopus 32 test as an acceptable test.

• Move the guidance in current 2.00A6a(v), which explains how we evaluate vision loss under 2.03B, to proposed 2.00A6d. We would add the definition of the term mean deviation (or defect), abbreviated as MD, which we use in current and proposed 2.03B but do not define. We would explain that Humphrey Field Analyzer (HFA) tests report the MD as a negative number and, therefore, we use the absolute value of the MD when determining whether the person's visual field loss meets the listing.

• Move the guidance in current 2.00A6a(viii), which explains when we can use visual field measurements obtained using kinetic perimetry to evaluate vision loss, to proposed 2.00A6e.

• Move the guidance on visual field screening tests in current 2.00A6a(ix) to proposed 2.00A6f.

• Move the guidance on the use of corrective lenses in visual field testing in current 2.00A6b to proposed 2.00A6g.

• Move the guidance on scotomas in current 2.00A8c to proposed 2.00A6h.

*2.00A7, How do we determine your visual acuity efficiency, visual field efficiency, and visual efficiency?*

We propose to make the following changes to current 2.00A7:

• Introduce ''value'' as a term to express visual efficiency, in addition to the term ''percentage,'' in proposed 2.00A7a, which we explain in the paragraphs below.

• Add current Table 1 (*Percentage of Visual Acuity Efficiency Corresponding to Best-Corrected Visual Acuity*), which is located at the end of the current special senses and speech listings, to proposed 2.00A7b because it is more useful to our adjudicators to place this table in the introductory text immediately after the explanation of visual acuity efficiency. Our current rules describe overall visual efficiency as a percentage and we provide the equivalent visual acuity efficiency percentages corresponding to Snellen best-corrected central visual acuities for distance in Table 1. In the proposed table, we would include a column for visual acuity efficiency values that correspond to Snellen best-corrected central visual acuities for distance.

• Expand current 2.00A7b and redesignate as proposed 2.00A7c. A person's visual field efficiency can be expressed as a percentage (using the visual field determined by kinetic perimetry) or as a value (using the MD determined by automated static threshold perimetry). We would explain that a visual field efficiency percentage of 20 is comparable to an MD of 22, which we currently explain in training.

• Add guidance in proposed 2.00A7c(i) on how to calculate visual field efficiency value using the MD determined by automated static threshold perimetry, which we currently provide in our internal operating instructions.

• Redesignate current 2.00A7b as proposed 2.00A7c(ii).

• Add current Table 2 (*Chart of Visual Fields*), which is located at the end of the current special senses and speech listings, to proposed 2.00A7c(ii), and redesignate it as Figure 1, because it is more useful to our adjudicators to place this figure in the introductory text immediately after the explanation of visual field efficiency. We would also add, and make minor changes to, the example for calculating visual field efficiency percentage under the current table to proposed 2.00A7c(ii)*A* and *B.*

• Expand current 2.00A7c and redesignate as proposed 2.00A7d. We would add an example for calculating visual efficiency value in proposed 2.00A7d(i). In proposed 2.00A7d(ii), we would revise the example for calculating visual efficiency percentage, which is in current 2.00A7c, to simply state more clearly how we convert a decimal value to a percentage.

*Section 2.00A8, What are our requirements for an acceptable perimeter?*

We propose to move the guidance on acceptable perimeters in current 2.00A6a(ii)*A–F* to proposed section 2.00A8 because perimeter manufacturers must provide us with the evidence that their automated static threshold perimeter(s) meet these requirements before we can use any results of visual field testing performed on their perimeters to evaluate visual field loss. Although we are not proposing to change these requirements, we believe placing them at the end of the introductory text will allow adjudicators to more quickly access the guidance on visual field testing requirements that are applicable to testing performed on all acceptable perimeters. We would also remove the reference to the HFA because acceptable perimeters may change over time and we do not want to appear to be giving preference in our rules to one manufacturer over another.

**Other Changes**

We propose to remove 2.00A8b, which describes blepharospasm, because it does not provide useful guidance to adjudicators on how to evaluate vision loss due to blepharospasm and has led to repeated questions from our adjudicators. As we explained earlier with cortical visual disorders, we intend to provide guidance for evaluating a person's vision loss due to blepharospasm and any other visual disorders that may result in vision loss or a loss in visual functioning in our internal operating instructions and training.

**What changes are we proposing to the listings for evaluating visual disorders in adults?**

In the following paragraphs, we describe the substantive changes to the adult listings for evaluating visual disorders in part A of appendix 1 to subpart P of part 404. We propose to:

• Add 2.04A to evaluate visual efficiency determined using the MD from acceptable automated static threshold perimetry.

• Redesignate current 2.04, which we use to evaluate visual efficiency determined by kinetic perimetry, as proposed 2.04B.

**What changes are we proposing to the introductory text and listings for evaluating visual disorders in children?**

We propose to clarify, simplify, and reorganize the introductory text in the childhood rules as in the adult rules. Since these are conforming changes, we do not summarize them here. We also propose to move the examples in current 102.00A5b(iii) to proposed 102.02B. We believe it is more helpful to adjudicators to include these examples directly in the listing to which they apply.

**What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?**

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them. Sections 205(a), 702(a)(5), and 1631(d)(1).

**How long would these proposed rules be effective?**

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

**Clarity of These Proposed Rules**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding more tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

**When will we start to use these rules?**

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register.** All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563*

We have consulted with the Office of Management and Budget (OMB) and determined that this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

These proposed rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure; Blind, Disability benefits; Old-age, survivors, and disability insurance; Reporting and recordkeeping requirements; Social Security.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, part 404, subpart P as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

### Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend appendix 1 to subpart P of part 404 by:

a. Revising item 3 of the introductory text before part A;

b. Revising section 2.00A and sections 2.01 through 2.04 in part A; and

c. Revising section 102.00A and sections 102.01 through 102.04 in part B.

The revisions read as follows:

## APPENDIX 1 TO SUBPART P OF PART 404—LISTING OF IMPAIRMENTS

* * * * *

3. Special Senses and Speech (2.00 and 102.00): [Insert date 5 years from the effective date of the final rules].

* * * * *

Part A

* * * * *

2.00 Special Senses and Speech

A. *How do we evaluate visual disorders?*

1. *What are visual disorders?* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, or do fine work. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. *How do we define statutory blindness?* Statutory blindness is blindness as defined in sections 216(i)(1) and 1614(a)(2) of the Social Security Act (Act).

a. The Act defines blindness as central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We use your best-corrected central visual acuity for distance in the better eye when we determine if this definition is met. (For visual acuity testing requirements, see 2.00A5.)

b. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having a central visual acuity of 20/200 or less. (For visual field testing requirements, see 2.00A6.)

c. You have statutory blindness only if your visual disorder meets the criteria of 2.02 or 2.03A. In order to find that you have statutory blindness under the law for a period of disability and for payment of disability insurance benefits, your blindness under 2.02 or 2.03A must also meet the duration requirement (see §§ 404.1509 and 404.1581). You do not have statutory blindness if your visual disorder medically equals the criteria of 2.02 or 2.03A or meets or medically equals the criteria of 2.03B, 2.03C, 2.04A, or 2.04B because your disability is based on criteria other than those in the statutory definition of blindness. If your visual disorder medically equals the criteria of 2.02 or 2.03A or meets or medically equals the criteria of 2.03B, 2.03C, 2.04A, or 2.04B, we will find that you are under a disability if your visual disorder also meets the duration requirement (see §§ 404.1509 and 416.909 of this chapter).

3. *What evidence do we need to establish statutory blindness under title XVI?* To establish that you have statutory blindness under title XVI, we need evidence showing only that your central visual acuity in your better eye or your visual field in your better eye meets the criteria in 2.00A2, provided that those measurements are consistent with the other evidence in your case record. We do not need documentation of the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983 of this chapter).

4. *What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?* To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of your best-corrected central visual acuity (see 2.00A5) or the extent of your visual fields (see 2.00A6), as appropriate. If you have visual acuity or visual field loss, we need documentation of the cause of the loss. A standard eye examination will usually indicate the cause of any visual acuity loss. An eye examination can also indicate the cause of some types of visual field deficits. Some disorders, such as cortical visual disorders, may result in abnormalities that do not appear on a standard eye examination. If the eye examination does not indicate the cause of your vision loss, we will request the information the physician or optometrist used to establish the presence of your visual disorder. If your visual disorder does not satisfy the criteria in 2.02, 2.03, or 2.04, we will request a description of how your visual disorder affects your ability to function.

5. *How do we measure your best-corrected central visual acuity?*

a. *Visual acuity testing.* When we need to measure your best-corrected central visual acuity, which is your optimal visual acuity attainable with the use of a corrective lens, we use visual acuity testing for distance that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

(i) Your best-corrected central visual acuity for distance is usually measured by determining what you can see from 20 feet. If your visual acuity is measured for a distance other than 20 feet, we will convert it to a 20-foot measurement. For example, if your visual acuity is measured at 10 feet and is reported as 10/40, we will convert this measurement to 20/80.

(ii) A visual acuity recorded as CF (counts fingers), HM (hand motion only), LP or LPO (light perception or light perception only), or NLP (no light perception) indicates that no optical correction will improve your visual acuity. If your central visual acuity in an eye is recorded as CF, HM, LP or LPO, or NLP, we will determine that your best-corrected central visual acuity is 20/200 or less in that eye.

(iii) We will not use the results of pinhole testing or automated refraction acuity to determine your best-corrected central visual acuity. These tests provide an estimate of potential visual acuity but not an actual measurement of your best-corrected central visual acuity.

b. *Other test charts.* Most test charts that use Snellen methodology do not have lines that measure visual acuity between 20/100 and 20/200. Some test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS) used mostly in research settings, have such lines. If your visual acuity is measured with one of these charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. For example, if your best-corrected central visual acuity for distance in the better eye is 20/160 using an ETDRS chart, we will find that you have statutory blindness. Regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line. For example, if your best-corrected central visual acuity for distance in the better eye is 20/125+1 using an ETDRS chart, we will find that you do not have statutory blindness because you are able to read one letter on the 20/100 line.

c. *Testing using a specialized lens.* In some instances, you may perform visual acuity testing using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. We will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field.

d. *Cycloplegic refraction.* Cycloplegic refraction, which measures your visual acuity in the absence of accommodation (focusing ability) after the eye has been dilated, is not part of a routine eye examination because it is not needed to determine your best-corrected central visual acuity. If your case record contains the results of cycloplegic refraction, we may use the results to determine your best-corrected central visual acuity. We will not purchase cycloplegic refraction.

e. *Visual evoked response (VER) testing.* VER testing measures your response to visual events and can often detect dysfunction that is undetectable through other types of examinations. If you have an absent response to VER testing in your better eye, we will determine that your best-corrected central visual acuity is 20/200 or less in that eye and that your visual acuity loss satisfies the criterion in 2.02, when these test results are consistent with the other evidence in your case record. If you have a positive response to VER testing in an eye, we will not use that result to determine your best-corrected central visual acuity in that eye.

6. *How do we measure your visual fields?*

a. *General.* We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, or optic neuropathy, or when you display behaviors that suggest a visual field loss. When we need to measure the extent of your visual field loss, we use visual field testing (also referred to as perimetry) carried out using automated static threshold perimetry performed on an acceptable perimeter (for perimeter requirements, see 2.00A8).

b. *Automated static threshold perimetry requirements.*

(i) The test must use a white size III Goldmann stimulus and a 31.5 apostilb (asb) white background (or a 10 candela per square meter (cd/m$^2$) white background). The stimuli test locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

(ii) We measure the extent of your visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. The ''III'' refers to the standard Goldmann test stimulus size III (4 mm$^2$), and the ''4e'' refers to the standard Goldmann intensity filter (0 dB attenuation, which allows presentation of the maximum luminance) used to determine the intensity of the stimulus.

(iii) In automated static threshold perimetry, the intensity of the stimulus varies. The intensity of the stimulus is expressed in decibels (dB). A perimeter's maximum stimulus luminance is usually assigned the value 0 dB. We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points you see at a 4e intensity level (a ''seeing point''). For example:

*A.* When the maximum stimulus luminance (0 dB stimulus) on an acceptable perimeter is 10,000 asb, a 10 dB stimulus is equivalent to a 4e stimulus. Any point you see at 10 dB or greater is a seeing point.

*B.* When the maximum stimulus luminance (0 dB stimulus) on an acceptable perimeter is 4,000 asb, a 6 dB stimulus is equivalent to a 4e stimulus. Any point you see at 6 dB or greater is a seeing point.

c. *Evaluation under 2.03A.* To determine statutory blindness based on visual field loss in your better eye (2.03A), we need the results of a visual field test that measures the central 24 to 30 degrees of your visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey Field Analyzer (HFA) 30–2, HFA 24–2, and Octopus 32.

d. *Evaluation under 2.03B.* To determine whether your visual field loss meets listing 2.03B, we use the mean deviation or defect (MD) from acceptable automated static threshold perimetry that measures the central 30 degrees of the visual field. MD is the average sensitivity deviation from normal values for all measured visual field locations within the central 30 degrees of the field. When using results from HFA tests, which report the MD as a negative number, we use the absolute value of the MD to determine whether your visual field loss meets listing 2.03B. We cannot use tests that do not measure the central 30 degrees of the visual field, such as the HFA 24–2, to determine if your impairment meets or medically equals 2.03B.

e. *Other types of perimetry.* If your case record contains visual field measurements obtained using manual or automated kinetic perimetry, such as Goldmann perimetry or the HFA ''SSA Test Kinetic,'' we can generally use these results if the kinetic test was performed using a white III4e stimulus projected on a white 31.5 asb (10 cd/m$^2$) background. Automated kinetic perimetry, such as the HFA ''SSA Test Kinetic,'' does not detect limitations in the central visual field because testing along a meridian stops when you see the stimulus. If your visual disorder has progressed to the point at which it is likely to result in a significant limitation in the central visual field, such as a scotoma (see 2.00A6h), we will not use automated kinetic perimetry to determine the extent of your visual field loss. Instead, we will determine the extent of your visual field loss using automated static threshold perimetry or manual kinetic perimetry.

f. *Screening tests.* We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing or to evaluate your residual functional capacity. We can consider normal results from visual field screening tests to determine whether your visual disorder is severe when these test results are consistent with the other evidence in your case record. (See §§ 404.1520(c), 404.1521, 416.920(c), and 416.921 of this chapter.) We will not consider normal test results to be consistent with the other evidence if the clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss, or you have a history of an operative procedure for retinal detachment.

g. *Use of corrective lenses.* You must not wear eyeglasses during visual field testing because they limit your field of vision. You may wear contact lenses or perimetric lenses to correct your visual acuity during the visual field test to obtain the most accurate visual field measurements. For this single purpose,

you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

h. *Scotoma.* A scotoma is a non-seeing area (also referred to as a blind spot) in the visual field surrounded by a seeing area. When we measure your visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

7. *How do we determine your visual acuity efficiency, visual field efficiency, and visual efficiency?*

a. *General. Visual efficiency* is the combination of your *visual acuity efficiency* and your *visual field efficiency* expressed as a value or as a percentage.

b. *Visual acuity efficiency.* Visual acuity efficiency is a value or a percentage that corresponds to the best-corrected central visual acuity for distance in your better eye. See Table 1.

TABLE 1

| Snellen best-corrected central visual acuity for distance | | Visual acuity efficiency value (2.04A) | Visual acuity efficiency percentage (2.04B) |
|---|---|---|---|
| English | Metric | | |
| 20/16 | 6/5 | 0.00 | 100 |
| 20/20 | 6/6 | 0.00 | 100 |
| 20/25 | 6/7.5 | 0.10 | 95 |
| 20/30 | 6/9 | 0.18 | 90 |
| 20/40 | 6/12 | 0.30 | 85 |
| 20/50 | 6/15 | 0.40 | 75 |
| 20/60 | 6/18 | 0.48 | 70 |
| 20/70 | 6/21 | 0.54 | 65 |
| 20/80 | 6/24 | 0.60 | 60 |
| 20/100 | 6/30 | 0.70 | 50 |

c. *Visual field efficiency.* Visual field efficiency is a value or a percentage that corresponds to the visual field in your better eye. Under 2.03C, we require kinetic perimetry to determine your visual field efficiency percentage. (A visual field efficiency percentage of 20, determined using kinetic perimetry, is comparable to an MD of 22, determined using automated static threshold perimetry.)

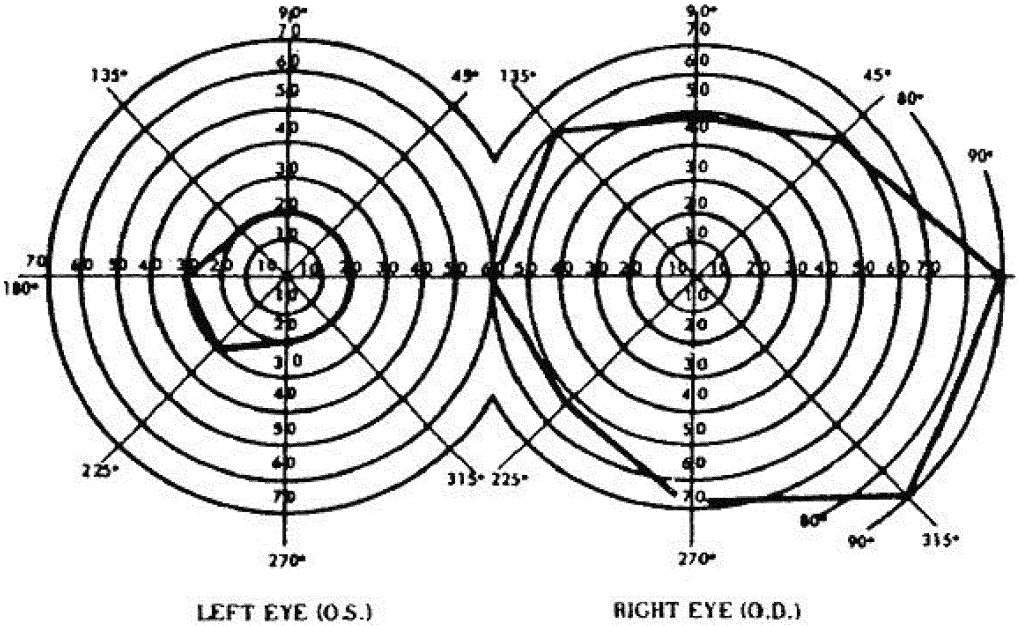
(i) *Value determined by automated static threshold perimetry.* Using the MD from acceptable automated static threshold perimetry, we calculate the visual field efficiency value by dividing the absolute value of the MD by 22. For example, if your MD on an HFA 30–2 is $-16$, your visual field efficiency value is: $|-16| \div 22 = 0.73$.

(ii) *Percentage determined by kinetic perimetry.* Using kinetic perimetry, we calculate the visual field efficiency percentage by adding the number of degrees you see along the eight principal meridians found on a visual field chart (0, 45, 90, 135, 180, 225, 270, and 315) in your better eye and dividing by 5. For example, in Figure 1:

*A.* The diagram of the left eye illustrates a visual field, as measured with a III4e stimulus, contracted to 30 degrees in two meridians (180 and 225) and to 20 degrees in the remaining six meridians. The visual efficiency percentage of this field is: $((2 \times 30) + (6 \times 20)) \div 5 = 36$ percent.

*B.* The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees. The visual efficiency percentage of this field is $500 \div 5 = 100$ percent.

Figure 1:




d. *Visual efficiency.*

(i) *Determined by automated static threshold perimetry (2.04A).* Under 2.04A, we calculate the visual efficiency value by adding your visual acuity efficiency value

(see 2.00A7b) and your visual field efficiency value (see 2.00A7c(i)). For example, if your visual acuity efficiency value is 0.48 and your visual field efficiency value is 0.73, your visual efficiency value is: 0.48 + 0.73 = 1.21.

(ii) *Determined by kinetic perimetry (2.04B).* Under 2.04B, we calculate the visual efficiency percentage by multiplying your visual acuity efficiency percentage (see 2.00A7b) by your visual field efficiency percentage (see 2.00A7c(ii)) and dividing by 100. For example, if your visual acuity efficiency percentage is 75 and your visual field efficiency percentage is 36, your visual efficiency percentage is: (75 × 36) ÷ 100 = 27 percent.

8. *What are our requirements for an acceptable perimeter?* We will use results from automated static threshold perimetry performed on a perimeter that:

a. Uses optical projection to generate the test stimuli.

b. Has an internal normative database for automatically comparing your performance with that of the general population.

c. Has a statistical analysis package that is able to calculate visual field indices, particularly mean deviation or mean defect.

d. Demonstrates the ability to correctly detect visual field loss and correctly identify normal visual fields.

e. Demonstrates good test-retest reliability.

f. Has undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

* * * * *

2.01 Category of Impairments, Special Senses and Speech

2.02 *Loss of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees.

OR

B. An MD of 22 decibels or greater, determined by automated static threshold perimetry that measures the central 30 degrees of the visual field (see 2.00A6d).

OR

C. A visual field efficiency of 20 percent or less, determined by kinetic perimetry (see 2.00A7c).

2.04 *Loss of visual efficiency in the better eye,* with:

A. A visual efficiency value of 1.00 or greater after best correction (see 2.00A7d(i)).

OR

B. A visual efficiency percentage of 20 or less after best correction (see 2.00A7d(ii)).

* * * * *

Part B

* * * * *

102.00 Special Senses and Speech

A. *How do we evaluate visual disorders?*

1. *What are visual disorders?* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or perform other age-appropriate activities. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. *How do we define statutory blindness?* Statutory blindness is blindness as defined in sections 216(i)(1) and 1614(a)(2) of the Social Security Act (Act).

a. The Act defines blindness as central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We use your best-corrected central visual acuity for distance in the better eye when we determine if this definition is met. (For visual acuity testing requirements, see 102.00A5.)

b. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having a central visual acuity of 20/200 or less. (For visual field testing requirements, see 102.00A6.)

c. You have statutory blindness only if your visual disorder meets the criteria of 102.02A, 102.02B, or 102.03A. You do not have statutory blindness if your visual disorder medically equals the criteria of 102.02A, 102.02B, or 102.03A or meets or medically equals the criteria of 102.03B, 102.03C, 102.04A, or 102.04B because your disability is based on criteria other than those in the statutory definition of blindness. If your visual disorder medically equals the criteria of 102.02A, 102.02B, or 102.03A or meets or medically equals the criteria of 102.03B, 102.03C, 102.04A, or 102.04B, we will find that you are under a disability if your visual disorder also meets the duration requirement (see § 416.909 of this chapter).

3. *What evidence do we need to establish statutory blindness under title XVI?* To establish that you have statutory blindness under title XVI, we need evidence showing only that your central visual acuity in your better eye or your visual field in your better eye meets the criteria in 102.00A2, provided that those measurements are consistent with the other evidence in your case record. We do not need documentation of the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983 of this chapter).

4. *What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?* To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of your best-corrected central visual acuity (see 102.00A5) or the extent of your visual fields (see 102.00A6), as appropriate. If you have visual acuity or visual field loss, we need documentation of the cause of the loss. A standard eye examination will usually indicate the cause of any visual acuity loss. An eye examination can also indicate the cause of some types of visual field deficits. Some disorders, such as cortical visual disorders, may result in abnormalities that do not appear on a standard eye examination. If the eye examination does not indicate the cause of your vision loss, we will request the information the physician or optometrist used to establish the presence of your visual disorder. If your visual disorder does not satisfy the criteria in 102.02, 102.03, or 102.04, we will request a description of how your visual disorder affects your ability to function.

5. *How do we measure your best-corrected central visual acuity?*

a. *Visual acuity testing.* When we need to measure your best-corrected central visual acuity, which is your optimal visual acuity attainable with the use of a corrective lens, we use visual acuity testing for distance that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

(i) Your best-corrected central visual acuity for distance is usually measured by determining what you can see from 20 feet. If your visual acuity is measured for a distance other than 20 feet, we will convert it to a 20-foot measurement. For example, if your visual acuity is measured at 10 feet and is reported as 10/40, we will convert this measurement to 20/80.

(ii) A visual acuity recorded as CF (counts fingers), HM (hand motion only), LP or LPO (light perception or light perception only), or NLP (no light perception) indicates that no optical correction will improve your visual acuity. If your central visual acuity in an eye is recorded as CF, HM, LP or LPO, or NLP, we will determine that your best-corrected central visual acuity is 20/200 or less in that eye.

(iii) We will not use the results of pinhole testing or automated refraction acuity to determine your best-corrected central visual acuity. These tests provide an estimate of potential visual acuity but not an actual measurement of your best-corrected central visual acuity.

(iv) Very young children, such as infants and toddlers, cannot participate in testing using Snellen methodology or other comparable testing. If you are unable to participate in testing using Snellen methodology or other comparable testing, we will consider clinical findings of your fixation and visual-following behavior. If both these behaviors are absent, we will consider the anatomical findings or the results of neuroimaging, electroretinogram, or visual evoked response (VER) testing when this testing has been performed.

b. *Other test charts.*

(i) Children between the ages of 3 and 5 often cannot identify the letters on a Snellen or other letter test chart. Specialists with expertise in assessment of childhood vision use alternate methods for measuring visual acuity in young children. We consider alternate methods, for example, the Landolt C test or the tumbling-E test, which are used to evaluate young children who are unable to participate in testing using Snellen methodology, to be comparable to testing using Snellen methodology.

(ii) Most test charts that use Snellen methodology do not have lines that measure visual acuity between 20/100 and 20/200. Some test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS) used mostly in research settings, have such lines. If your visual acuity

is measured with one of these charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. For example, if your best-corrected central visual acuity for distance in the better eye is 20/160 using an ETDRS chart, we will find that you have statutory blindness. Regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line. For example, if your best-corrected central visual acuity for distance in the better eye is 20/125+1 using an ETDRS chart, we will find that you do not have statutory blindness because you are able to read one letter on the 20/100 line.

c. *Testing using a specialized lens.* In some instances, you may perform visual acuity testing using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. We will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field.

d. *Cycloplegic refraction.* Cycloplegic refraction, which measures your visual acuity in the absence of accommodation (focusing ability) after the eye has been dilated, is not part of a routine eye examination because it is not needed to determine your best-corrected central visual acuity. It can be useful for determining refractive error and visual acuity in some children. If your case record contains the results of cycloplegic refraction, we may use the results to determine your best-corrected central visual acuity. We will not purchase cycloplegic refraction.

e. *VER testing.* VER testing measures your response to visual events and can often detect dysfunction that is undetectable through other types of examinations. If you have an absent response to VER testing in your better eye, we will determine that your best-corrected central visual acuity is 20/200 or less in that eye and that your visual acuity loss satisfies the criterion in 102.02A or 102.02B4, as appropriate, when these test results are consistent with the other evidence in your case record. If you have a positive response to VER testing in an eye, we will not use that result to determine your best-corrected central visual acuity in that eye.

6. *How do we measure your visual fields?*

a. *General.* We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, or optic neuropathy, or when you display behaviors that suggest a visual field loss. When we need to measure the extent of your visual field loss, we use visual field testing (also referred to as perimetry) carried out using automated static threshold perimetry performed on an acceptable perimeter (for perimeter requirements, see 102.00A8).

b. *Automated static threshold perimetry requirements.*

(i) The test must use a white size III Goldmann stimulus and a 31.5 apostilb (asb) white background (or a 10 candela per square meter (cd/m$^2$) white background). The stimuli test locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

(ii) We measure the extent of your visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. The ''III'' refers to the standard Goldmann test stimulus size III (4 mm$^2$), and the ''4e'' refers to the standard Goldmann intensity filter (0 dB attenuation, which allows presentation of the maximum luminance) used to determine the intensity of the stimulus.

(iii) In automated static threshold perimetry, the intensity of the stimulus varies. The intensity of the stimulus is expressed in decibels (dB). A perimeter's maximum stimulus luminance is usually assigned the value 0 dB. We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points you see at a 4e intensity level (a ''seeing point''). For example:

*A.* When the maximum stimulus luminance (0 dB stimulus) on an acceptable perimeter is 10,000 asb, a 10 dB stimulus is equivalent to a 4e stimulus. Any point you see at 10 dB or greater is a seeing point.

*B.* When the maximum stimulus luminance (0 dB stimulus) on an acceptable perimeter is 4,000 asb, a 6 dB stimulus is equivalent to a 4e stimulus. Any point you see at 6 dB or greater is a seeing point.

c. *Evaluation under 102.03A.* To determine statutory blindness based on visual field loss in your better eye (102.03A), we need the results of a visual field test that measures the central 24 to 30 degrees of your visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey Field Analyzer (HFA) 30–2, HFA 24–2, and Octopus 32.

d. *Evaluation under 102.03B.* To determine whether your visual field loss meets listing 102.03B, we use the mean deviation or defect (MD) from acceptable automated static threshold perimetry that measures the central 30 degrees of the visual field. MD is the average sensitivity deviation from normal values for all measured visual field locations within the central 30 degrees of the field. When using results from HFA tests, which report the MD as a negative number, we use the absolute value of the MD to determine whether your visual field loss meets listing 102.03B. We cannot use tests that do not measure the central 30 degrees of the visual field, such as the HFA 24–2, to determine if your impairment meets or medically equals 102.03B.

e. *Other types of perimetry.* If your case record contains visual field measurements obtained using manual or automated kinetic perimetry, such as Goldmann perimetry or the HFA ''SSA Test Kinetic,'' we can generally use these results if the kinetic test was performed using a white III4e stimulus projected on a white 31.5 asb (10 cd/m$^2$) background. Automated kinetic perimetry, such as the HFA ''SSA Test Kinetic,'' does not detect limitations in the central visual field because testing along a meridian stops when you see the stimulus. If your visual disorder has progressed to the point at which it is likely to result in a significant limitation in the central visual field, such as a scotoma (see 102.00A6h), we will not use automated kinetic perimetry to determine the extent of your visual field loss. Instead, we will determine the extent of your visual field loss using automated static threshold perimetry or manual kinetic perimetry.

f. *Screening tests.* We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing, or functionally equals the listings. We can consider normal results from visual field screening tests to determine whether your visual disorder is severe when these test results are consistent with the other evidence in your case record. (See § 416.924(c) of this chapter.) We will not consider normal test results to be consistent with the other evidence if the clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss, or you have a history of an operative procedure for retinal detachment.

g. *Use of corrective lenses.* You must not wear eyeglasses during visual field testing because they limit your field of vision. You may wear contact lenses or perimetric lenses to correct your visual acuity during the visual field test to obtain the most accurate visual field measurements. For this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

h. *Scotoma.* A scotoma is a non-seeing area (also referred to as a blind spot) in the visual field surrounded by a seeing area. When we measure your visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

7. *How do we determine your visual acuity efficiency, visual field efficiency, and visual efficiency?*

a. *General. Visual efficiency* is the combination of your *visual acuity efficiency* and your *visual field efficiency* expressed as a value or as a percentage.

b. *Visual acuity efficiency.* Visual acuity efficiency is a value or a percentage that corresponds to the best-corrected central visual acuity for distance in your better eye. See Table 1.

TABLE 1

| Snellen best-corrected central visual acuity for distance | | Visual acuity efficiency value (102.04A) | Visual acuity efficiency percentage (102.04B) |
|---|---|---|---|
| English | Metric | | |
| 20/16 | 6/5 | 0.00 | 100 |
| 20/20 | 6/6 | 0.00 | 100 |
| 20/25 | 6/7.5 | 0.10 | 95 |
| 20/30 | 6/9 | 0.18 | 90 |
| 20/40 | 6/12 | 0.30 | 85 |
| 20/50 | 6/15 | 0.40 | 75 |
| 20/60 | 6/18 | 0.48 | 70 |
| 20/70 | 6/21 | 0.54 | 65 |
| 20/80 | 6/24 | 0.60 | 60 |
| 20/100 | 6/30 | 0.70 | 50 |

c. *Visual field efficiency.* Visual field efficiency is a value or a percentage that corresponds to the visual field in your better eye. Under 102.03C, we require kinetic perimetry to determine your visual field efficiency percentage. (A visual field efficiency percentage of 20, determined using kinetic perimetry, is comparable to an MD of 22, determined using automated static threshold perimetry.)

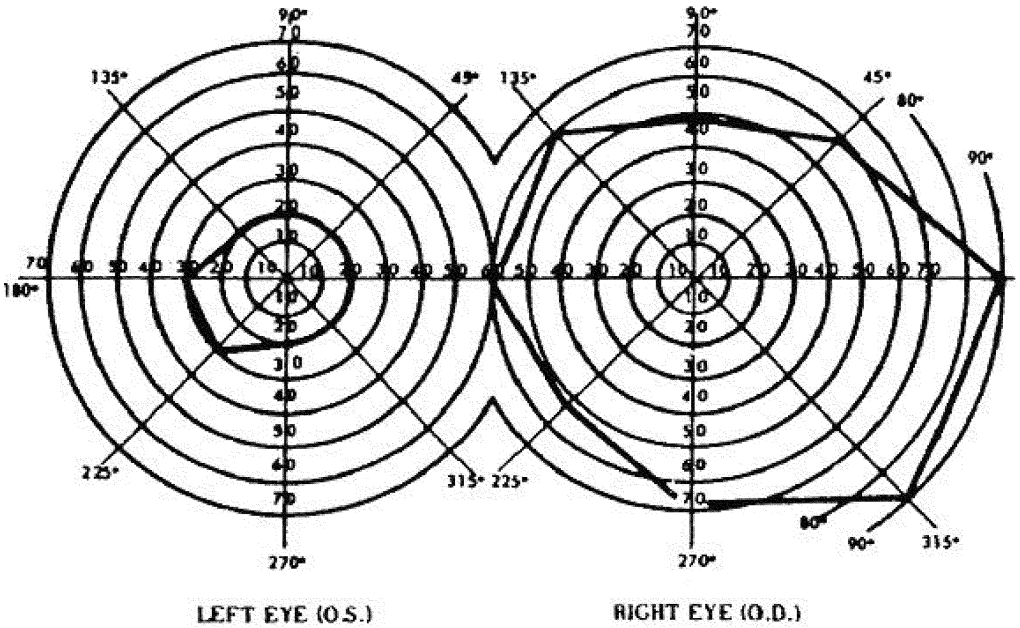
(i) *Value determined by automated static threshold perimetry.* Using the MD from acceptable automated static threshold perimetry, we calculate the visual field efficiency value by dividing the absolute value of the MD by 22. For example, if your MD on an HFA 30–2 is $-16$, your visual field efficiency value is: $|-16| \div 22 = 0.73$.

(ii) *Percentage determined by kinetic perimetry.* Using kinetic perimetry, we calculate the visual field efficiency percentage by adding the number of degrees you see along the eight principal meridians found on a visual field chart (0, 45, 90, 135, 180, 225, 270, and 315) in your better eye and dividing by 5. For example, in Figure 1:

*A.* The diagram of the left eye illustrates a visual field, as measured with a III4e stimulus, contracted to 30 degrees in two meridians (180 and 225) and to 20 degrees in the remaining six meridians. The visual efficiency percentage of this field is: $((2 \times 30) + (6 \times 20)) \div 5 = 36$ percent.

*B.* The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees. The visual efficiency percentage of this field is $500 \div 5 = 100$ percent.

Figure 1:




d. *Visual efficiency.*

(i) *Determined by automated static threshold perimetry (102.04A).* Under 102.04A, we calculate the visual efficiency value by adding your visual acuity efficiency value (see 102.00A7b) and your visual field efficiency value (see 102.00A7c(i)). For example, if your visual acuity efficiency value is 0.48 and your visual field efficiency value is 0.73, your visual efficiency value is: $0.48 + 0.73 = 1.21$.

(ii) *Determined by kinetic perimetry (102.04B).* Under 102.04B, we calculate the visual efficiency percentage by multiplying your visual acuity efficiency percentage (see 102.00A7b) by your visual field efficiency percentage (see 102.00A7c(ii)) and dividing by 100. For example, if your visual acuity efficiency percentage is 75 and your visual field efficiency percentage is 36, your visual efficiency percentage is: $(75 \times 36) \div 100 = 27$ percent.

8. *What are our requirements for an acceptable perimeter?* We will use results from automated static threshold perimetry performed on a perimeter that:

a. Uses optical projection to generate the test stimuli.

b. Has an internal normative database for automatically comparing your performance with that of the general population.

c. Has a statistical analysis package that is able to calculate visual field indices, particularly mean deviation or mean defect.

d. Demonstrates the ability to correctly detect visual field loss and correctly identify normal visual fields.

e. Demonstrates good test-retest reliability.

f. Has undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

* * * * *

102.01 *Category of Impairments, Special Senses and Speech*

102.02 *Loss of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less.

OR

B. An inability to participate in visual acuity testing using Snellen methodology or other comparable testing, clinical findings that fixation and visual-following behavior are absent in the better eye, and one of the following:

1. Abnormal anatomical findings indicating a visual acuity of 20/200 or less in the better eye (such as the presence of Stage III or worse retinopathy of prematurity despite surgery, hypoplasia of the optic nerve, albinism with macular aplasia, or bilateral optic atrophy); or

2. Abnormal neuroimaging documenting damage to the cerebral cortex which would be expected to prevent the development of a visual acuity better than 20/200 in the better eye (such as neuroimaging showing bilateral encephalomyelitis or bilateral encephalomalacia); or

3. Abnormal electroretinogram documenting the presence of Leber's congenital amaurosis or achromatopsia in the better eye; or

4. An absent response to VER testing in the better eye.

102.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees.

OR

B. An MD of 22 decibels or greater, determined by automated static threshold perimetry that measures the central 30 degrees of the visual field (see 102.00A6d).

OR

C. A visual field efficiency of 20 percent or less, determined by kinetic perimetry (see 102.00A7c).

102.04 *Loss of visual efficiency in the better eye,* with:

A. A visual efficiency value of 1.00 or greater after best correction (see 102.00A7d(i)).

OR

B. A visual efficiency percentage of 20 or less after best correction (see 102.00A7d(ii)).

* * * * *

[FR Doc. 2012–3226 Filed 2–10–12; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 202

**[Docket No. FR–5416–N–02]**

**RIN 2502–AI91**

## Withdrawal of Proposed Rule on Approval of Farm Credit System Lending Institutions in Federal Housing Administration (FHA) Mortgage Insurance Programs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This notice withdraws HUD's August 2011 rule that proposed to amend HUD's regulations to enable the direct lending institutions of the Farm Credit System to seek approval to participate in the FHA mortgage insurance programs as approved mortgagees and lenders.

**DATES:** The proposed rule is withdrawn February 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202–708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 26, 2011, at 76 FR 53362, HUD published a proposed rule that would enable the direct lending institutions of the Farm Credit System to seek approval to participate in the FHA mortgage insurance programs as FHA-approved mortgagees and lenders. In the proposed rule, HUD noted that recent difficulties in mortgage finance markets indicated reduced availability of housing credit in rural areas. HUD therefore proposed to extend FHA mortgagee and lender eligibility to the lending institutions of the Farm Credit System to provide an additional avenue for mortgage financing in rural areas. The Farm Credit System is a federally chartered network of borrower-owned lending institutions composed of cooperatives and related service organizations. The public comment period for the proposed rule closed on October 25, 2011. HUD received approximately 27 substantive public comments in response to the August 26, 2011, proposed rule. Certain comments were identical in substance, having been submitted as part of mailing campaigns. The public comments on this rule can be found at *http://www.regulations.gov/#!searchResults;rpp=10;po=0;s=FR-5416-P-01.*

The commenters were almost evenly divided in their support of and opposition to the rule. Those commenters that supported the rule stated that there was indeed a need for available housing credit in rural areas and that allowing Farm Credit lending institutions to be FHA-approved lenders would aid in the necessary extension of credit. The commenters stated that the Farm Credit System has been a source of consistent and reliable credit for rural homeowners and that the ability to provide the option of FHA programs to families in rural areas will help ensure that the borrowing needs of rural families are met. Those commenters that opposed the rule stated that there was no need to expand FHA mortgage availability to Farm Credit member institutions; that the banking community was satisfactorily meeting the need for credit in rural areas. The commenters opposing the rule also stated that it was their view that approval of Farm Credit lending institutions to originate FHA insured loans runs afoul of the Administration's proposal to reduce government involvement in the housing finance market.

Upon consideration of the issues raised by public comments, HUD is withdrawing the August 26, 2011, proposed rule. While HUD seeks to ensure the availability of mortgage financing for qualified borrowers nationwide—and particularly in underserved areas—HUD and the Administration remain committed to reducing FHA's market share and facilitating the return of private capital to the housing finance market. Therefore, in concert with its network of FHA-approved lending partners, FHA will continue to monitor the adequacy of mortgage credit in rural areas to ensure that rural residents have access to homeownership.

Accordingly, the proposed rule to amend 24 CFR 202.10, published on August 26, 2011, at 76 FR 53362, entitled ''Approval of Farm Credit System Lending Institutions in FHA Mortgage Insurance Programs,'' is hereby withdrawn.

Dated: February 7, 2012.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2012–3289 Filed 2–10–12; 8:45 am]

BILLING CODE 4210–67–P

**DEPARTMENT OF JUSTICE**

**28 CFR Part 26**

**[Docket No. OJP (DOJ) 1540; AG Order No 3322–2012]**

**RIN 1121–AA77**

## Certification Process for State Capital Counsel Systems

**AGENCY:** Department of Justice.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** Section 2265 of title 28, United States Code, instructs the Attorney General to promulgate regulations establishing a certification procedure for States seeking to qualify for the special Federal habeas corpus review provisions for capital cases under chapter 154 of title 28. The benefits of chapter 154—including expedited timing and limits on the scope of Federal habeas review of State judgments—are available to States on the condition that they provide counsel to indigent capital defendants in State postconviction proceedings pursuant to mechanisms that satisfy certain statutory requirements. This supplemental notice of proposed rulemaking (supplemental notice) requests public comment concerning five changes that the Department is considering to a previously published proposed rule for the chapter 154 certification procedure.

**DATES:** Comments must be submitted on or before March 14, 2012. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW., Room 4234, Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 1540 on your correspondence. You may submit comments electronically or view an electronic version of this supplemental notice at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Caroline T. Nguyen, Office of Legal Policy, (202) 514–4601 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

*Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as a name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

### Background

Chapter 154 of title 28, United States Code, makes special expedited procedures available to a State respondent in Federal habeas corpus proceedings involving review of State capital judgments, and limits the scope of Federal court review of such judgments, but only if the Attorney General has certified that the ''State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265,'' and if ''counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.'' 28 U.S.C. 2261(b) (2006). Section 2265(a)(1) provides that, if requested by an appropriate State official, the Attorney General must determine whether ''the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent [capital] prisoners'' and whether the State ''provides standards of competency for the appointment of counsel in [such proceedings].'' Section 2265(b) directs the Attorney General to promulgate regulations to implement procedures for making the necessary determinations and certifying States accordingly.

The Attorney General published a proposed rule for the chapter 154 certification procedure in the **Federal Register** on March 3, 2011, at 76 FR 11705. The comment period for the proposed rule closed on June 1, 2011. The Department received approximately 30 comments concerning both the general approach and specific provisions of the proposed rule. In response to those comments, the Department is considering certain modifications to the proposed rule, including five modifications described in this supplemental notice.

### Request for Comments

This supplemental notice solicits public comment on five potential changes to the proposed rule published on March 3. Each of these five proposed changes derives from comments received in response to the publication of that proposed rule. The Department solicits additional public views to provide all interested parties, including those who did not previously comment, an opportunity to provide input on these specific possible changes. The specific changes under consideration are (1) modifying the proposed rule's first counsel competency standard, § 26.22(b)(1), which sets as a benchmark five years of bar admission and three years of felony litigation experience, to substitute postconviction experience for felony litigation experience; (2) modifying the second counsel competency standard, § 26.22(b)(2), which incorporates as a benchmark certain provisions of the Innocence Protection Act of 2004, Public Law 108–405, Title IV, § 421, 118 Stat. 2286, codified at 42 U.S.C. 14163(e)(1) and (2)(A), to incorporate as well other provisions of section 14163(e)(2), specifically, subparagraphs (B), (D), and (E); (3) specifying that a mechanism for providing competent counsel in postconviction proceedings must encompass a policy for the timely provision of counsel to satisfy chapter 154; (4) providing that the Attorney General will presumptively certify a mechanism that meets the standards set out in the rule; and (5) providing for periodic renewal of certifications.

This supplemental notice is limited to solicitation of additional comment on the matters described herein. Commenters need not reiterate or resubmit comments in response to this supplemental notice that they previously submitted relating to these matters or other aspects of the proposed rule. All public comments submitted pursuant to the proposed rule published on March 3, 2011, and in response to this supplemental notice will be fully considered when the Department prepares the final rule.

*Proposed Change 1: Postconviction Experience*

Section 26.22(b)(1) of the proposed rule provides that a State may satisfy chapter 154's requirement relating to counsel competency by requiring appointment of counsel ''who have been admitted to the bar for at least five years and have at least three years of felony litigation experience.'' 76 FR at 11712. The Department solicits comment on the suggestion to change this provision to set a standard of five years of bar admission and three years of postconviction litigation (instead of felony litigation) experience. In particular, the Department solicits comment on whether three years of postconviction litigation experience is an appropriate measure of competency in postconviction proceedings and whether more years, fewer years, or alternative measures would constitute a more appropriate benchmark.

The benchmark in the proposed rule is based on 18 U.S.C. 3599, pertaining to appointment of counsel in Federal court proceedings in capital cases. That provision sets out a standard of three years of felony trial experience for appointments made before judgment and three years of felony appellate experience for appointments made after judgment. The proposed rule incorporates neither of these specialized experience standards, but instead sets a benchmark of three years of felony litigation experience of any sort. The Department is considering substituting for that benchmark three years of postconviction litigation experience as the form of experience most relevant and most necessary to the litigation of State postconviction petitions.

In construing chapter 154, a number of courts have concluded that, given the complexity of postconviction law and procedure, a qualifying mechanism for the appointment of competent counsel should provide for counsel with specialized postconviction litigation experience. *See, e.g., Colvin-El* v. *Nuth,* No. Civ.A. AW 97–2520, 1998 WL 386403, at *6 (D. Md. July 6, 1998) (''Given the extraordinarily complex body of law and procedure unique to post-conviction review, an attorney must, at minimum, have some experience in that area before he or she is deemed 'competent.' ''). Similarly, the Judicial Conference of the United States has recognized the value and importance of specialized experience when confronting the complexity of postconviction representation and the risk of irremediable procedural default. *See Judicial Conference of the United States, Committee on Defender Services, Subcommittee on Federal Death Penalty Cases, Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* 21 (May 1998) (recommending that appointing authorities ''consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings''); *see also* Jon B. Gould & Lisa Greenman, *Report to the Committee on Defender Services Judicial Conference of the United States: Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* 88 (Sep. 2010) (noting the view of postconviction specialists that there is ''little time available for inexperienced counsel to 'learn the ropes,' and no safety net if they fail'').

At the same time, it is possible that some lawyers may be capable of providing competent counsel even without such postconviction experience. Accordingly, as in § 26.22(b)(1) of the proposed rule, a modified version of the provision with a postconviction experience standard could continue to include an exception allowing appointment of other counsel whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant. *Cf.* 18 U.S.C. 3599(d); *Spears* v. *Stewart,* 283 F.3d 992, 1011, 1013 (9th Cir. 2002) (finding State competency standards generally requiring postconviction litigation experience, but allowing some exception, adequate under chapter 154); *Ashmus* v. *Calderon,* 123 F.3d 1199, 1208 (9th Cir. 1997) (recognizing that ''habeas corpus law is complex and has many procedural pitfalls'' but concluding that it is not necessary under chapter 154 that every lawyer have postconviction experience), *rev'd on other grounds,* 523 U.S. 740 (1998).

*Proposed Change 2: Innocence Protection Act (IPA)*

Section 26.22(b)(2) of the proposed rule provides that a State's capital counsel mechanism will be deemed adequate for purposes of chapter 154's counsel competency requirements if it provides for the appointment of counsel ''meeting qualification standards established in conformity with 42 U.S.C. 14163(e)(1) [and] (2)(A).'' 76 FR at 11712. The Department solicits comments on the suggestion of modifying § 26.22(b)(2) in the proposed rule to incorporate not only section 14163(e)(1) and (2)(A), but all of the subparagraphs of that section that bear directly on counsel qualifications—specifically, subparagraphs (2)(B), (D), and (E).

Subparagraphs (B), (D), and (E) require maintenance of a roster of qualified attorneys; provision or approval of specialized training programs for attorneys representing defendants in capital cases; monitoring of the performance of attorneys who are appointed and their attendance at training programs to ensure continued competence; and removal from the roster of attorneys who fail to deliver effective representation or engage in unethical conduct. 42 U.S.C. 14163(e)(2). Those provisions are integral elements of the IPA's comprehensive approach to counsel qualifications. Under the modification now being considered by the Department, to the extent that the rule uses the IPA standard as a benchmark for counsel competency, it would incorporate all directly relevant elements of that Act.

*Proposed Change 3: Timely Provision of Competent Counsel*

The Department solicits comments on a proposal to specify that a State capital counsel mechanism must encompass a policy for the timely provision of competent counsel in order to be certified as an adequate ''mechanism for the appointment * * * of competent counsel in State postconviction proceedings'' under chapter 154. 28 U.S.C. 2265(1)(A). The Department recognizes that States should be given significant latitude in designing their capital counsel mechanisms and therefore does not propose to define timeliness in terms of a specific number of days or weeks within which counsel is to be provided. Instead, the Department is considering only clarification that the mechanism must provide for affording counsel to indigent capital defendants in State postconviction proceedings in a manner that is reasonably timely, in light of the statutes of limitations governing both State and Federal collateral review and the effort involved in the investigation, research, and filing of effective habeas petitions, to protect a petitioner's right to meaningful habeas review.

Many comments raised the concern that the proposed rule does not address the timing of counsel appointment and asserted that such failure is particularly troubling in light of the expedited Federal habeas procedures under chapter 154. Section 2263, for example, generally requires the filing of a Federal habeas corpus petition within 180 days of the completion of direct State court review of the conviction and sentence, a period substantially shorter than in other Federal habeas cases. Compare 28 U.S.C. 2263(a) (180 days), with § 2444(d)(1) (one-year deadline); § 2255(f) (same). (Section 2263 also provides for tolling during the pendency of both a petition for certiorari to the Supreme Court (following direct review in State courts) and State collateral proceedings. § 2263 (b).) And section 2266 restricts the ability to amend a Federal habeas petition after it has been filed. § 2266(b)(3)(B).

The comments raise an important issue for consideration. Chapter 154 involves a *quid pro quo* arrangement under which the right to representation by counsel is extended to State postconviction proceedings for capital defendants, and in return Federal habeas review is carried out with generally more limited time frames and scope following the State postconviction proceedings in which counsel has been made available. If a State capital counsel mechanism provided for the provision of counsel to represent indigent capital defendants only after the deadline for pursuing State postconviction proceedings had passed; or only after the expiration of section 2263's time limit for Federal habeas filing; or only after such delay that the time available for preparing for and pursuing either State or Federal postconviction review had been seriously eroded, then the mechanism would not appear to provide for appointment of postconviction counsel as required under chapter 154, even if the State mechanism otherwise tracked the appointment procedures set forth in § 26.22(a) of the proposed rule. Since chapter 154's enactment in 1996, when Federal habeas courts were charged with evaluating the sufficiency of state mechanisms (amendments to the statute in 2006 transferred that function to the Attorney General), a number of courts have concluded that chapter 154 required that the mechanism provide for timely appointment of counsel. *See, e.g., Brown* v. *Puckett,* No. 3:01–CV–197–D, 2003 WL 21018627, at *3 (N.D. Miss. Mar. 12, 2003) (''The timely appointment of counsel at the conclusion of direct review is an essential requirement in the opt-in structure. Because the abbreviated 180-day statute of limitations begins to run immediately upon the conclusion of direct review, time is of the essence. Without a requirement for the timely appointment of counsel, the system is not in compliance.''); *Ashmus* v. *Calderon,* 31 F. Supp. 2d 1175, 1186–87 (N.D. Cal. 1998) (construing chapter 154 to require timely appointment in part because ''the legislative history is clear that actual and expeditious appointment [of counsel] was expected'' and ''effective and competent habeas representation is compromised by long delays''); *Hill* v. *Butterworth,* 941 F. Supp. 1129, 1147 (N.D. Fla. 1996), *rev'd on other grounds,* 147 F.3d 1333 (11th Cir. 1998) (''[T]he Court holds that any offer of counsel pursuant to Section 2261 must be a *meaningful offer.* That is, counsel must be immediately appointed after a capital defendant accepts the state's offer of post-conviction counsel.''). Accordingly, the Department is considering specifying in the final rule that a mechanism, to be certified under section 2265, must encompass a policy for the timely provision of competent counsel.

*Proposed Change 4: Effect on Certification of Compliance With Benchmarks*

The Department is considering amending § 26.22(b) and (c) of the proposed rule to state that the Attorney General will ''presumptively'' certify that a State has established a sufficient mechanism for the appointment of competent counsel if he determines that the mechanism satisfies the specific standards for competency and compensation set out in the remainder of those paragraphs. So revised, the rule would continue to provide guidance to the States regarding approaches that are likely to be sufficient to warrant certification, while also allowing the Attorney General to consider whether the presumption that the standards described in the rule are adequate may be overcome in light of unusual circumstances presented by a particular State system.

Many commenters expressed concern that under the proposed rule, the Attorney General must certify a State's mechanism so long as it meets competence and compensation benchmarks identified in the proposed rule, even if it can be shown that in the context of the State in which it operates, the mechanism is not adequate. That concern is separate from criticism that the proposed rule fails to provide for oversight of a State's compliance with its own mechanism over time; the Department remains of the view that whether a State has complied with its mechanism in an individual case is a question the statute assigns to the Federal habeas courts, not to the Attorney General. *See* 28 U.S.C. 2261(b)(2). The distinct concern at issue here arises from the seemingly categorical statement in the proposed rule that the ''Attorney General *will* certify'' a State's mechanism upon determination that it satisfies a relevant benchmark, *see* 76 FR at 11712 (emphasis added), which does not appear to allow for any additional evaluation by the Attorney General of whether the mechanism, as implemented in the particular State, is in fact reasonably likely to lead to the timely provision of competent counsel to State habeas petitioners.

The comments raise an issue that should be considered. The Department continues to believe that compliance with the competence and compensation benchmarks identified in the proposed rule, subject to modifications discussed herein, and the proposed specification that a mechanism include a policy on timeliness, are likely to result in the timely provision of competent counsel. But the comments seemed persuasive that it may not be possible to predict with certainty that these benchmarks will be adequate in the context of every possible State capital counsel system. For example, in the context of a particular State and its distinctive market conditions for legal services, it is conceivable that what normally should be sufficient compensation may not in fact be reasonably likely to make competent lawyers available for timely provision to capital petitioners in State habeas proceedings. Modification of the rule as indicated would afford the Attorney General latitude to consider such circumstances and other similar State-specific circumstances in making certification decisions. *See* Memorandum for the Attorney General from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: The Attorney General's Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Counsel for Purposes of Capital Conviction Review Proceedings* at 2 (Dec. 16, 2009) (''[T]he statutory provisions in question may reasonably be construed to permit you to evaluate a State's appointment mechanism—including the level of attorney compensation—to assess whether it is adequate for purposes of ensuring that the state mechanism will result in the appointment of competent counsel.'').

*Proposed Change 5: Renewal of Certifications*

The Department solicits comments on a proposal to specify that a certification under chapter 154 is effective for a specified term of years. This proposal is responsive to many comments pointing out that changed circumstances may affect whether a once-certified mechanism continues to be adequate for purposes of ensuring the availability for appointment of competent counsel. At the time a State applies for certification, for example, its provisions authorizing compensation at a specified hourly rate may be sufficient to achieve this objective. But after the passage of years, that may no longer be the case in light of inflation or other changed economic circumstances. *Cf. Durable Mfg. Co.* v. *United States Dep't of Labor,* 578 F.3d 497, 501–02 (7th Cir. 2009) (upholding time limitation of validity of labor certificates in light of possible subsequent changes in economic circumstances affecting consistency with statutory requirements and objectives). Similarly, changes in various State policies that may affect the mechanism's operation, or new statutory provisions or legal precedent relating to attorney competence, compensation, or reasonable litigation expenses, may bear on the continued adequacy of the mechanism. Providing some limitation on the lifespan of certifications and requiring renewal of certifications would allow questions regarding continued compliance with chapter 154 to be reexamined at regular intervals, each time with increased information about a State's actual experience with its mechanism, rather than assuming that a once-compliant State system is compliant indefinitely.

At the same time, it is possible that overly stringent limitations on the duration of certifications could unduly burden States and disserve chapter 154's objectives by discouraging States from undertaking the effort to establish compliant mechanisms and seek their certification. Balancing the need for examination of continued compliance with the need to provide States with a substantial period of certainty, the Department is considering a term of five years for certifications, which would begin to run only after completion of both the certification process by the Attorney General and any related judicial review. *See* 28 U.S.C. 2265(c) (providing for DC Circuit review of certification decisions). The final rule could also provide that if a State requests renewal of the certification at or before the end of the five-year period, the initial certification would remain effective until completion of the renewal process and any related judicial review. Thus, a State that achieves certification of its mechanism would enjoy the uninterrupted benefits of chapter 154 for the full term of five years. The Department seeks comment on the merits and substance of a renewal requirement, including whether five years is an appropriate term of years during which a certification should be effective, or whether that term of years should be longer or shorter.

**Regulatory Certifications**

*Executive Orders 12866 and 13563—Regulatory Review*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

*Executive Order 13132—Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It only requests public comment on possible changes in a previously published proposed rule regarding the certification procedure under chapter 154 of title 28, United States Code. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

*Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

*Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It only requests public comment on possible changes in a previously published proposed rule regarding the certification procedure under chapter 154 of title 28, United States Code.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in aggregate expenditures by State, local, and tribal governments or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: February 6, 2012.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2012–3293 Filed 2–10–12; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 385, 390, and 395

**[Docket No. FMCSA–2010–0167]**

**RIN 2126–AB20**

## Electronic On-Board Recorders and Hours of Service Supporting Documents

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** FMCSA announces its intent to move forward with the Electronic On-Board Recorders and Hours of Service Supporting Documents rulemaking (EOBR 2) by preparing a Supplemental Notice of Proposed Rulemaking (SNPRM). To augment the Agency's efforts to obtain comprehensive data to support this SNPRM, FMCSA plans to do the following: hold listening sessions on the issue of driver harassment; task the Motor Carrier Safety Advisory Committee (MCSAC) to assist in developing material to support this

rulemaking, including technical specifications for EOBRs and their potential to be used to harass drivers; and conduct research by surveying drivers, carriers, and vendors regarding harassment issues.

**ADDRESSES:** Comments and material received from the public as well as documents mentioned in this notice are available for inspection or copying in the docket, Docket No. FMCSA–2010–0167, and at the Docket Management Facility, U.S. Department of Transportation, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Background

The following discussion summarizes the recent regulatory history of the agency's EOBR initiatives.[1]

*EOBR 1*

On April 5, 2010, the Agency issued a final rule (75 FR 17208) that provided new technical requirements for EOBRs. The EOBR final rule also required the limited, remedial use of EOBRs by any motor carrier found, during a single compliance review, to have a 10 percent violation rate for any hours-of-service (HOS) regulation listed in a new Appendix C of 49 CFR part 385. The final rule required EOBRs on all of the motor carrier's commercial motor vehicles (CMVs) for a period of 2 years. The compliance date for the final rule was June 4, 2012.

The Owner-Operator Independent Drivers Association (OOIDA) challenged the final rule in the United States Court of Appeals for the Seventh Circuit. OOIDA raised several concerns relating to EOBRs and their potential use for driver harassment. On August 26, 2011, the Court vacated the entire final rule. *Owner-Operator Indep. Drivers Ass'n et al.* v. *Fed. Motor Carrier Safety Admin.,* 656 F.3d. 580 (7th Cir. 2011). The Court held that, contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a) which reads as follows:

> USE OF MONITORING DEVICES. If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, *the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.* (Emphasis added.)).

The court's expectation about how the Agency should address harassment and productivity under the statutory directive included the following:

> ''In addition, an adequate explanation that addresses the distinction between productivity and harassment must also describe what precisely it is that will prevent harassment from occurring. The Agency needs to consider what types of harassment already exist, how frequently and to what extent harassment happens, and how an electronic device capable of contemporaneous transmission of information to a motor carrier will guard against (or fail to guard against) harassment. A study of these problems with EOBRs already in use, and a comparison with carriers that do not use these devices, might be one obvious way to measure any effect that requiring EOBRs might have on driver harassment'' (Id. at 588–89).

The Court also noted that the Agency had not estimated the safety benefits of EOBRs currently in use and how much EOBRs increased compliance.

As a result of the vacatur, carriers relying on electronic devices to monitor HOS compliance are currently governed by the Agency's previous rules regarding the use of automatic on-board recording devices (49 CFR 395.15). The requirements set forth in 49 CFR 395.15, were not affected by the Seventh Circuit's decision regarding the technical specifications set out in 49 CFR 395.16 in the EOBR 1 Final Rule.

*EOBR 2*

On February 1, 2011, the Agency published a notice of proposed rulemaking (NPRM) that proposed to expand the scope of EOBR use to a broader population of motor carriers (EOBR 2) (76 FR 5537). The EOBR 2 NPRM proposed that, within 3 years of the effective date of the final rule, all motor carriers currently required to maintain records of duty status (RODS) for HOS recordkeeping would be required to use EOBRs.

Due to the pending EOBR 1 litigation, the Agency extended the EOBR 2 public comment period and, in recognition of issues raised in oral argument before the Seventh Circuit, expressly invited comment on the issue of driver harassment. A notice published on March 10, 2011 (76 FR 13121) extended the public comment period for the EOBR 2 NPRM to May 23, 2011. On April 13, 2011, the Agency published a notice specifically inviting comments on the EOBR2 rulemaking to address harassment (76 FR 20611). In light of the litigation challenging the Agency's treatment of driver harassment in EOBR 1, FMCSA wished to ensure that interested parties had a full opportunity to consider the harassment issue in the active EOBR 2 rulemaking.

## Planned Activities

*EOBR 2 SNPRM*

Because the EOBR 2 rule relied on the technical specifications provided in EOBR 1, where this final rule was vacated, the Agency must again proposed and seek comment on new technical standards into the CFR before any final rule concerning use of an EOBR device is issued. These proposed technical standards would take into account the official MCSAC recommendations, as well as public comments.

FMCSA takes this opportunity to declare its intention to proceed with the EOBR 2 rulemaking. The Agency is preparing an SNPRM to propose technical standards for an EOBR, address driver harassment issues, propose requirements for retaining HOS supporting documents, and provide clarification and request further comments on several of the proposals. Additionally, the Agency will hold public listening sessions; work with its Motor Carrier Safety Advisory Committee (MCSAC); and use driver, carrier, and vendor surveys to obtain all the stakeholder information needed to discuss issues involving driver harassment.

*Public Listening Sessions*

FMCSA will hold public listening sessions to discuss issues involving the driver harassment issue. The public will have an opportunity to speak about this issue and provide the Agency with information on how to address harassment. All public comments will be placed in the docket of this rulemaking. Details concerning the schedule and locations for the listening sessions, as well as procedural information for participants, will follow in a subsequent **Federal Register** notice.

[1] For a more detailed history of the program containing the initial regulatory actions by the agency see EOBR 1, discussed below in this section (75 FR 17208).

*Motor Carrier Safety Advisory Committee Task*

MCSAC is an advisory committee to FMCSA.

In June 2011, a MCSAC subcommittee began work on Task 11–04 (Electronic On-Board Recorders (EOBR) Communications Protocols, Security, Interfaces, and Display of Hours-of-Service Data During Driver/Vehicle Inspections and Safety Investigations). The subcommittee examined technical issues relating to the electronic transfer of HOS information from CMVs to law enforcement personnel at the roadside raised by the EOBR 1 final rule. The subcommittee met several times and made its final report to the full committee on December 5 and 6, 2011. On December 16, 2011, the full committee made an official recommendation to FMCSA.

FMCSA will task MCSAC to make recommendations related to the EOBR2 rulemaking. Details will follow in a subsequent **Federal Register** notice.

More information about these MCSAC meetings, recommendations, and task orders can be found at *http://mcsac.fmcsa.dot.gov/meeting.htm*.

*Research*

Subject to Office of Management and Budget approval, FMCSA will initiate OMB-approved survey of drivers regarding harassment experiences and concerns and OMB-approved surveys for carriers and vendors regarding harassment. Details will follow in subsequent **Federal Register** notices.

*EOBR 1 Final Rule Withdrawal*

Based on the Seventh Circuit's decision, the Agency plans to publish a final rule in the **Federal Register** announcing the removal of the regulatory text in 49 CFR parts 350, 385, 395, 396 adopted in EOBR 1 and subsequently vacated by the Seventh Circuit decision. This will complete the actions required by the Court.

Issued on: February 7, 2012.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2012–3265 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–EX–P**

# Notices

Federal Register

Vol. 77, No. 29

Monday, February 13, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### Solicitation of Input From Stakeholders Regarding the Agriculture and Food Research Initiative

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Agriculture published a document in the **Federal Register** of February 1, 2012, concerning a notice of public meeting and request for stakeholder input. The document contained the incorrect fax number and minor edits.

**FOR FURTHER INFORMATION CONTACT:** Effie Baldwin, (202) 401–4891

*Correction*

(1) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the first column, correct the first full sentence to read:

In September of 2008 and June of 2010, NIFA solicited public comment from persons who use or conduct research, extension, or education activities to assist with guidance to be developed for this new program.

(2) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the first column, correct the first full paragraph to read:

In an effort to improve the quality of the AFRI program, NIFA is again holding a public meeting and soliciting public comments for consideration in the development of future AFRI program solicitations. All written comments received prior to the AFRI Listening Session on February 22, 2012, may be utilized in a question and response document and/or responded to during the session held on February 22, 2012 based on the applicability of the comment to the general population of AFRI stakeholders. However, all comments must be received by close of business on March 22, 2012, to be considered in the initial drafting of the FY 2013 AFRI program solicitations.

(3) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the second column, correct the ''Fax'' caption to read:

Fax: (202) 401–1782

(4) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the second column, correct the ''Mail'' STOP caption to read:

STOP 2240

(5) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** fax number to read:

(202) 401–1782 (fax)

(6) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the second column, correct the **SUPPLEMENTARY INFORMATION** fax number to read:

fax at (202) 401–1782

(7) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the second column, correct the second line from the bottom to read:

Food Safety; Food Security;

(8) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the third column, correct the first word to read:

Fellows

(9) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4985, in the third column, correct the first sentence to read:

The date and time for each webinar will be posted to the following URL, on or before February 22, 2012: *http://www.nifa.usda.gov/funding/afri/afri_faq_webinars.html.*

(10) In the **Federal Register** of February 1, 2012 in FR Doc. 2012–2100, on page 4986, in the first column, correct the third sentence to read:

Written comments and suggestions on issues that may be considered in the meeting may be submitted to Ms. Terri Joya at the address above.

Dated: February 7, 2012.

**Chavonda Jacobs-Young,**

*Acting Director, National Institute of Food and Agriculture.*

[FR Doc. 2012–3288 Filed 2–10–12; 8:45 am]

BILLING CODE 3410–22–P

## BROADCASTING BOARD OF GOVERNORS

### Government in the Sunshine Act Meeting Notice

**DATE AND TIME:** Saturday, February 11, 2012, 2:30 p.m.–3:30 p.m. EDT.

**PLACE:** Telephonic Meeting.

**SUBJECT:** Notice of Special Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The members of the Broadcasting Board of Governors (BBG) will meet in a special session to consider the issue of Board leadership following the recent departure of the Board Chairman. The BBG will be meeting at the time listed above. At the meeting, which will be conducted telephonically, the BBG will consider the conduct of Board operations in the absence of a Chair. Due to the meeting's short notice, the Agency is unable to make it available for public observation via live streaming webcast. However, a complete audio recording and a verbatim transcript of the meeting will promptly be made available for public observation on the BBG's public Web site at *www.bbg.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel.*

[FR Doc. 2012–3408 Filed 2–9–12; 4:15 pm]

BILLING CODE 8610–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XB002**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting of the North Pacific Fishery Management Council's (NPFMC) Scallop Plan Team (SPT).

**SUMMARY:** The SPT will meet February 27, 2012 at the NPFMC conference room 205.

**DATES:** The meeting will be held on February 27, 2012, from 9 a.m. to 5 p.m.

**ADDRESSES:** North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Stram; NPFMC; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Plan Team will meet to discuss status of statewide scallop stocks and compile the annual Stock Assessment Evaluation report (SAFE). The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 8, 2012.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–3266 Filed 2–10–12; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA997**

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Council and its advisory entities will hold public meetings.

**DATES:** The Pacific Council and its advisory entities will meet February 29 to March 7, 2012. The Pacific Council meeting will begin on Friday, March 2, 2012 at 8 a.m., reconvening each day through Wednesday, March 7, 2012. All meetings are open to the public, except a closed session will be held as the third agenda item on Saturday, March 3 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** Meetings of the Pacific Council and its advisory entities will be held at the DoubleTree Hotel Sacramento, 2001 Point West Way, Sacramento, CA 95815; telephone: (916) 929–8855.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

**SUPPLEMENTARY INFORMATION:** The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Highly Migratory Species Management
  1. National Marine Fisheries Service (NMFS) Report
  2. Update on and Recommendations for International Management Activities
  3. Swordfish Management Data Report and Future Management Recommendations
C. Open Comment Period
  Comments on Non-Agenda Items
D. Coastal Pelagic Species Management
  Exempted Fishing Permits for 2012
E. Habitat
  Current Habitat Issues
F. Groundfish Management
  1. Planning and Necessary Actions for the 2012–13 Pacific Whiting Fishing Seasons, Including Potential Impacts from the Pacific Dawn Litigation
  2. Briefing on and Limited Actions for Emerging Issues in the 2013–14 Biennial Specifications Process
  3. NMFS Report
  4. Scoping for Amendment 24: Improvements to the Groundfish Management Process
  5. Stock Assessment Planning for Management Specifications in the 2014–15 Fisheries
  6. Consideration of Inseason Adjustments
  7. Harvest Set-Aside Flexibility
  8. Trawl Rationalization Trailing Actions and Allocation Amendments and Actions
G. Salmon Management
  1. NMFS Report
  2. Review of 2011 Fisheries and Summary of 2012 Stock Abundance Forecasts
  3. Rebuilding Plan Consideration for Sacramento River Fall Chinook and Strait of Juan de Fuca Coho
  4. Identification of Management Objectives and Preliminary Definition of 2012 Salmon Management Alternatives
  5. Council Recommendations for 2012 Management Alternative Analysis
  6. Scoping of Amendment 17: Updating Salmon Essential Fish Habitat
  7. Further Council Direction for 2012 Management Alternatives
  8. Adoption of 2012 Management Alternatives for Public Review
  9. Salmon Hearings Officers
H. Pacific Halibut Management
  1. Report on the International Pacific Halibut Commission Meeting
  2. Incidental Catch Recommendations for the Salmon Troll and Fixed Gear Sablefish Fisheries
  3. Update on Review of Pacific Halibut Management under the National Environmental Policy Act and Status of Preliminary Alternatives for Incidental Catch Retention of Pacific Halibut in the Limited Entry Fixed Gear Sablefish Fisheries
I. Administrative Matters
  1. Approval of Council Meeting Minutes
  2. Membership Appointments and Council Operating Procedures
  3. Future Council Meeting Agenda and Workload Planning

### Schedule of Ancillary Meetings

Day 1—Wednesday, February 29, 2012
  Highly Migratory Species Advisory Subpanel—8 a.m.
  Highly Migratory Species Management Team—8 a.m.
Day 2—Thursday, March 1, 2012
  Highly Migratory Species Advisory Subpanel—8 a.m.
  Highly Migratory Species Management Team—8 a.m.
  Scientific and Statistical Committee—8 a.m.
Day 3—Friday, March 2, 2012
  California State Delegation—7 a.m.
  Oregon State Delegation—7 a.m.
  Washington State Delegation—7 a.m.
  Groundfish Management

Team—8 a.m.
Habitat Committee—8 a.m.
Scientific and Statistical Committee (SSC)—8 a.m.
Groundfish Advisory Subpanel—1 p.m.
Enforcement Consultants—4:30 p.m.
Day 4—Saturday, March 3, 2012
California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
SSC Economic Subcommittee—8 a.m.
Enforcement Consultants—As Necessary
Tribal Policy Group—As Necessary
Tribal and Washington Technical Group—As Necessary
Day 5—Sunday, March 4, 2012
California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Necessary
Tribal Policy Group—As Necessary
Tribal and Washington Technical Group—As Necessary
Day 6—Monday, March 5, 2012
California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Necessary
Tribal Policy Group—As Necessary
Tribal and Washington Technical Group—As Necessary
Day 7—Tuesday, March 6, 2012
California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Necessary
Tribal Policy Group—As Necessary
Tribal and Washington Technical Group—As Necessary
Day 8—Tuesday, March 7, 2012
California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Necessary
Tribal Policy Group—As Necessary
Tribal and Washington Technical Group—As Necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: February 8, 2012.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–3231 Filed 2–10–12; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2012–OS–0016]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 13, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Joint Personnel Adjudication System, ATTN: Autumn Grijalva, 400 Gigling Road, Seaside, CA 93955, or call the JPAS Office at 831–583–4191.

*Title; Associated Form; And OMB Number:* Joint Personnel Adjudication System; OMB Control Number 0704–TBD.

*Needs and Uses:* JPAS requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities. Specific uses include: facilitation for DoD Adjudicators and Security Managers to obtain accurate up-to-date eligibility and access information on all personnel (military, civilian and contractor personnel) adjudicated by the DoD. The DoD

Adjudicators and Security Managers are also able to update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information.

*Affected Public:* Business or other for profit (non-Military or Federal Employee).

*Annual Burden Hours:* 703,792.

*Number of Respondents:* 22,225.

*Responses per Respondent:* 95 (number varies by count of person records maintained by respondent).

*Average Burden per Response:* 20 minutes.

*Frequency:* on occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are Facility Security Managers or DoD Adjudicators who update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information. JPAS is a Personnel Security System and is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities. Collection and maintenance of personal data in JPAS is required to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials.

Dated: February 8, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–3282 Filed 2–10–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Army Corps of Engineers

### Draft Environmental Impact Statement for the Clearwater Program

**AGENCY:** U.S. Army Corps of Engineers, Department of the Army, DOD.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) in conjunction with the Sanitation Districts of Los Angeles County (Sanitation Districts) has completed a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Clearwater Program. The Clearwater Program is a comprehensive planning effort undertaken by the Sanitation Districts. Its purpose is to develop a long-range Master Facilities Plan for the Joint Outfall System, a regional wastewater management system serving approximately 4.8 million people in 73 cities and unincorporated areas in Los Angeles County. A major component of the Clearwater Program is the evaluation of alternatives for new ocean outfalls and rehabilitation of the existing ocean outfalls. Both activities would entail discharge of dredged and fill material in waters of the United States, work in navigable waters of the United States, and the transport of dredged material for ocean disposal. These activities would require authorization from the Corps pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, respectively.

**FOR ADDITIONAL INFORMATION CONTACT:** Questions or comments concerning the Draft EIS/EIR should be directed to Dr. Aaron O. Allen, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, Ventura Field Office, 2151 Alessandro Drive, Suite 110, Ventura, CA 93001, (805) 585–2148.

**SUPPLEMENTARY INFORMATION:** The Draft EIS/EIR is available for a 57-day review period from February 13, 2012 through April 10, 2012. The document is accessible via the World-Wide Web at *www.ClearwaterProgram.org.* Alternatively, printed copies are available at the following locations: Sanitation Districts of Los Angeles County, 1955 Workman Mill Road, Whittier, California; Carson Regional Library, 151 East Carson Street, Carson, California; Los Angeles Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro, California; Los Angeles Public Library, Wilmington Branch, 1300 North Avalon, Wilmington, California.

*Public Meeting:* The Sanitation Districts and the Corps will jointly hold a public hearing to receive public comments regarding the Draft EIS/EIR on March 8, 2012, 6:30 p.m., at the Crowne Plaza Hotel Los Angeles Harbor Hotel, 601 South Palos Verdes Street, San Pedro, California. Written comments will be accepted until the close of public review on April 10, 2012.

Dated: January 24, 2012.

**David J. Castanon**

*Chief, Regulatory Division, Corps of Engineers.*

[FR Doc. 2012–3300 Filed 2–10–12; 8:45 am]

**BILLING CODE 3710–KF–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 11–161–LNG]**

### Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC; Application for Long-Term Authorization To Export Domestically Produced Liquefied Natural Gas to Non Free Trade Agreement Countries for a 25-Year Period

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on December 19, 2011, by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of 511 Billion cubic feet (Bcf) of natural gas per year, which averages to 1.4 Bcf per day (Bcf/d), over a 25-year period, commencing on the earlier of the date of first export or eight years from the date the requested authorization is granted. The LNG would be exported from the Freeport LNG Terminal on Quintana Island near Freeport, Texas, to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. The Application is filed independent of, and in addition to, FLEX's prior application filed with DOE/FE under Docket No. 10–161–LNG. This Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, April 13, 2012.

**ADDRESSES:**

*Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11–161–LNG: http://www.regulations.gov.*

*Electronic Filing by email: fergas@hq.doe.gov.*

**Regular Mail**

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory

Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

**Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)**

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel, Electricity & Fossil Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave. SW., Washington, DC 20585. (202) 586–3397.

**SUPPLEMENTARY INFORMATION:**

## Background

FLNG Expansion is a Delaware limited partnership and a wholly owned subsidiary of Freeport LNG Development, L.P. with its principal place of business in Houston, Texas. FLNG Liquefaction is a Delaware limited liability company and a wholly owned subsidiary of FLNG Expansion with its principal place of business in Houston, Texas. FLEX, through one or more of its subsidiaries, intends to develop, own and operate natural gas liquefaction facilities to receive and liquefy domestic natural gas for export (Liquefaction Project) to foreign markets, pursuant to the export authorization sought herein. The Liquefaction Project facilities will be integrated into the existing Freeport Terminal, and is in addition to a separate liquefaction project proposed at the same terminal for substantially the same volume. The Freeport Terminal presently consists of a marine berth, two 160,000 cubic meter full containment LNG storage tanks, LNG vaporization systems, associated utilities and a 9.6-mile pipeline and meter station.

FLEX intends to expand the terminal to provide natural gas pretreatment, liquefaction, and export capacity of up to 511 Bcf per year, which averages to 1.4 Bcf/d.[1] The facility will be designed so that the addition of liquefaction capability will not preclude the Freeport Terminal from operating in vaporization and send-out mode. FLEX states that although this Application requests authorization substantially similar to the pending application in DOE/FE Docket No. 10–161–LNG, this is a wholly separate Application.[2] As a result, the total of the liquefaction capacity at the Freeport Terminal of both this Application and the prior application in Docket 10–161–LNG is 2.8 Bcf/d. FLEX further states that demand for liquefaction capacity has been significant since it filed its initial export applications a year ago, and it expects to secure long-term contracts for the liquefaction and export of the equivalent of an additional 1.4 Bcf/d of natural gas.

## Current Application

In the instant application, FLEX seeks long-term, multi-contract authorization to export domestically produced LNG up to the equivalent of 511 Bcf of natural gas per year, 1.4 Bcf/d, for a period of twenty-five years beginning on the earlier of the date of first export or eight years from the date the authorization is granted by DOE/FE. FLEX requests that such long-term authorization provide for export from the Freeport LNG Terminal on Quintana Island, Texas to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy.

FLEX states that rather than enter into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTA), under which individual customers who hold title to natural gas will have the right to deliver that gas to FLEX and receive LNG. FLEX states that in the current natural gas market, LTAs fulfill the role previously performed by long-term supply contracts, in that they provide stable commercial arrangements between companies involved in natural gas services. FLEX states that the Liquefaction Project will require significant capital expenditures on fixed assets. FLEX further states that although it has not yet entered into long-term LTAs or other commercial arrangements, long-term export authorization is required to attract prospective LTA customers willing to make large-scale, long-term investments in LNG export arrangements. FLEX states that both are required to obtain necessary financing for the Liquefaction Project.

FLEX requests long-term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. FLEX contemplates that the title holder at the point of export[3] may be FLEX or one of FLEX's LTA customers, or another party that has purchased LNG from an LTA customer pursuant to a long-term contract. FLEX requests authorization to register each LNG title holder for whom FLEX seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in FLEX's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom FLEX seeks to export as agent, FLEX states that it will file under seal with DOE/FE any relevant long-term commercial agreements between FLEX and such LNG title holder, including LTAs, once they have been executed.[4] FLEX provides further discussion of the gas supply markets in the Application.

FLEX states that the natural gas supply underlying the proposed exports will come primarily from the highly liquid Texas market, but may draw upon the interconnected general U.S. natural gas market. FLEX states that given the size of the traditional natural gas market in close proximity to the Freeport Terminal, and the exponential growth of unconventional resources in the region, a diverse and reliable source

[1] When added to the first proposed liquefaction project associated with applications received by DOE/FE in 2010, the combined projects will have the capacity to produce LNG for export from domestic sources equivalent to 2.8 Bcf/d.

[2] On December 17, 2010, FLEX filed two applications to export domestically produced LNG from a proposed liquefaction project at the Freeport Terminal capable of producing LNG from domestic resources up to the equivalent of 1.4 Bcf/d of natural gas. The first of these applications, which requested long-term authorization to export LNG to FTA countries, was granted by DOE/FE in Order No. 2913 on February 10, 2011. The second application (DOE/FE Docket No. 10–161–LNG), which requested long-term authorization to export LNG to countries with which the United States does not have an FTA, is still pending before DOE/FE. Both applications sought to each export the entire capacity of the proposed facility.

[3] LNG exports occur when the LNG is delivered to the flange of the LNG export vessel. *See The Dow Chemical Company,* FE Docket No. 10–57–LNG, Order No. 2859 at p. 7 (October 5, 2010).

[4] FLEX states the practice of filing of contracts after the DOE/FE has granted export authorization is well established. *See Yukon Pacific Corporation,* ERA Docket No. 87–68–LNG, Order No. 350 (November 16, 1989); *Distrigas Corporation,* FE Docket No. 95–100–LNG, Order No. 1115, at p. 3 (November 7, 1995); See also Freeport LNG Expansion and FLNG Liquefaction, LLC, FE Docket No. 10–160–LNG, Order No. 2913 at 9–10 (February 10, 2011).

of natural gas will be available to support the requested authorization.

**Public Interest Considerations**

In support of its Application, FLEX states that DOE/FE has consistently ruled that section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest. FLEX asserts that unless opponents of an export license make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest, DOE/FE must grant the export application.[5]

FLEX asserts that in evaluating whether the proposed exportation is within the public interest, DOE/FE applies the principles established by the Policy Guidelines,[6] which promote free and open trade by minimizing federal control and involvement in energy markets, and DOE Delegation Order No. 0204–111, which requires ''consideration of the domestic need for the gas to be exported.'' FLEX refers to DOE/FE Order No. 2961,[7] in which DOE/FE stated that its public interest review of applications to export natural gas to countries with which the United States does not have an FTA ''has continued to focus on the domestic need for the natural gas proposed to be exported; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issue determined to be appropriate * * *''.

FLEX states that as a result of technological advances, huge reserves of domestic shale gas that were previously infeasible or uneconomic to develop are now being profitably produced in many regions of the United States. FLEX asserts that the United States is now estimated to have more natural gas resources than it can use in a century.[8] FLEX also states that large volumes of domestic shale gas reserves and continued low production costs will enable the United States to export LNG while also meeting domestic demand for natural gas for decades to come.

FLEX asserts that as U.S. natural gas reserves and production have risen, U.S. natural gas prices have fallen to the point where they are among the lowest in the developed world. FLEX states that LNG supply contracts in Asian markets are pegged to crude oil prices. FLEX asserts that while Europe receives pipeline gas from various sources, the long supply chains and relative inflexibility of markets have made diversification of supply a high priority. FLEX states that domestic natural gas prices are projected to remain low relative to European and Asian markets well into the future, making exports of LNG by vessel a viable long-term opportunity for the United States.

FLEX states that the Liquefaction Project is positioned to provide the Gulf Coast region and the United States with significant economic benefits by increasing domestic natural gas production. FLEX states that these benefits will be obtained with only a minimal effect on domestic natural gas prices. FLEX states that at current and forecasted rates of demand, the United States' natural gas reserves will meet demand for 100 years. FLEX states that the Liquefaction Project allows the United States to benefit now from the natural gas resources that may not otherwise be produced for many decades, if ever. FLEX provides further discussion on why the proposed export authorization is in the public interest.

First, FLEX contends that the project will cause direct and indirect job creation through construction (3,000 onsite jobs over 3–4 years) and operation (20 to 30 permanent jobs) of the Liquefaction Project, and indirect jobs as a result of increased drilling for and production of natural gas (17,000 to 21,000 jobs).[9]

Second, FLEX maintains that the Liquefaction Project would create significant economic stimulus, with the total economic benefits to the American economy estimated to be between $3.6 and $5.2 billion per year from 2015 to 2040, or $90 to $130 billion over the requested 25-year export term.[10]

Third, FLEX contends that there will be a material improvement in the U.S. balance of trade. FLEX states that assuming an average value of $7 per million Btu, exporting approximately 1.4 Bcf/d of LNG through the Liquefaction Project will improve the U.S. balance of payments by approximately $3.9 billion per year, or $97.5 billion over the requested 25-year export term.

Fourth, FLEX states the project will have significant environmental benefits by reducing global greenhouse gas emissions if the natural gas exported is used as a substitute for coal and fuel oil.

Fifth, FLEX states the Liquefaction Project supports American energy security. To support this statement, FLEX states that the United States has developed a massive natural gas resource base that is sufficient to supply domestic demand for a century, even with significant exports of LNG. FLEX states the Liquefaction Project will not adversely affect U.S. Energy security. FLEX references the MIT Report *supra,* which concludes that ''[t]he U.S. should sustain North American energy market integration and support development of a global 'liquid' natural gas market with diversity of supply. A corollary is that the U.S. should not erect barriers to gas imports or exports.''[11]

Finally, FLEX provides further discussion of various studies that allegedly support FLEX's public interest analysis.

Based on the reasoning provided in the Application, FLEX requests that DOE/FE determine that FLEX's request for long-term, multi-contract authorization to export LNG to non-FTA countries is not inconsistent with the public interest.

**Environmental Impact**

FLEX states that the Federal Energy Regulatory Commission (FERC) has already authorized the Phase II expansion of the Freeport LNG Terminal. FLEX also states that the Liquefaction Project improvements, including those required to conduct operations under the current Application will be contained within the previously authorized operational area of the Freeport LNG Terminal on Quintana Island, Texas. FLEX states that the potential air impacts of the Liquefaction Project, including the facilities required to support the Export Authorization, will be reviewed by the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA). FLEX states that other environmental impacts of the Liquefaction Project will be reviewed by FERC under the National Environmental Policy Act (NEPA). FLEX states that the FERC authorization will be conditioned upon issuance of air quality permits from TCEQ and EPA. Accordingly, FLEX requests that DOE/FE issue a conditional order authorizing export of domestically produced LNG pending

[5] DOE/FE Order No. 1473, note 42 at p. 13, citing *Panhandle Producers and Royalty Owners Association* v. *ERA,* 822 F.2d 1105, 1111 (DC Cir. 1987).

[6] *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas,* 49 FR 6684 (Feb. 22, 1984).

[7] *Sabine Pass Liquefaction LLC,* DOE/FE Docket No. 10–110 LNG (DOE/FE Order No. 2961), May 20, 2011.

[8] FLEX states that domestic natural gas reserves, including both Alaska and the Lower 48, are estimated to total about 2,100 Tcf, which is about 92 times the annual U.S. consumption of 22.8 Tcf in 2009. MIT Energy Initiative Study on *The Future of Natural Gas* Massachusetts Institute of Technology Report (MIT REPORT), at 30 (2011).

[9] *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC,* DOE/FE Docket 10–161–LNG, Appendix B: *Analysis of Freeport LNG Export Impact on U.S. Markets,* 12 (Altos Management Partners, Inc. 2010).

[10] Id.

[11] MIT Report *supra* note 8, at 157.

completion of FERC's environmental review.

**DOE/FE Evaluation**

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

**Public Comment Procedures**

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov,* by following the on-line instructions and submitting such comments under FE Docket No. 11–161–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 11–161–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by FLEX is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*. In addition, any electronic comments filed will also be available at: *http://www.regulations.gov*.

Issued in Washington, DC on February 7, 2012.

**John A. Anderson,**

*Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.*

[FR Doc. 2012–3247 Filed 2–10–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No.: 12796–004]**

### City of Wadsworth, OH; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License.

b. *Project No.:* 12796–004.

c. *Date Filed:* March 28, 2011.

d. *Applicant:* City of Wadsworth, Ohio.

e. *Name of Project:* R.C. Byrd Hydroelectric Project.

f. *Location:* On the Ohio River at the U.S. Army Corps of Engineers' (Corps) R.C. Byrd Locks and Dam (river mile 279.2), approximately 12.7 miles south of the confluence of the Ohio River and the Kanawha River and 9 miles south of the Town of Gallipolis, Gallia County, Ohio. The project would occupy 7.6 acres of federal land managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Chris Easton, Director of Public Services, City of Wadsworth, Ohio, 120 Maple Street, Wadsworth, OH 44281, (330) 335–2777; or Mr. Phillip E. Meier, Assistant Vice President, Hydro Development, American Municipal Power, Inc., 1111 Schrock Road, Suite 100, Columbus, OH 43229, (614) 540–0913.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032 or *gaylord.hoisington@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would use the existing Corps' R.C. Byrd Locks and Dam and would consist of the following new facilities: (1) A 1,200-foot-long intake channel; (2) a trashrack located in front of each of the generating unit intakes, with a bar spacing of approximately 8 inches; (3) a reinforced concrete powerhouse measuring approximately 258 feet long by 145 feet wide by 110 feet high and housing two bulb-type turbine generator units with a total installed capacity of 50 megawatts; (4) a 900-foot-long tailrace channel; (5) a 2.41-mile-long, 138-kilovolt transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 266 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–3275 Filed 2–10–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–50–000; PF11–7–000]**

### Alliance Pipeline L.P.; Notice of Application

Take notice that on January 25, 2012, Alliance Pipeline L.P. filed with the Federal Energy Regulatory Commission an application under section 7 of the Natural Gas Act to construct, and operate approximately 79.3 miles of 12-inch diameter interstate natural gas pipeline lateral designed to connect new natural gas production near Tioga, North Dakota to the Alliance mainline near Sherwood, North Dakota. Additional facilities to be constructed as part of the project include a 6,000 horsepower compressor station, a meter station, a pressure regulating station, appurtenances, and a non-jurisdictional liquid meter and pump station. The total cost of the project is estimated to be approximately $141,437,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Brian Troicuk, Manager, Regulatory Affairs, Alliance Pipeline Ltd., on behalf of Alliance Pipeline Inc., Managing General Partner of Alliance Pipeline L.P., 800, 605—5 Ave. SW., Calgary, Alberta, Canada T2P 3H5 by phone: 403–517–6354 or by email: *brian.troicuk@alliancepipeline.com.*

Alliance also requests approval to establish initial incremental recourse rates for firm and interruptible service on the Tioga Lateral. Additionally, Alliance requests that the Commission order granting the requested certificate

authorization also approve (i) a nonconforming Firm Transportation Agreement and (ii) certain *pro forma* tariff modifications related to transportation service on the Tioga Lateral which will be filed to be effective following the Commission approval of this Application.

On July 1, 2011, the Commission staff granted Alliance's request to utilize the Pre-Filing Process and assigned Docket No. PF11–7–000 to staff activities involved the Tioga Lateral Project. Now as of the filing the January 25, 2012 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP12–50–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* 5:00 pm Eastern Time on February 28, 2012.

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–3279 Filed 2–10–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PR12–14–000]**

## CenterPoint Energy—Illinois Gas Transmission Company; Notice of Compliance Filing

Take notice that on February 3, 2012, CenterPoint Energy—Illinois Gas Transmission Company filed a revised Statement of Operating Conditions to comply with a Delegated letter order issued January 24, 2012, in Docket No. PR11–127–000, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 pm Eastern Time on Thursday, February 16, 2012.

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary*

[FR Doc. 2012–3274 Filed 2–10–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL12–23–000**

### Cross-Sound Cable Company, LLC; Notice of Petition for Declaratory Order

Take notice that on February 3, 2012, pursuant to Rules 207 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207 and 385.212, 18 CFR part 34, and Section 204 of the Federal Power Act, 16 USC 824(c), Cross-Sound Cable Company, LLC (CSCC) filed a Petition for Declaratory Order, requesting that the Commission confirm that CSCC's blanket authorization remains operative under Part 34 of the Commission's Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on March 5, 2012.

Dated: February 7, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–3273 Filed 2–10–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14352–000]**

### Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On January 13, 2012, the Grand Coulee Project Hydroelectric Authority (GCPHA) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the P.E. Scooteney Wasteway Hydroelectric Project, to be located on the P.E. 46A Wasteway, which is part of the Federal Columbia Basin Project, in Franklin County, Washington.

The proposed project would consist of the following new facilities: (1) A 20-foot-long, 20-foot-wide intake diversion canal leading to a 20-foot-wide, 15-foot-high intake gate structure; (2) an 8-foot-diameter, 2,800-foot-long steel penstock connecting the intake gate structure to the powerhouse; (3) a powerhouse containing a single Francis turbine/generating unit with an installed capacity of 1.1 megawatts; (4) an approximately 0.5-mile-long, 13.8-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated average annual generation of 4,800 megawatts-hours.

*Applicant Contact:* Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, 32 C Street NW., P.O. Box 219, Ephrata, WA 98823, phone (509) 754–2227.

*FERC Contact:* Kelly Wolcott, (202) 502–6480.

*Competing Application:* This application competes with Project No. 14237–000 filed July 29, 2011. Competing applications had to be filed on or before January 17, 2012.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14352) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–3277 Filed 2–10–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14349–000]**

### Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On January 13, 2012, the Grand Coulee Project Hydroelectric Authority (GCPHA) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the P.E. 16.4 Wasteway Hydroelectric Project, to be located on the P.E. 16.4 Wasteway, which is part of the Federal Columbia Basin Project, in Franklin County, Washington.

The proposed project would consist of the following new facilities: (1) A 20-foot-long, 20-foot-wide intake diversion canal leading to a 20-foot-wide, 15-foot-high intake gate structure; (2) an 8-foot-diameter, 4900-foot-long steel penstock connecting the intake gate structure to the powerhouse; (3) a powerhouse containing a single Francis turbine/generating unit with an installed capacity of 1.75 megawatts; (4) an

approximately 0.2-mile-long, 13.8-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated average annual generation of 10,000 megawatts-hours.

*Applicant Contact:* Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, 32 C Street NW., P.O. Box 219, Ephrata, WA 98823, phone (509) 754–2227.

*FERC Contact:* Kelly Wolcott, (202) 502–6480.

*Competing Application:* This application competes with Project No. 14236–000 filed July 29, 2011. Competing applications had to be filed on or before January 17, 2012.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14349) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–3276 Filed 2–10–12; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD12–7–000]**

### Southwestern Gas Storage Technical Conference; Notice of Revised Agenda and Transcript Availability

On December 13, 2011, the Secretary issued formal notice that on February 16, 2012 at 9:00 a.m. MST, the Staff of the Federal Energy Regulatory Commission (FERC or Commission) will convene a technical conference with interested parties to discuss issues related to natural gas storage development in the southwestern United States, to be held at the Radisson Fort McDowell Resort, 10438 North Fort McDowell Rd., Scottsdale, AZ 85264 (*http://www.radissonfortmcdowellresort.com*).

Attached is a revised agenda for the conference. In addition, this conference will be transcribed, and the transcript will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646).

If you have any questions about the upcoming conference or if you would like additional information, please contact Berne Mosley in the Office of Energy Projects, phone: (202) 502–8700, email: *berne.mosley@ferc.gov.*

Dated: February 7, 2012.

**Kimberly D. Bose,**

*Secretary.*

AGENDA

| Event/item | Speaker/panelists | Time |
|---|---|---|
| Opening Remarks | Jeff Wright, Director, Office of Energy Projects | 9:00 a.m. |
| Keynote | Chairman Gary Pierce, Arizona Corporation Commission | 9:10 |
| FERC/NERC Outage Report (Need for Storage) | Tom Pinkston, Office of Enforcement, Division of Market Oversight | 9:20 |
| FERC Certificate Process | Jeff Wright, Director, Office of Energy Projects | 9:45 |
| Geology of the Southwest (Storage Applicability) | Todd Ruhkamp, Office of Energy Projects, Division of Pipeline Certificates; Tom Shaw, Vice President, Corporate Development, Voyager Midstream, LLC. | 10:15 |
| Environmental Impacts of Storage | Danny Laffoon, Office of Energy Projects, Division of Gas Environment & Engineering. | 10:55 |
| Environmental Impacts—Case Study | Rafael Montag, Office of Energy Projects, Division of Gas Environment & Engineering. | 11:20 |
| Lunch (on your own) | | 11:45 |
| FERC Storage Policies | Berne Mosley, Deputy Director, Office of Energy Projects | 12:45 p.m. |
| Industry Panel 1 | Mike Manning—Tricor Energy, LLC; Greg Gettman—El Paso Natural Gas Company. | 1:15 |
| Industry Panel 2 | Dick Robinson—Picacho Peak Gas Storage, LLC; Jim Bowe—Arizona Natural Gas Storage LLC.<br>Steve Cole—Enstor Operating Company, LLC | 1:45 |
| Customer Panel | Norm Spooner—Arizona Storage Coalition; Tom Carlson—Arizona Public Service Co.; William Moody—Southwest Gas Corporation. | 2:30 |
| State Regulatory Panel | Joe Dixon—Manager, Minerals Section, Arizona State Land Department; TBA—Arizona Corporation Commission. | 3:15 |
| Federal Panel | Arizona Department of Environmental Quality (invited); Zach Barrett—PHMSA. | 3:45 |
| Native American Perspective | Alan Downer—Navajo Nation | 4:15 |
| Closing Remarks | Jeff Wright, Director, Office of Energy Projects | 4:45 |

[FR Doc. 2012–3278 Filed 2–10–12; 8:45 am]
BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9630–2; EPA–HQ–ORD–2011–0390]**

## Draft Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)

**AGENCY:** Environmental Protection Agency .

**ACTION:** Notice of Peer Review Meeting.

**SUMMARY:** EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review meeting to review the draft human health assessment titled, ''Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' [EPA/635/R–11/003]. The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development. EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

Versar, Inc. invites the public to register to attend this meeting as observers. In addition, Versar, Inc. invites the public to give brief oral comments and/or provide written comments at the meeting regarding the draft assessment under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. In preparing a final report, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer review meeting and any written public comments that EPA receives in accordance with the announcements of the public comment period for the 1,4-dioxane assessment in **Federal Register** Notices published August 31, 2011, (76 FR 54225) and September 16, 2011 (76 FR 57739).

**DATES:** The peer review panel meeting on the draft assessment for 1,4-dioxane will be held on March 19, 2012, beginning at 9 a.m. and ending at 5 p.m. Eastern Time.

**ADDRESSES:** The draft ''Toxicological Review of 1,4-Dioxane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment [Mail Code: 8601P], U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

The peer review meeting on the draft 1,4-dioxane assessment will be held at Hyatt Place, Raleigh-Durham Airport, 200 Airgate Drive, Morrisville, NC 27560. To attend the meeting, register no later than March 12, 2012, by contacting Versar, Inc., by email: *bcolon@versar.com* (subject line: 1,4-Dioxane Peer Review Meeting), by phone: (703) 642–6727 (ask for Betzy Colon, the 1,4-Dioxane Peer Review Meeting Coordinator), or by faxing a registration request to (703) 642–6809 (please reference the 1,4-Dioxane Peer Review Meeting and include your name, title, affiliation, full address and contact information). Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be limited time at the peer review meeting for comments from the public. Please inform Betzy Colon if you wish to make comments during the meeting.

*Information on Services for Individuals with Disabilities:* EPA welcomes public attendance at the ''1,4-Dioxane Peer Review Meeting'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact: Versar, Inc., at 6850 Versar Center, Springfield, VA 22151; by email: *bcolon@versar.com* (subject line: 1,4-Dioxane Peer Review Meeting), by phone: (703) 642–6727 (ask for Betzy Colon, the 1,4-Dioxane Peer Review Meeting Coordinator), or by faxing a registration request to (703) 642–6809 (please reference the 1,4-Dioxane Peer Review Meeting and include your name, title, affiliation, full address and contact information).

Additional Information: For information on the draft assessment, please contact Patricia Gillespie, National Center for Environmental Assessment [Mail Code: B–243–01], U.S. Environmental Protection Agency, National Center for Environmental Assessment, Office of Research and Development, Research Triangle Park, NC 27711; telephone: (919) 541–1964; facsimile: (919) 541–2985; or email: [*FRN_Questions@epa.gov*].

**SUPPLEMENTARY INFORMATION:**

### I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 550 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: January 30, 2012.

**Darrell A. Winner,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2012–3296 Filed 2–10–12; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9630–3]**

## Farm, Ranch, and Rural Communities Committee (FRRCC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Request for Nominations to the Farm, Ranch, and Rural Communities Committee (FRRCC).

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to the Farm, Ranch, and Rural Communities Federal Advisory Committee (FRRCC). Vacancies are anticipated to be filled by May 2012. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

*Background:* The FRRCC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. The FRRCC was established in 2008 and provides independent advice to the EPA Administrator on a broad range of environmental issues and policies that are of importance to agriculture and rural communities. Members serve as representatives from academia, industry (*e.g.*, farm groups and allied industries), non-governmental organizations, and state, local, and tribal governments.

Members are appointed by the EPA Administrator for two-year terms with the possibility of reappointment. The FRRCC generally meets two (2) times annually, or as needed and approved by the Designated Federal Officer (DFO). Meetings will generally be held in Washington, DC. Members serve on the Committee in a voluntary capacity.

We are unable to provide honoraria or compensation for your services. However, if needed, you may receive travel and per diem allowances where appropriate and according to applicable federal travel regulations. EPA is seeking nominations from all sectors, including academia, industry (*e.g.,* farm groups and allied industries), non-governmental organizations, and state, local, and tribal governments. Members who are actively engaged in farming or ranching are encouraged to apply. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

In selecting Committee members, EPA will seek candidates who possess: Extensive professional knowledge of agricultural issues and environmental policy; a demonstrated ability to examine and analyze complicated environmental issues with objectivity and integrity; excellent interpersonal as well as oral and written communication skills; and an ability and willingness to participate in a deliberative and collaborative process. In addition, well-qualified applicants must be prepared to process a substantial amount of complex and technical information, and have the ability to volunteer approximately 10 to 15 hours per month to the Committee's activities, including participation in teleconference meetings and preparation of text for Committee reports.

*Submissions Procedure:* All nominations must be identified by name, occupation, organization, position, current business address, email address, and daytime telephone number, and must include: (1) A resume detailing relevant experience and professional and educational qualifications of the nominee; and (2) a brief statement (one page or less) describing the nominee's interest in serving on the Committee. Interested candidates may self-nominate.

**DATES:** Applicants are encouraged to submit all nominations materials by March 15, 2012 in order to ensure fullest consideration.

**ADDRESSES:** Submit all nominations to: Alicia Kaiser, Designated Federal Officer, Office of the Administrator, U.S. Environmental Protection Agency (MC 1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also email nominations with the subject line Committee Nomination to: *Kaiser.Alicia@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Alicia Kaiser, Designated Federal Officer, U.S. Environmental Protection Agency; Email: *Kaiser.Alicia@epa.gov;* Telephone: (202) 564–7273.

Dated: February 6, 2012.

**Alicia Kaiser,**

*Designated Federal Officer.*

[FR Doc. 2012–3294 Filed 2–10–12; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 12–93]**

## Emergency Access Advisory Committee; Announcement of Date of Next Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. The February meeting will review achievements from 2011 and consider plans for activities for 2012.

**DATES:** The Committee's next meeting will take place on Friday, February 10, 2012, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

**FOR FURTHER INFORMATION CONTACT:** Cheryl King, Consumer and Governmental Affairs Bureau, (202) 418–2284 (voice) or (202) 418–0416 (TTY), email: *Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, (202) 418–2413, email: *Patrick.Donovan@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 111–260, which directs that an advisory committee be established for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG 9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to NG 9–1–1 emergency services by individuals with disabilities. In 2011, the EAAC conducted a nationwide survey of individuals with disabilities, prepared a report on the survey, and developed recommendations for achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to the NG 9–1–1 system. The EAAC recommendations were submitted to the FCC, in compliance with the CVAA's statutory mandate, by December 7, 2011.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

**Karen Peltz Strauss,**

*Deputy Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2012–3018 Filed 2–10–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notice

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, February 16, 2012 at 10:00 A.M.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor)

**STATUS:** This Meeting Will Be Open to the Public.

**Items To Be Discussed**

Correction and Approval of the Minutes for the Meeting of February 2, 2012.

Draft Advisory Opinion 2012–02: Wawa, Inc.

Draft Advisory Opinion 2012–04: Justice Party of Mississippi.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary of the Commission.*

[FR Doc. 2012–3425 Filed 2–9–12; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

*Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:*

*Report title:* Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

*Agency form number:* FRY–8.

*OMB Control number:* 7100–0126.

*Frequency:* Quarterly.

*Reporters:* Top-tier bank holding companies (BHCs), including financial holding companies (FHCs), for all insured depository institutions that are owned by the BHC and by foreign banking organizations (FBOs) that directly own a U.S. subsidiary bank.

*Estimated annual reporting hours:* Institutions with covered transactions: 31,294 hours. Institutions without covered transactions: 18,204 hours.

*Estimated average hours per response:* Institutions with covered transactions: 7.8 hours; Institutions without covered transactions: 1 hour.

*Number of respondents:* Institutions with covered transactions, 1,003; Institutions without covered transactions, 4,551.

*General description of report:* This information collection is mandatory pursuant to section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)). The data are confidential pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4)). Section (b)(4) exempts information deemed competitively sensitive from disclosure.

*Abstract:* This reporting form collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The primary purpose of the data is to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure banks' compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

*Current Actions:* On November 10, 2011, the Federal Reserve published a notice in the **Federal Register** (76 FR 70146) requesting public comment for 60 days on the extension, without revision, of the Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates. The comment period for this notice expired on January 9, 2012. The Federal Reserve did not receive any comments.

*Final approval under OMB delegated authority of the implementation of the following report:*

*Report title:* Quarterly Savings and Loan Holding Company Report.

*Agency form number:* FR 2320.

*OMB Control number:* 7100-to be assigned.

*Effective Date:* Implementation of the FR 2320 reporting forms and instructions will be effective as of the March 31, 2012, report date.

*Frequency:* Quarterly.

*Reporters:* Top or lower-tier savings and loan holding companies (SLHCs).

*Estimated annual reporting hours:* 400 hours.

*Estimated average hours per response:* 2.5 hours.

*Number of respondents:* 40.

*General description of report:* This information collection is mandatory pursuant to section 312 of the Dodd-Frank Act; and section 10 of the Home Owners' Loan Act (HOLA), as amended by section 369 of the Dodd-Frank Act authorizing the Federal Reserve to collect information on the FR 2320. Public Law 111–203, § 312(b)(1) and 12 U.S.C. 1467a(b)(2), as amended by Public Law 111–201, § 369(8).

The Federal Reserve has determined that a few of the data items that the Office of Thrift Supervision (OTS) had deemed confidential—specifically, the FR 2320 counterparts to data items HC850, HC855, and HC860 on Schedule HC of the Thrift Financial Report (TFR; OMB No. 1557–0255)—may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA), (5 U.S.C. 552(b)(4)).

With regard to the remaining data items the OTS had deemed confidential on Schedule HC, the SLHC may request, in writing, confidential treatment of such information under one or more of the exemptions in FOIA, 5 U.S.C.

552(b). All such requests for confidential treatment will be reviewed on a case-by-case basis.

*Abstract:* The FR 2320 will be a quarterly information collection of parent only and consolidated financial and organizational structure data of top and lower tier SLHCs. The data was previously collected on Schedule HC of the TFR. Title III of the Dodd-Frank Act transferred all former OTS authorities (including rulemaking) related to SLHCs to the Federal Reserve on July 21, 2011. Consequently, the Federal Reserve became responsible for the consolidated supervision of SLHCs beginning July 21, 2011. The Federal Reserve will use the data to evaluate a diversified holding company and to determine whether an SLHC is in compliance with applicable laws and regulations. In addition, the data collected will contribute to the analyses of the overall financial condition of SLHCs to ensure safe and sound operations.

*Current Actions:* On November 10, 2011, the Federal Reserve published a notice in the **Federal Register** (76 FR 70146) requesting public comment for 60 days on the implementation of the Quarterly Savings and Loan Holding Company Report (FR 2320). The comment period for this notice expired on January 9, 2012. The Federal Reserve received three comment letters addressing the proposed implementation of the FR 2320: two from law firms and one from a financial services company.

Two commenters requested clarification of the reporting criteria for multi-tiered SLHCs. Also, these commenters asked that the Federal Reserve be flexible when determining which SLHCs within a multi-tiered organization would be required to file the FR 2320. In response to the comments, the Federal Reserve will clarify the FR 2320 instructions to indicate which SLHCs should file the FR 2320. The FR 2320 will generally be filed by the top-tier SLHC if that SLHC is exempt [1] from filing the Federal Reserve's existing regulatory reports. However, if a top-tier SLHC is not required to file the FR 2320, then a lower-tier SLHC must file FR 2320. Such determination as to which SLHC will be required to file the FR 2320 will be made by the district Federal Reserve Bank. In addition, lower-tier SLHCs may voluntarily file the FR 2320 or may be required to file (in addition to the top-tier SLHC) for safety and soundness purposes at the discretion of the district Federal Reserve Bank.

One commenter noted certain data items that were given confidential treatment by the OTS are no longer afforded the same treatment in the FR 2320 and this may be of concern to privately held institutions. After considering these comments, the Federal Reserve believes the data items no longer held as confidential will not cause competitive harm to any institution, publicly or privately held and notes there are several BHCs that are privately held where similar information is made publicly available. However, as noted above, institutions may request, in writing, confidential treatment for any data item in the FR 2320 or for all data items in the report, and confidential treatment will be afforded if the institution is able to establish that disclosure would cause substantial competitive harm.

Board of Governors of the Federal Reserve System, February 7, 2012.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2012–3192 Filed 2–10–12; 8:45 am]

**BILLING CODE 6210–01–P**

[1] An exempt SLHC includes: (1) A grandfathered unitary SLHC whose assets are primarily commercial and whose thrifts make up less than 5 percent of its consolidated assets; and (2) a SLHC whose assets are primarily insurance-related and who does not otherwise submit financial reports with the Securities and Exchange Commission.

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Western State Agency, Inc. Employee Stock Ownership Plan and Trust, Devils Lake, North Dakota; to acquire an additional 14.44 percent, for a total of 43.25 percent of the voting shares of Western State Agency, Inc., Devils Lake, North Dakota, and thereby indirectly acquire additional voting shares of Western State Bank, Devils Lake, North Dakota.

Dated: February 8, 2012.

Board of Governors of the Federal Reserve System.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2012–3256 Filed 2–10–12; 8:45 am]

**BILLING CODE 6210–01–P**

## GOVERNMENT ACCOUNTABILITY OFFICE

### Debarment, Suspension, and Ineligibility of Contractors

**AGENCY:** Government Accountability Office.

**ACTION:** Policy statement.

**SUMMARY:** On September 30, 2011, the Government Accountability Office (GAO) provided notice of its proposed policy to adopt the policies and procedures contained in the Federal Acquisition Regulation (FAR) regarding the debarment, suspension, and ineligibility of government contractors. Comments on GAO's policy were due on or before November 14, 2011. GAO received two comments. Both comments expressed support for GAO's efforts to adopt policies and procedures regarding the debarment, suspension, and ineligibility of government contractors. Neither comment suggested any changes to GAO's policy statement. GAO is adopting, with minor changes, the policy statement published in the **Federal Register** on September 30, as set forth below.

As a legislative branch agency, GAO is not subject to the requirements of the FAR. However, it is GAO's general policy to follow the FAR, as appropriate and applicable. Mandatory application of the FAR is not to be inferred from

GAO's adoption of this policy. Further, GAO's procurement rules are not contained in the Code of Federal Regulations, but instead are contained in an internal GAO document referred to as ''Government Accountability Office Procurement Guidelines'' (hereinafter, GAO's Procurement Order). As such, GAO's policy regarding debarment and suspension will be added as a chapter to GAO's Procurement Order.

**DATES:** This policy is effective February 13, 2012.

**ADDRESSES:** Questions concerning this policy can be addressed to Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street NW., Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** John A. Bielec, Assistant General Counsel, 202–512–2846 or email, *bielecj@gao.gov.*

**SUPPLEMENTARY INFORMATION:** Under GAO's policy, GAO will follow FAR Subpart 9.4. GAO's Procurement Order, GAO Order 0625.1, states that it is GAO's policy to follow the FAR and GAO has long-maintained procedures, consistent with FAR Subpart 9.4, that ensure that it contracts only with those entities and individuals (hereinafter, contractors) who are responsible. However, GAO's Procurement Order does not explicitly reference the debarment and suspension procedures contained in FAR Subpart 9.4. To make clear that FAR Subpart 9.4 applies, GAO will amend its Procurement Order to formally and explicitly adopt FAR Subpart 9.4.

Except as provided in FAR Subpart 9.4, GAO will not solicit offers from, award contracts to, or consent to subcontracts with, contractors who are listed on the Excluded Parties List System (EPLS), which is maintained by the General Services Administration. Further, if GAO debars, proposes for debarment, or suspends a contractor, GAO will, consistent with FAR Subpart 9.4, list that contractor in the EPLS. Given that GAO is a legislative branch agency, the listing of a contractor in the EPLS by GAO will have mandatory effect only as to GAO. Consistent with FAR 9.405–1, GAO may continue an existing contract with a contractor who is later debarred, proposed for debarment, or suspended.

Consistent with the definitions of ''debarring official'' and ''suspending official'' contained at FAR 9.403, the Comptroller General, as the head of GAO, will serve as the debarring official and suspending official (hereinafter, debarment/suspension official). The Comptroller General may designate another GAO official to serve as the debarment/suspension official. The Comptroller General will also be responsible for deciding whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

GAO's Acquisition Management office (AM), which is responsible for the majority of GAO's contracting activities, will be the GAO unit with primary responsibility for investigating and referring potential debarment and suspension actions to the debarment/suspension official for his or her consideration. GAO's procurement activities are largely centralized in AM, which is staffed by contracting officers and other acquisition professionals. As such, AM staff has the required technical knowledge to handle debarment and suspension referrals and is in the best position to learn of matters that may warrant debarment and/or suspension. Moreover, AM is the first point of contact for Contracting Officers' Representatives, who have direct knowledge of any problems with contractor performance. Thus, individuals—including GAO employees and members of the public—who believe that there may be grounds to debar or suspend a contractor should contact AM and provide them with all relevant information. Whenever AM learns of information that indicates there may be grounds for debarring or suspending a contractor, AM will gather appropriate information and refer the matter to the debarment/suspension official. All such referrals will include a recommendation by the Director of AM as to a proposed course of action. Likewise, AM will have responsibility for recommending to the Comptroller General whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

Given its central role in GAO's procurement process, AM, in consultation with GAO's Office of General Counsel, will also be responsible for establishing written procedures that address the key aspects of GAO's debarment/suspension program.

Accordingly, the Government Accountability Office has adopted the following policy and will incorporate it into GAO's Procurement Order:

GAO will follow the policies and procedures contained at FAR Subpart 9.4—Debarment, Suspension, and Ineligibility. GAO will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System (EPLS), except as otherwise provided for in FAR Subpart 9.4. GAO will report to the EPLS any contractor GAO debars, suspends, or proposes for debarment. Such action will have mandatory application only to GAO. Notwithstanding the debarment, suspension, or proposed debarment of a contractor, GAO may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the Comptroller General (CG) directs otherwise.

The CG or a designee will serve as the debarring official and suspending official (debarment/suspension official). The CG will also decide whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

Acquisition Management (AM) will have primary responsibility for investigating and referring potential debarment/suspension actions to the debarment/suspension official for consideration. As such, any person who believes that there may be grounds to debar or suspend a person or entity from contracting with GAO should contact AM and provide them with all relevant information. AM will also have responsibility for recommending to the CG whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

In consultation with the Office of General Counsel, AM will establish and maintain written procedures for:

(1) The prompt reporting, investigation, and referral to the debarment/suspension official of matters appropriate for that official's consideration. All debarment/suspension referrals shall include a recommendation by the Director of AM as to a proposed course of action;

(2) The debarment decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment;

(3) The suspension decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension;

(4) Recommending to the CG whether or not to solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment; and

(5) Recommending to the CG whether or not to continue current contracts with a contractor or subcontractor who is debarred, suspended, or proposed for debarment.

OGC will review for legal sufficiency:

(1) Referrals by AM to the debarment/suspension official;

(2) Recommendations by AM to the CG that GAO solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment;

(3) Recommendations by AM to the CG to terminate a current contract because a contractor or subcontractor was subsequently debarred, suspended, or proposed for debarment; and

(4) Notices of proposed debarment, notices of suspension, or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment.

**Lynn H. Gibson,**

*General Counsel, U.S. Government Accountability Office.*

[FR Doc. 2012–3307 Filed 2–10–12; 8:45 am]

**BILLING CODE 1610–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–New]**

### Agency Information Collection Request; 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

*Proposed Project:* Survey of Primary Care Physicians on Oral Health for the Office on Women's Health (OWH), U.S. Department of Health and Human Services (HHS) (New)—OMB No. 0990–NEW.

*Abstract:* The Office on Women's Health (OWH) at the Department of Health and Human Services is requesting OMB approval to conduct a new, one time survey of primary care physicians regarding oral health. This survey will provide the agency with information on oral health knowledge, attitudes, and professional experience among practicing physicians throughout the U.S. The study will explore physicians' level of understanding of oral disease and what constitutes health for the oral cavity, oral health training and support needs, current practices and barriers to further involvement. OWH is requesting two years of OMB approval to enable sampling, screening, and survey implementation.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Form name | Number of respondents | Number responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Medical Secretary | Screener | 1,300 | 1 | 5/60 | 108 |
| Physician | Survey | 600 | 1 | 30/60 | 300 |
| Total | | | | | 408 |

**Keith A. Tucker,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 2012–3210 Filed 2–10–12; 8:45 am]

**BILLING CODE 4150–33–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–P–0292]**

### Determination That KAPVAY (Clonidine Hydrochloride) Extended-Release Tablets, 0.2 Milligram, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 milligram (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for clonidine hydrochloride extended-release tablets, 0.2 mg, if all other requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6262, Silver Spring, MD 20993–0002, 301–796–3601.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, is the subject of NDA 22–331, held by Shionogi Pharma, Inc., and initially approved on September 28, 2010. KAPVAY is indicated for the treatment of attention deficit hyperactivity disorder as monotherapy or as adjunctive therapy to stimulant medications. Shionogi Pharma has never marketed KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg. In previous instances (see, *e.g.,* 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Actavis, Inc. submitted a citizen petition dated April 20, 2011 (Docket No. FDA–2011–P–0292), under 21 CFR 10.30, requesting that the Agency determine whether KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, was withdrawn from sale for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg from sale. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, FDA will continue to list KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to KAPVAY (clonidine hydrochloride) Extended-Release Tablets, 0.2 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3223 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–P–0291]**

### Determination That JENLOGA (Clonidine Hydrochloride) Extended-Release Tablets, 0.1 Milligram and 0.2 Milligram, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 milligram (mg) and 0.2 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for clonidine hydrochloride extended-release tablets, 0.1 mg and 0.2 mg, if all other requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6262, Silver Spring, MD 20993–0002, 301–796–3601.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,''

which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, are the subject of NDA 22–331, held by Shionogi Pharma, Inc., initially approved on September 29, 2009. JENLOGA is indicated for the treatment of hypertension. Shionogi Pharma has never marketed JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg. In previous instances (see, e.g., 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Actavis, Inc. submitted a citizen petition dated April 20, 2011 (Docket No. FDA–2011–P–0291), under 21 CFR 10.30, requesting that the Agency determine whether JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, were not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, were withdrawn from sale for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, from sale. We have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, FDA will continue to list JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to JENLOGA (clonidine hydrochloride) Extended-Release Tablets, 0.1 mg and 0.2 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3222 Filed 2–10–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–P–0701]**

### Determination That WILPO (phentermine hydrochloride) Tablets, 8 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that WILPO (phentermine hydrochloride) Tablets, 8 Milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve Abbreviated New Drug Applications (ANDAs) for phentermine hydrochloride tablets, 8 mg, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Nam Kim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6320, Silver Spring, MD 20993–0002, 301–796–3472.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

WILPO (phentermine hydrochloride) Tablets, 8 mg is the subject of NDA 012737, held by Sandoz, Inc. WILPO is indicated in the management of exogenous obesity as a short term adjunct (a few weeks) in a regimen of weight reduction based on caloric restriction.

WILPO (phentermine hydrochloride) Tablets, 8 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

KVK–Tech, Inc. (KVK–Tech), submitted a citizen petition dated September 22, 2011 (Docket No. FDA–2011–P–0701), under 21 CFR 10.30, requesting that the Agency determine whether WILPO (phentermine hydrochloride) Tablets, 8 mg, was withdrawn from sale for reasons of safety or effectiveness. After considering the citizen petition and reviewing

Agency records and based on the information we have at this time, FDA has determined under § 314.161 that WILPO (phentermine hydrochloride) Tablets, 8 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner KVK–Tech has identified no data or other information suggesting that WILPO (phentermine hydrochloride) Tablets, 8 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of WILPO (phentermine hydrochloride) Tablets, 8 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list WILPO (phentermine hydrochloride) Tablets, 8 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to WILPO (phentermine hydrochloride) Tablets, 8 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3232 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–D–0083]**

### Draft Guidance for Industry on Heparin for Drug and Medical Device Use; Monitoring Crude Heparin for Quality; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Heparin for Drug and Medical Device Use: Monitoring Crude Heparin for Quality.'' This draft guidance is intended to alert manufacturers of active pharmaceutical ingredients (APIs), pharmaceutical and medical device manufacturers of finished products, and others to the potential risk of crude heparin contamination.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by April 13, 2012.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Frank W. Perrella, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4337, Silver Spring, MD 20993–0002, 301–796–3265; or Dennis M. Bensley, Jr., Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8268; or Jason Brookbank, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3558, Silver Spring, MD 20993–0002, 301–796–5770.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Heparin for Drug and Medical Device Use: Monitoring Crude Heparin for Quality.'' This draft guidance provides recommendations that will help API manufacturers, pharmaceutical and medical device manufacturers of finished products, and others, to better control their use of crude heparin that might contain oversulfated chondroitin sulfate (OSCS) or non-porcine material (especially ruminant material) contaminants. This draft guidance on crude heparin recommends strategies to test for contamination and should be used in addition to the United States Pharmacopeia (USP) monograph testing required for other forms of heparin to detect the presence of OSCS.

Following reports of serious adverse events (including deaths) among patients injected with heparin sodium in 2008, FDA identified the contaminant OSCS in heparin API manufactured in China. FDA is also concerned about the potential for contamination of heparin with the bovine spongiform encephalopathy (BSE) agent derived from ruminant materials. The control of the quality of crude heparin is critical to ensure the safety of drugs and devices and to protect public health. FDA developed this draft guidance to alert manufacturers to the risks of crude heparin contaminants and to recommend strategies to ensure that the heparin supply chain is not contaminated with OSCS or any non-porcine origin material, especially ruminant material (unless specifically approved or cleared as part of drug or medical device application).

The draft guidance recommends that manufacturers test and confirm the species origin of crude heparin in each shipment before use in the manufacture or preparation of a drug or medical device containing heparin. The test method should be qualified for use in testing crude heparin and for the identification of species origin. The method should be based on good scientific principles (e.g., sufficient accuracy and specificity) and possess a level of sensitivity commensurate with the current state of scientific knowledge and risk. Likewise, the draft guidance recommends that manufacturers test for OSCS in crude heparin in each shipment before use, using a qualified test method that is suitable for detecting low levels of OSCS concentrations and is based on good scientific principles. Manufacturers should reject for use and control or destroy crude heparin found to contain any amount of OSCS and notify FDA of any such finding. The draft guidance also recommends that manufacturers identify and audit crude heparin suppliers and heparin API suppliers to ensure conformance to current good manufacturing practice (CGMP), employ the controls described in the guidance for industry ''Q7 Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients,'' and comply with the quality system regulations (as applicable).

This draft guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In the draft guidance, FDA advises drug and medical device manufacturers who receive and use crude heparin to manufacture drugs and medical devices to notify the Agency of crude heparin found to contain any amount of OSCS (for human drugs 21 CFR 314.81(b)(1)(ii); for animal drugs 21 CFR 514.80(b); for medical devices 21 CFR 803.50). The collections of information in 21 CFR 314.81(b)(1)(ii) have been approved under OMB control number 0910–0001; in 21 CFR 514.80(b) under OMB control number 0910–0284; and in 21 CFR 803.50 under OMB control number 0910–0437.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, http://www.fda.gov/MedicalDvices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm,* or *http://www.regulations.gov.*

Dated: February 8, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3229 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0369]**

### Draft Guidance for Industry on Bioequivalence Recommendations for Rifaximin Tablets; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of two draft guidances for industry entitled ''Bioequivalence Recommendations for Rifaximin,'' one for the 200-milligram (mg) strength (rifaximin-200) and one for the 550-mg strength (rifaximin-550). The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for rifaximin tablets.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft guidances by April 13, 2012.

**ADDRESSES:** Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Submit electronic comments on the draft guidances to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8608.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of two draft BE recommendations, one for rifaximin-200 and one for rifaximin-550.

Xifaxan (rifaximin) 200-mg tablets, approved by FDA in May 2004, are indicated for the treatment of patients (≥ 12 years of age) with travelers' diarrhea caused by noninvasive strains of *Escherichia coli.* Xifaxan (rifaximin) 550-mg tablets, approved by FDA in March 2010, are indicated for reduction in risk of hepatic encephalopathy recurrence in patients ≥ 18 years of age. Xifaxan, 200 mg, and Xifaxan, 550 mg, are designated the reference listed drugs (RLDs) and therefore any ANDAs for generic rifaximin-200 or rifaximin-550 must demonstrate BE to the relevant RLD prior to approval. There are no approved ANDAs for these products.

In November 2011, FDA posted on its Web site a draft guidance for industry on the Agency's recommendations for BE studies to support ANDAs for rifaximin-200 (Draft Rifaximin-200 BE Recommendations). FDA is now issuing a draft guidance for industry on BE recommendations for generic rifaximin-550 (Draft Rifaximin-550 BE Recommendations).

In May 2008, Salix Pharmaceuticals, Inc. (Salix), manufacturer of the RLD, Xifaxan (200 mg), filed a citizen petition requesting that FDA refuse to receive for substantive review, or approve, ANDAs for generic rifaximin-200 unless the ANDAs contain certain data to demonstrate BE (Docket No. FDA–2008–P–0300). FDA is reviewing the issues raised in the petition and will consider any comments on the Draft Rifaximin-200 BE Recommendations before responding to Salix's citizen petition and finalizing its BE recommendations for rifaximin-200.

These draft guidances are being issued consistent with FDA's good

guidance practices regulation (21 CFR 10.115). The draft guidances, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for rifaximin-200 and rifaximin-550. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3234 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. FDA–2007–D–0369]**

## Draft Guidance for Industry on Bioequivalence Recommendation for Nitroglycerin Metered Spray/Sublingual Products and Metered Aerosol/Sublingual Products; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of two draft guidances for industry entitled ''Bioequivalence Recommendations for Nitroglycerin,'' one for nitroglycerin metered spray/sublingual products and one for nitroglycerin metered aerosol/sublingual products. The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for these products. The draft guidances are revised versions of previously published draft guidances on the subject.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft guidances by April 13, 2012.

**ADDRESSES:** Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Submit electronic comments on the draft guidances to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8608.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** sof June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This document announces the availability of two revised draft BE recommendations, one for nitroglycerin metered spray/sublingual products and one for nitroglycerin metered aerosol/sublingual products.

Nitrolingual Pumpspray (nitroglycerin lingual spray), approved by FDA in October 1985, is a metered dose spray indicated for acute relief of an attack or prophylaxis of angina pectoris due to coronary artery disease. Nitromist (nitroglycerin lingual aerosol), approved by FDA in November 2006, is another metered dose spray indicated for acute relief of an attack or acute prophylaxis of angina pectoris due to coronary artery disease. Nitrolingual Pumpspray and Nitromist are designated as reference listed drugs (RLDs), and therefore any ANDAs for generic nitroglycerin lingual spray or generic nitroglycerin lingual aerosol must demonstrate BE to the relevant RLD prior to approval. There are no approved ANDAs for these products.

In February 2010, FDA posted on its Web site a draft guidance for industry on the Agency's recommendations for BE studies to support ANDAs for nitroglycerin metered spray/sublingual products (Draft Nitroglycerin Spray BE Recommendations of February 2010). In that draft guidance, FDA recommended three studies to demonstrate BE of generic nitroglycerin metered spray/sublingual products: An in vivo fasting study, an in vitro study of unit dose and uniformity of unit dose, and an in vitro study of priming and tail off.

In March 2010, FDA posted on its Web site a draft guidance for industry on the Agency's recommendations for BE studies to support ANDAs for nitroglycerin metered aerosol/sublingual products (Draft Nitroglycerin Aerosol BE Recommendations of March 2010). In that draft guidance, FDA recommended three studies to demonstrate BE of generic nitroglycerin metered aerosol/sublingual products: An in vivo fasting study, an in vitro study of unit dose and uniformity of unit dose, and an in vitro study of priming and tail off.

FDA has reconsidered the recommendations for both of these draft guidances and has decided to revise them. In November 2011, FDA withdrew the Draft Nitroglycerin Spray BE Recommendations of February 2010 and the Draft Nitroglycerin Aerosol BE Recommendations of March 2010. FDA is now issuing revised draft guidances for industry on BE recommendations for nitroglycerin metered spray/sublingual products (Revised Draft Nitroglycerin Spray BE Recommendations) and nitroglycerin metered aerosol/sublingual products (Revised Draft Nitroglycerin Aerosol BE Recommendations). In these revised draft guidances, FDA recommends one

study (an in vivo fasting study) to demonstrate BE of generic nitroglycerin metered spray/sublingual products and generic nitroglycerin metered aerosol/sublingual products. In both of the revised draft guidances, FDA notes that even though we have not requested comparative in vitro studies, in vitro studies outlined in the 2002 guidance for industry, ''Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products—Chemistry, Manufacturing, and Controls Documentation,'' should still be submitted for chemistry, manufacturing, and controls evaluation.

In December 2010, G. Pohl-Boskamp GmbH and Company KG (Pohl), manufacturer of the RLD Nitrolingual Pumpspray, filed a citizen petition challenging FDA's Draft Nitroglycerin Spray BE Recommendations of February 2010 (Docket No. FDA–2010–P–0648). FDA is reviewing the issues raised in the petition and will consider any comments on the Revised Draft Nitroglycerin Spray BE Recommendations before responding to Pohl's citizen petition and finalizing its BE recommendation for nitroglycerin metered spray/sublingual products.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidances, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for nitroglycerin metered spray/sublingual products and nitroglycerin metered aerosol/sublingual products. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3233 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Gastrointestinal Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Gastrointestinal Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 13, 2012, from 8 a.m. to 5 p.m.

*Location:* Hilton Washington, DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

*Contact Person:* Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *GIDAC@fda.hhs.gov,* FAX: 301–847–8533, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* The committee will discuss and provide general advice on the appropriate target populations, objectives and designs of trials intended to evaluate products for the control of hyperbilirubinemia (increased levels of bilirubin in the body) in newborn infants.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* On March 13, 2012, from 8 a.m. to 12:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 28, 2012. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 17, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 21, 2012.

*Closed Presentation of Data:* On March 13, 2012, from 1:15 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). During this session, the committee will discuss the drug development program of an investigational drug.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole

Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 7, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–3203 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0102]**

### Antiparasitic Drug Use and Resistance in Ruminants and Equines; Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Antiparasitic Drug Use and Resistance in Ruminants and Equines.'' The purpose of the meeting is to discuss the current state of anthelmintic resistance in the United States and worldwide, tools for the evaluation of antiparasitic resistance, evaluation of the effectiveness of drugs against resistant parasites, and the scientific rationale for the use of combinations of antiparasitic drugs in ruminants and equines.

**DATES:** *Date and Time:* The public meeting will be held on March 5 and 6, 2012, from 8 a.m. to 5:30 p.m.

*Location:* The meeting will be held at the Hilton Washington, DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852–1699; 1–800–774–1500; FAX 301–468–0163; *http://rockvillehotel-px.rtrk.com/.*

*Contact Person:* Aleta Sindelar, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9004, FAX: 240–276–9030, email: *Aleta.Sindelar@fda.hhs.gov.*

*Requests for Oral Presentations and Registration:* Interested persons may present data, information, or views, orally or in writing, on the topic of the discussion of the meeting. Written submissions may be made to the contact person on or before February 27, 2012. Oral presentations from the public during the open public comment period will be scheduled between approximately 2 p.m. and 3 p.m. on March 5, 2012, and 10:30 a.m. and 12 noon on March 6, 2012. Those desiring to make oral presentations should notify the contact person by February 20, 2012, and submit a brief statement of the general nature of information they wish to present and an indication of the approximate time requested to make their presentation. Time allotted for each presentation may be limited. The contact person will inform each speaker of their schedule prior to the meeting.

Registration is not required for this meeting; however, early arrival is recommended because seating may be limited. If you need special accommodations due to a disability, please contact Aleta Sindelar, (see *Contact Person*) at least 7 days in advance.

*Comments:* Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The docket will remain open for written or electronic comments for 60 days following the meeting.

**SUPPLEMENTARY INFORMATION:** The main purpose of the meeting is to explore and discuss ways in which antiparasitic drugs can be used, alone or in combination, to maximize antiparasitic drug efficacy and minimize parasitic resistance in ruminant and equine species. Other topics for discussion include:

(1) The current state of anthelmintic resistance in the United States and in other parts of the world;

(2) The factors that have contributed to the development of anthelmintic resistance;

(3) The role of refugia in the management of anthelmintic resistance;

(4) The use of mathematical modeling as a tool for evaluating resistance;

(5) The use of the fecal egg count reduction test in the detection and management of anthelmintic resistance; and

(6) Ways to maximize the effectiveness of anthelmintics for today and the future.

*Agenda:* The meeting will allow for public comment and discussion on current challenges regarding the use of antiparasitic drugs in ruminants and equines. The agenda for the public meeting will be made available on the Agency's Web site at *http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/default.htm.*

*Transcripts:* FDA will prepare a meeting transcript and make it available on the Agency's Web site (see *Agenda*) after the meeting. FDA anticipates that transcripts will be available approximately 30 business days after the meeting. The transcript will be available for public examination at the Division of Dockets Management (see *Comments* section of this document), between 9 a.m. and 4 p.m., Monday through Friday. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: February 7, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–3221 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Blood Products Advisory Committee; Cancellation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The meeting of the Blood Products Advisory Committee scheduled for February 29, 2012 is cancelled. This meeting was announced in the **Federal Register** of January 30, 2012 (77 FR 4567). FDA intends to convene at a future date a public scientific workshop to discuss the evaluation of possible new plasma products manufactured following storage at room temperature for up to 24 hours.

**FOR FURTHER INFORMATION CONTACT:** Bryan Emery or Pearl Muckelvene,

Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, Contact 1–301–827–1277 or 1–301–827–1281, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: February 7, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–3199 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Tobacco Products Scientific Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Tobacco Products Scientific Advisory Committee (TPSAC).

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

**DATES:** *Date and Time:* The meeting will be held on March 1, 2012, from 10 a.m. to 5 p.m., and on March 2, 2012, from 8 a.m. to 1 p.m.

*Location:* Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373.

*Contact Person:* Caryn Cohen, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose option 4), email: *TPSAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* As part of the TPSAC's required report to the Secretary of Health and Human Services, the committee will complete their discussion of issues related to the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. Discussion will include such topics as the composition and characteristics of dissolvable tobacco products, product use, potential health effects, and marketing.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* On March 1, 2012, from 1 p.m. to 5 p.m., and on March 2, 2012, from 8 a.m. to 1 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 16, 2012. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on March 1, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 23, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 24, 2012.

*Closed Committee Deliberations:* On March 1, 2012, from 10 a.m. to 12 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting must be closed because the Committee will be discussing trade secret and/or confidential data regarding products provided by the tobacco companies.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caryn Cohen at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 8, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–3258 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Neurological Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and

recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 23, 2012, from 8 a.m. to 7 p.m.

*Location:* Hilton Washington, DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

*Contact Person:* Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, 301–796–3805, *Avena.Russell@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* On March 23, 2012, the committee will discuss current knowledge about the safety and effectiveness of the Wingspan Stent System with Gateway PTA Balloon Catheter for the treatment of intracranial arterial stenosis. FDA is convening this committee to seek expert scientific and clinical opinion on the risks and benefits of this device based on the available premarket and postmarket data. The Wingspan Stent System with Gateway PTA Balloon Catheter is a neurovascular stent, balloon catheter, and delivery system consisting of the following components:

1. *Wingspan Stent*—This is a self-expanding, nitinol stent with a tubular mesh design.

2. *Gateway PTA Balloon Catheter*—This balloon catheter is used to predilate the lesion prior to introduction of the Wingspan Stent System into the patient.

3. *Wingspan Delivery System*—This delivery system is a single lumen, over-the-wire, coaxial microcatheter that is used to deliver the stent to the treatment site within the patient's artery.

The Wingspan Stent System with Gateway PTA Balloon Catheter has been approved under a humanitarian device exemption (HDE) (H050001) for the following indications: ''The Wingspan Stent System with Gateway PTA Balloon Catheter is indicated for use in improving cerebral artery lumen diameter in patients with intracranial atherosclerotic disease, refractory to medical therapy, in intracranial vessels with ≥ 50% stenosis that are accessible to the system.''

Interim results and analyses of data from an ongoing randomized clinical trial, ''Stenting and Aggressive Medical Management for Preventing Recurrent Stroke in Intracranial Stenosis'' (SAMMPRIS), published in the *New England Journal of Medicine* (2011;365:993–1003), will be presented for the Wingspan Stent with Gateway PTA Balloon catheter. The committee will be asked to discuss the comparability of the patient populations for the approved HDE and SAMMPRIS trial and the relevance of the SAMMPRIS trial results to the assessment of safety and probable benefit for the Wingspan Stent System with Gateway PTA Balloon Catheter HDE.

FDA recently received a citizen's petition seeking withdrawal of the HDE approval and recall of Wingspan stents currently on the market. The petitions are available for public review and comment at *www.regulations.gov* under docket number FDA–2011–P–0923.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* FDA will work with affected industry and professional organizations that have an interest in the Wingspan Stent System and who wish to make a presentation separate from the general Open Public Hearing; time slots between 2 p.m. and 3 p.m. are provided. Representatives from industry and professionals organizations interested in making formal presentations to the committee should notify the contact person on or before March 1, 2012.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 9, 2012. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 1, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 2, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, *James.Clark@fda.hhs.gov* or 301–796–5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 8, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–3243 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. FDA–2012–N–0001]**

## Request for Notification From Consumer Organizations Interested in Participating in the Selection Process for Nominations for Voting and/or Nonvoting Consumer Representatives and Consumer Representatives on Public Advisory Committees or Panels

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may either be self-nominated or may be nominated by a consumer organization. Nominations will be accepted for current vacancies and for those that will or may occur through February 2013.

**DATES:** Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by March 14, 2012, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by March 14, 2012.

**ADDRESSES:** All statements of interest from consumer organizations interested in participating in the selection process and consumer representative nominations should be sent electronically to *CV@OC.FDA.GOV,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, rm. 5129, Silver Spring, MD 20993–0002, or by fax to 301–847–8640. Information about becoming a member of an FDA advisory committee can be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

**FOR FURTHER INFORMATION CONTACT:** Doreen Brandes, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5122, Silver Spring, MD 20993–0002, 301–796–8858, *Doreen.Brandes@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the persons listed in table 2 in the **SUPPLEMENTARY INFORMATION** section of this document:

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 1 of this document:

TABLE 1

| Committee/panel/areas of expertise needed | Current and upcoming vacancies | Approximate date needed |
|---|---|---|
| Allergenic Products—Knowledgeable in the field of allergenic extracts that are used for the diagnosis and treatment of allergic diseases such as allergic rhinitis ("hay fever"), allergic sinusitis, allergic conjunctivitis, bee venom allergy, and food allergy. | 1—Voting | 08/31/12. |
| Peripheral and Central Nervous Systems—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties. | 1—Voting | 01/31/13. |
| Non-Prescription Drugs—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties. | 1—Voting | 01/31/13. |
| National Mammography Quality Assurance—Knowledgeable in clinical practice, research specialization, or professional work that has a significant focus on mammography. | 2—Nonvoting | 01/31/13. |
| **Certain Panels of the Medical Devices Advisory Committee** | | |
| Clinical Chemistry and Clinical Toxicology Devices—Knowledgeable in the fields of clinical chemistry and toxicology in vitro diagnostic devices (IVDs); clinical use of related IVDs in laboratories and in home; data concerning safety and effectiveness of related IVDs for clinical use in diseases/disorders/conditions such as diabetes, cardiovascular disease, endocrine disorders, women's health, drug abuse, therapeutic drug monitoring, and general chemistry conditions. | 1—Nonvoting | 02/28/13. |
| Microbiology Devices Panel—Knowledgeable in infectious and pulmonary disease, pediatric infectious diseases, tropical diseases, and clinical microbiology. | 1—Voting | Immediately. |

### I. Functions

*A. Allergenic Products Advisory Committee*

The Committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease, and makes appropriate recommendations to the Commissioner of Food and Drugs of its findings.

*B. Peripheral and Central Nervous Systems Advisory Committee*

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases and makes appropriate recommendations to the Commissioner of Food and Drugs.

*C. Non-Prescription Drugs Advisory Committee*

The Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (non-prescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as

safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee will serve as a forum for the exchange of views regarding the prescription and non-prescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

*D. National Mammography and Quality Assurance Advisory Committee*

The Committee reviews and evaluates (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities; and (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

*E. Certain Panels of the Medical Devices Advisory Committee*

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

## II. Criteria for Members

Persons nominated for membership as consumer representatives on the committees or panels should meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

## III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing three to five qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

## IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

All nominations should include: A cover letter; a curriculum vitae or resume that includes the nominee's home or office address, telephone number, and email address; and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations also should specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations should include confirmation that the nominee is aware of the nomination and is willing to serve as a member of the advisory committee or panel if selected. The term of office is up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of three to five qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

FDA has a special interest in ensuring that women, minority groups, and individuals with physical disabilities are adequately represented on its advisory committees and panels and, therefore, encourages nominations for appropriately qualified candidates from these groups.

For questions relating to specific advisory committees or panels, contact the following persons listed in table 2 of this document:

TABLE 2

| Contact person | Committee/panel |
|---|---|
| Donald Jehn, Center for Biologics Evaluation and Research, Food and Drug Administration, 5515 Security Lane, Rockwall Bldg. 2 (HFM–71), rm. 1118, , Rockville, MD 20852, 301–827–1293, Fax: 301–827–0294, *Donald.Jehn@fda.hhs.gov*. | Allergenic Products. |
| CDR Diem-Kieu Ngo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2412, Silver Spring, MD 20993–0002, 301–796–9021, Fax: 301–847–8533, *Diem.Ngo@fda.hhs.gov*. | Peripheral and Central Nervous Systems Drugs. |
| CDR Diem-Kieu Ngo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2412, Silver Spring, MD 20993–0002, 301–796–9021, Fax: 301–847–8533, *Diem.Ngo@fda.hhs.gov*. | Non-Prescription Drugs. |
| LCDR Sara J. Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1544, Silver Spring, MD 20993–0002, 301–796–7047, Fax: 301–847–8121, *Sara.Anderson@fda.hhs.gov*. | National Mammography and Quality Assurance. |
| LCDR Sara J. Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1544, Silver Spring, MD 20993–0002, 301–796–7047, Fax: 301–847–8121, *Sara.Anderson@fda.hhs.gov*. | Clinical Chemistry and Clinical Toxicology Devices. |
| Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1544, Silver Spring, MD 20993–0003, 301–796–3063, Fax: 301–847–8121, *Jamie.Waterhouse@fda.hhs.gov*. | Ear, Nose, and Throat Devices. |
| Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, Silver Spring, MD 20993–0003, 301–796–6639, Fax: 301–847–8121, *Shanika.Craig@fda.hhs.gov*. | Microbiology Devices Panel. |

Dated: February 7, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–3198 Filed 2–10–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–0165.

*Comments are invited on:* (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Uncompensated Services Assurance Report (OMB No. 0915–0077)—[Extension]**

Under the Hill-Burton Act, the Government provides grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide services to persons unable to pay. A condition of receiving this assistance requires facilities to provide periodic assurances that the required level of uncompensated care is being provided, and that certain notification and record keeping procedures are being followed. These standard requirements are referred to as the uncompensated services assurance.

The annual estimate of burden is as follows:

ESTIMATE OF INFORMATION COLLECTION BURDEN

| Type of requirement and regulatory citation | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Disclosure Burden (42 CFR): | | | | | |
| Published Notices (124.504(c)) | 63 | 1 | 63 | 0.75 | 47.25 |
| Individual Notices (124.504(c)) | 63 | 1 | 63 | 43.60 | 2,746.80 |
| Determinations of Eligibility (124.507) | 63 | 63 | 3,969 | 0.75 | 2,976.75 |
| SUBTOTAL DISCLOSURE BURDEN | | | | | 5,770.80 |

| Type of requirement and regulatory citation | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Reporting: | | | | | |
| Uncompensated Services Report—HRSA–710 Form (124.509(a)) | 10 | 1 | 10 | 11.00 | 110.00 |

| Type of requirement and regulatory citation | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Application for Compliance Alternatives: | | | | | |
| Public Facilities (124.513) | 4 | 1 | 4 | 6.00 | 24.00 |
| Small Obligation Facilities (124.514(c)) | 0 | | | | |
| Charitable Facilities (124.516(c)) | 2 | 1 | 2 | 6.00 | 12.00 |
| Annual Certification for Compliance Alternatives: | | | | | |
| Public Facilities (124.509(b)) | 32 | 1 | 32 | 0.50 | 16.00 |
| Charitable Facilities (124.509(b)) | 13 | 1 | 13 | 0.50 | 6.50 |
| Small Obligation Facilities (124.509(c)) | 0 | | | | |
| Complaint Information (124.511(a)): | | | | | |
| Individuals | 10 | 1 | 10 | 0.25 | 2.50 |
| Facilities | 10 | 1 | 10 | 0.50 | 5.00 |
| SUBTOTAL REPORTING BURDEN | | | | | 176.00 |

| Recordkeeping | Number of record keepers | Hours per year | Total burden hours |
|---|---|---|---|
| Non-alternative Facilities (124.510(a)) | 63 | 50 | 3,150.00 |
| SUBTOTAL RECORDKEEPING BURDEN | | | 3,150.00 |

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 7, 2012.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2012–3281 Filed 2–10–12; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Infant Mortality (ACIM).

*Dates and Times:* March 8, 2012, 8:30 a.m.–6 p.m.; March 9, 2012, 8:30 a.m.–3 p.m.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, (301) 657–1234.

*Status:* The meeting is open to the public with attendance limited to space availability.

*Purpose:* The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department of Health and Human Services' programs that focus on reducing infant mortality and improving the health status of infants and pregnant women; and factors affecting the continuum of care with respect to maternal and child health care. It includes outcomes following childbirth; strategies to coordinate the myriad of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start program and *Healthy People 2020* infant mortality objectives.

*Agenda:* Topics that will be discussed include the following: A Health Resources and Services Administration (HRSA) update; a Maternal and Child Health Bureau (MCHB) update; an update from the Committee's four workgroups; updates from the Centers for Medicare & Medicaid Services and the Centers for Disease Control and Prevention; a report from the HRSA/MCHB Regions IV and VI Infant Mortality Summit; Presidential Challenge from the Association of State and Territorial Health Officials; a State-level presentation on activities related to reducing infant mortality; and, Improvement Science. Proposed agenda items are subject to change as priorities dictate.

Time will be provided for public comments, but will be limited to five minutes each. Comments are to be submitted in writing no later than 5 p.m. ET on February 24, 2012.

*For Additional Information or to Submit Public Comments:* Please contact: David S. de la Cruz, Ph.D., M.P.H., HRSA, SACIM Designated Federal Official, Maternal and Child Health Bureau; telephone: (301) 443–0543; email: *David.delaCruz@hrsa.hhs.gov.*

Dated: February 7, 2012.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2012–3286 Filed 2–10–12; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 76 FR 77840–778411 dated December 14 2011).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the functional statement for the Office of Planning, Analysis and Evaluation (RA5): (1) Establish the Office of External Engagement (RA57); (2) transfer some of the functions currently within the Office of Policy Analysis (RA53) into the newly established Office of External Engagement (RA57) and; (3) transfer one of the functions currently within the Office of Policy Analysis (RA53) into the Office of the Director (RA5).

**Chapter RA5—Office of Planning, Analysis and Evaluation**

*Section RA5–10, Organization*

Delete in its entirety and replace with the following:

The Office of Planning, Analysis and Evaluation (RA5) is headed by the Director, who reports directly to the Administrator, Health Resources and Services Administration. The Office of Planning, Analysis and Evaluation (RA5) includes the following components:

(1) Office of the Director (RA5);

(2) Office of Policy Analysis (RA53);

(3) Office of Research and Evaluation (RA56); and

(4) Office of External Engagement (RA57).

*Section RA5–20, Functions*

(1) Delete the functional statement for the Office of Planning, Analysis and Evaluation (RA5) and replace in its entirety.

**Office of the Director (RA5)**

(1) Provides Agency-wide leadership for policy development, data collection and management, major analytic activities, research, and evaluation; (2) develops HRSA-wide policies; (3) participates with HRSA organizations in developing strategic plans for their component; (4) coordinates the Agency's long term strategic planning process; (5) conducts and/or guides analyses, research, and program evaluation; (6) develops annual performance plans; (7) analyzes budgetary data with regard to planning guidelines; (8) develops and produces performance reports required under the Government Performance and Accountability Report and OMB; (9) coordinates the Agency's participation in Department and Federal initiatives; (10) as requested, develops, implements, and coordinates policy processes for the agency for key major cross-cutting policy issues; (11) facilitates policy development by maintaining analytic liaison between the Administrator, other OPDIVs, Office of the Secretary staff components, and other Departments on critical matters involving program policy undertaken in the Agency; (12) provides data analyses, graphics presentations, briefing materials, and analyses on short notice to support the immediate needs of the Administrator and Senior Leadership; (13) conducts special studies and analyses and/or provides analytic support and information to the Administrator and Senior Leadership needed to support the Agency's goals and directions; and (14) collaborates with Office of Operations in the development of budgets, performance plans, and other administration reporting requirements.

**Office of Policy Analysis (RA53)**

(1) Serves as the principal Agency resource for policy analysis; (2) analyzes issues arising from legislation, budget proposals, regulatory actions, and other program or policy actions; (3) serves as focal point within HRSA for analysis of healthcare payment systems and financing issues; (4) collaborates with HHS Agencies to examine the impact of Medicare, Medicaid, and Children's Health Insurance Program (CHIP) on HRSA grantees and safety net providers; and (5) provides Agency leadership guidance on policy development.

**Office of Research and Evaluation (RA56)**

(1) Serves as the principal source of leadership and advice on program information and research; (2) analyzes and coordinates the Agency's need for information and data for use in the management and direction of Agency programs; (3) manages an Agency-wide information and data group as well as an Agency-wide research group; (4) maintains an inventory of HRSA databases; (5) provides technical assistance to HRSA staff in database development, maintenance, analysis, and distribution; (6) promotes the availability of HRSA data through web sites and other on-line applications; (7) conducts, oversees, and fosters high quality research across HRSA programmatic interests; (8) develops an annual research agenda for the Agency; (9) conducts, leads, and/or participates with HRSA staff in the development of research and demonstration projects; (10) coordinates HRSA participation in institutional review boards and the protection of human subjects; (11) conducts, guides, and/or participates in major program evaluation efforts and prepares reports on HRSA program efficiencies; and (12) manages HRSA activity related to the Paperwork Reduction Act, and other OMB policies.

**Office of External Engagement (RA57)**

(1) Serves as the principal Agency resource for facilitating external engagement; (2) coordinates the Agency's intergovernmental activities; (3) provides the Administrator with a single point of contact on all activities related to important state and local government, stakeholder association, and interest group activities; (4) coordinates Agency cross-Bureau cooperative agreements and activities with organizations such as the National Governors Association, National Conference of State Legislature, Association of State and Territorial Health Officials, National Association of Counties, and National Association of County and City Health Officials; (5) interacts with various commissions such as the Delta Regional Authority, Appalachian Regional Commission, and on the Denali Commission; (6) serves as the primary liaison to Department intergovernmental staff; and (7) serves as the coordinator for the Government Accountability Office and reports on HRSA programs and activities.

**Section RA5–30, Delegations of Authority**

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: February 2, 2012.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2012–3271 Filed 2–10–12; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4052–DR; Docket ID FEMA–2012–0002]**

### Alabama; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4052–DR), dated February 1, 2012, and related determinations.

**DATES:** *Effective Date:* February 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 1, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of January 22–23, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Chilton and Jefferson Counties for Individual Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–3200 Filed 2–10–12; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4053–DR; Docket ID FEMA–2012–0002]**

### Utah; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–4053–DR), dated February 1, 2012, and related determinations.

**DATES:** *Effective Date:* February 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 1, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from a severe storm during the period of November 30 to December 1, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Utah have been designated as adversely affected by this major disaster:

Davis County for Public Assistance.

All counties within the State of Utah are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–3205 Filed 2–10–12; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4054–DR; Docket ID FEMA–2012–0002]**

### Alaska; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4054–DR), dated February 2, 2012, and related determinations.

**DATES:** *Effective Date:* February 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 2, 2012, the President issued a

major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm during the period of November 15–17, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The Kenai Peninsula Borough for Public Assistance.

All counties within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–3207 Filed 2–10–12; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2010–0032]**

### Federal Radiological Preparedness Coordinating Committee

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on February 24, 2012 in Arlington, VA.

**DATES:** The meeting will take place on February 24, 2012. The session is open to the public from 9:00 a.m. to 10:00 a.m. Send written statements and requests to make oral statements to the contact person in the **FOR FURTHER INFORMATION CONTACT** section by close of business February 17, 2012.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Reagan National Airport in Salons III and IV at 2020 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Richard Collins, Program Specialist (Emergency Management), DHS/FEMA, 1800 South Bell Street—CC858, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 212–4357; fax (703) 305–0837; or email *richard.collins@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on February 24, 2012 from 9 a.m. to 10 a.m., at the Radisson Hotel Reagan National Airport in Salons I, II and III at 2020 Jefferson Davis Highway, Arlington, VA 22202. Please note that the meeting may close early. This meeting is open to the public. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on February 17, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) Presidential Policy Directive 8 (PPD–8) Relationship to the National Response Framework (NRF), (3) FRPCC Charter Re-Write Update, (4) Nuclear Incident Response Team Project Update, (5) Radiation Team Resource Typing Update, (6) Nuclear Sector Specific Agency Update, (7) Human Capital Crisis In Radiation Safety. The FRPCC Co-Chairs shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on February 17, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on February 17, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

**Authority:** 44 CFR 351.10(a); 351.11(a).

Dated: February 6, 2012.

**Timothy W. Manning,**

*Deputy Administrator, Protection and National Preparedness, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2012–3206 Filed 2–10–12; 8:45 am]

**BILLING CODE 9110–21–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2012–0006]**

### Waiver of Debt

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA is providing notice of its implementation of the Disaster Assistance Recoupment Fairness Act of 2011 (Pub. L. 112–74) (DARFA). DARFA provides the Administrator of FEMA with the authority to waive certain debts

arising from improper payments provided to disaster survivors for disasters declared between August 28, 2005, and December 31, 2010.

**DATES:** FEMA's waiver procedures are effective February 13, 2012.

**ADDRESSES:** ''FEMA Directive: Waiving Debts Pursuant to the Disaster Assistance Recoupment Fairness Act of 2011'' can be viewed at *www.regulations.gov* under Docket ID FEMA–2012–0006. Go to *www.regulations.gov,* click on ''Advanced Search,'' enter ''FEMA–2012–0006'' in the ''By Docket ID'' box, and click ''Search.'' A hard copy may be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Keith Turi, Federal Emergency Management Agency, Department of Homeland Security, 501 C Street SW., Washington, DC, telephone (202) 646–3642 (this is not a toll-free number). If you have any questions regarding a Notice of Debt or recoupment action, please contact the Recoupment Hotline at 1–800–816–1122. If you have a speech disability or hearing loss and use a TTY, call 1–800–462–7585 directly; if you use 711 or Video Relay Service (VRS), call 800–816–1122.

**SUPPLEMENTARY INFORMATION:**

Pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Improper Payments Elimination and Recovery Act of 2010 (Pub. L. 111–204), as implemented by 31 CFR Part 901, 31 CFR 902.2, and 6 CFR Part 11, FEMA is required to recover funds improperly paid (overpayments). On March 15, 2011, FEMA published a notice in the **Federal Register** (76 FR 14039) that announced FEMA's recoupment process for collecting overpayments (debts) made in delivering temporary housing and other disaster-related individual assistance. This process provides individuals an opportunity to appeal a FEMA debt determination and, in some cases, to request an oral hearing.

Some members of Congress expressed concern about the fairness of FEMA collecting overpayments from disaster survivors when the overpayment was the result of FEMA error and where a significant amount of time had elapsed before FEMA provided actual notice of the debt. As a result of these concerns, Congress passed, and the President signed, the Disaster Assistance Recoupment Fairness Act of 2011 (Pub. L. 112–74) (DARFA). Pursuant to DARFA, FEMA may determine to waive a debt arising from improper payments provided to disaster survivors for disasters declared between August 28, 2005 and December 31, 2010 if:

(1) The debt does not involve fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim; and

(2) The assistance was distributed based on FEMA error; and

(3) There was no fault on behalf of the debtor; and

(4) The collection of the debt would be ''against equity and good conscience.''

(5) In addition, if all four conditions above are met but the debtor's Adjusted Gross Income (AGI) is greater than $90,000, FEMA may approve no more than a partial waiver.

FEMA may determine it would be against equity and good conscience to collect a debt where collection would cause serious financial hardship; where the debtor has spent the overpayment for the reason it was provided or other disaster related needs and has no present ability to reclaim the funds; more than 36 months have elapsed between the time FEMA awarded the assistance and the date final notification was provided to the debtor of the debt; and/or other personal circumstances exist where collection would be unconscionable.

If FEMA determines to waive a debt pursuant to the authority provided in DARFA, the debt will cease to exist, FEMA will cease further debt collection activity with respect to the debt waived, and reimburse any payments or fees previously paid on the debt. If FEMA determines that a debt is not waived, the debtor will be notified of payment options.

DARFA is a time-limited authority that only applies to very particular debts arising from FEMA individual assistance overpayments for specific disaster events. It is thus extraordinary authority and the waiver process that results from it does not apply to debts arising from delivery of any other FEMA or other Federal assistance program.

**Authority:** Pub. L. 112–74; 31 U.S.C. 3701 *et seq.*

Dated: February 7, 2012.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–3208 Filed 2–10–12; 8:45 am]

**BILLING CODE 9110–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5603–N–09]**

## Notice of Submission of Proposed Information Collection to OMB CDBG Urban County/New York Towns Qualification/Requalification Process

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The UC/New York Towns qualification/requalification process obtains information yearly to establish the participating population used to calculate the final grant CDBG allocations for all CDBG grantees for the next fiscal year.

**DATES:** *Comments Due Date: March 14, 2012.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0170) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title Of Proposal:* CDBG Urban County/New York Towns Qualification/Requalification Process.

*OMB Approval Number:* 2506–0170.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* The UC/New York Towns qualification/requalification process obtains information yearly to establish the participating population used to calculate the final grant CDBG allocations for all CDBG grantees for the next fiscal year.

*Frequency of Submission:* Monthly, Annually.

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 183 | | 0.344 | | 62.857 | | 3,960 |

*Total Estimated Burden Hours:* 3,960.

*Status:* Revision of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 7, 2012.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2012–3264 Filed 2–10–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2012–N031; 40120–1112–0000–F2]**

### Receipt of Applications for Endangered Species Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

**DATES:** We must receive written data or comments on the applications at the address given below, by March 14, 2012.

**ADDRESSES:** Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Cameron Shaw, Permit Coordinator).

**FOR FURTHER INFORMATION CONTACT:** Cameron Shaw, telephone (904) 731–3191; facsimile (904) 731–3045.

**SUPPLEMENTARY INFORMATION:** The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Permit Application Number: TE–56762A**

*Applicant:* University of Arkansas, Pine Bluff, Arkansas

Applicant requests authorization to take (capture, transport, temporarily house, conduct captive breeding, release and monitor populations), the yellowcheek darter (*Etheostoma moorei*). This activity will be conducted on the Little Red River in Arkansas and at the University of Arkansas at Pine Bluff.

**Permit Application Number: TE–58322A**

*Applicant:* Brent Mock, Nashville, Tennessee

Applicant requests authorization for non-lethal take of Indiana bats (*Myotis sodalist*) and gray bats (*Myotis grisescens*) for the purpose of conducting presence/absence surveys and collecting scientific data. This work will be conducted throughout the ranges of these species.

**Permit Application Number: TE–58442A**

*Applicant:* James Cox, Tallahassee, Florida

Applicant requests authorization to take Florida grasshopper sparrows (*Ammodramus savannarum floridanus*) by netting, handling, marking and releasing for the purpose of conducting scientific research in Osceola and Okeechobee Counties, Florida.

**Permit Application Number: TE–63270A**

*Applicant:* Dr. Robert Reynolds, Quincy, Massachusetts

Applicant requests authorization to take Puerto Rican boa (*Epicrates inornatus*) and Virgin Island boa (*Epicrates monensis granti*) by capturing, handling, collecting blood and tissue samples and releasing for the purpose of conducting scientific research in the Mato del Platano Nature Reserve, Puerto Rico.

**Permit Application Number: TE–14097A**

*Applicant:* Daniel Judy, Mount Dora, Florida

Applicant requests amendment of permit to allow for the take of Virginia big-eared bats (*Corynorhinus townsendii virginianus*) and Ozark big-eared bats (*Corynorhinus townsendii ingens*) while conducting presence/absence surveys. Applicant further requests authorization to conduct such activities in Oklahoma and Kansas.

**Permit Application Number: TE–75916**

*Applicant:* Dr. Julie Lockwood, Rutgers University, New Brunswick, New Jersey

Applicant requests authorization to take Cape Sable seaside sparrows (*Ammodramus maritimus mirabilis*) by netting, handling, marking and releasing for the purpose of conducting scientific research in Florida.

**Permit Application Number: TE–63577A**

*Applicant:* National Park Service, Mammoth Cave National Park

Applicant requests authorization for non-lethal take of Indiana bats (*Myotis sodalist*) and gray bats (*Myotis grisescens*) for the purpose of conducting presence/absence surveys and collecting scientific data. This work will be conducted at and in the vicinity of Mammoth Cave National Park, Kentucky.

**Permit Application Number: TE–63633A**

*Applicant:* Biodiversity Research Institute, Gorham, Maine

Applicant requests authorization for non-lethal take of Indiana bats (*Myotis sodalist*) and gray bats (*Myotis grisescens*) for the purpose of conducting presence/absence surveys and collecting scientific data. This work will be conducted in Tennessee, New Jersey and New York.

**Permit Application Number: TE–63797A**

*Applicant:* Christopher Owen, Louisville, Kentucky

Applicant requests authorization for take (capture, survey, handle, hold in captivity, propagate and release), for the purpose of collecting scientific data and artificial propagation research, the following freshwater mussel species:

Cumberland bean *(Villosa trabalis)*
Fanshell *(Cyprogenia stegaria)*
Little-wing pearlymussel *(Pegias fabula)*
Orangefoot pimpleback *(Plethobasus cooperianus)*
Ring pink mussel *(Obovarua retusa)*
Rough pigtoe *(Pleurobema plenum)*

This work will be conducted in the Cumberland, Green, Kentucky, Licking, Salt and Ohio River basins.

Dated: January 27, 2012.

**Franklin J. Arnold, III,**

*Acting Regional Director.*

[FR Doc. 2012–3236 Filed 2–10–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLAZ910000.L14300000.DB0000. LXSS058A0000]**

## Notice of Segregation of Public Lands in the State of Arizona for the Restoration Design Energy Project—Agua Caliente Solar Energy Zone in Yuma County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) is segregating public lands located in the State of Arizona from all forms of appropriation under the public land laws, including the mining law, but excluding the mineral leasing or materials sale laws, for a period of up to 2 years. This is for the purpose of protecting potential sites for future solar energy development while they are being analyzed in the Restoration Design Energy Project (RDEP). The public lands contained in this segregation total approximately 20,776 acres in Yuma County.

**DATES:** This segregation is effective on February 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lane Cowger, BLM Deputy Project Manager; telephone: 602–417–9612; address: One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427; or email: *az_arra_rdep@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This segregation of public lands corresponds with the analysis of these same public lands as a proposed Solar Energy Zone (SEZ) in the RDEP. The analysis will establish whether some or all of these lands are suitable for utility-scale solar energy development. Decisions about the suitability of the lands as a SEZ will be included in the RDEP record of decision, which is scheduled to be completed in late 2012. More information on the RDEP is available on the project Web site at: *http://www.blm.gov/az/st/en/prog/energy/arra_solar.html.*

The following described lands to be segregated are located in Yuma County, Arizona:

**Gila and Salt River Meridian**

*Agua Caliente SEZ*

T. 4 S., R. 11 W.,
Sec. 19;
Sec. 29, N½ and SW¼;
Secs. 30 and 31.

T. 4 S., R. 12 W.,
Sec. 14, SW¼SW¼;
Sec. 15, S½S½;
Sec. 16, SE¼SW¼ and S½SE¼;
Sec. 19, E½SE¼ and SW¼SE¼;
Sec. 20, E½, SE¼NW¼, and SW¼;
Secs. 21 and 22;
Sec. 23, W½W½;
Secs. 24 and 25;
Sec. 26, W½;
Secs. 27, 28, and 29;
Sec. 30, E½ and NE¼NW¼;
Sec. 31, E½NE¼, NW¼NE¼, E½SW¼NE¼, and E½NE¼SE¼;
Secs. 32, 33, and 34;
sec. 35, lot 1, W½NW¼ and NW¼SW¼;
Sec. 36.

T. 5 S., R. 11 W.,
Sec. 5, lots 3 and 4, S½NW¼, and SW¼;
Secs. 6 and 7;
Sec. 18, lots 1 to 4, inclusive, NE¼, and E½W½;
Sec. 19, lot 1, and N½NE¼NW¼.

T. 5 S., R. 12 W.,
Sec. 2, lots 1 to 4, inclusive, S½N½, SW¼, W½SE½, and NE¼SE¼;
Sec. 3;
Sec. 4, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 5, lot 4, NE¼SW¼NW¼, E½NE¼SW¼, and SE¼;
Sec. 8, E½NE¼, E½NW¼NE¼, SW¼NE¼, SW¼SW¼, E½SW¼, and SE¼;
Sec. 9, E½NE¼ and NE¼SE¼;
Sec. 10;
Sec. 15, E½, E½NW¼, NW¼NW¼;
Sec. 17;
Sec. 18, lot 4, E½E½, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 19, lots 1 and 2, NE¼, E½NW¼, and N½SE¼;
Sec. 20;
Sec. 22, E½E½;
Sec. 23, W½;
Sec. 26, N½NW¼;
Sec. 28, W½E½ and W½;
Sec. 29;
Sec. 33, NW¼NW¼NE¼, N½NW¼, and NW¼SW¼NW¼.

T. 5 S., R. 13 W.,
Sec. 24, lots 1 and 2, and E½SW¼NE¼.

The areas described aggregate 20,776 acres, more or less, in Yuma County.

In order to protect potential sites for future solar energy development, the BLM is segregating the lands under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) for a period of up to 2 years, subject to valid existing rights. This segregation period will commence on February 13, 2012. The public lands involved in this notice will be segregated from all forms of appropriation under the public land and mining laws, but not the Mineral Leasing Act of 1920 or the Materials Act of 1947. It has been determined that this segregation is necessary for the orderly administration of the public lands that have been identified by the BLM as having potential for solar energy generation.

The temporary segregation period will terminate and the lands will automatically reopen to all forms of appropriation under the public land laws, including the mining laws, on February 13, 2014 unless, prior to the end of the 2-year period, the BLM publishes a **Federal Register** notice terminating the segregation.

**Authority:** 43 CFR 2091.3–1(e), 43 CFR 2804.25(e).

**Raymond Suazo,**

*State Director.*

[FR Doc. 2012–3241 Filed 2–10–12; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA–051552, LLCAD07000 L51010000 FX0000 LVRWB10B3980]**

### Notice of Segregation of Public Lands for the Pattern Energy Group Ocotillo Express Wind Energy Project, Imperial County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) is segregating public lands located in Imperial County, California, from appropriation under the public land laws including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years for the purpose of processing a wind energy right-of-way (ROW) application for the Ocotillo Express Wind Project. The public land contained in this segregation totals approximately 12,436 acres.

**DATES:** Effective Date: This segregation is effective on February 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cedric Perry, BLM Project Manager, telephone (951) 697–5388; address 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553; email *Cedric_Perry@ca.blm.gov.* Please contact Cedric Perry if you would like to have your name added to our mailing list.

**SUPPLEMENTARY INFORMATION:** The BLM is segregating the following described public lands, located in Imperial County, California, subject to valid existing rights, from appropriation under the public land laws and Mining Laws, but not the Mineral Leasing Laws or the Material Sale Law.

**San Bernardino Meridian, California**

T. 16 S., R. 9 E.,
- Sec. 17, lots 3 thru 10, inclusive;
- Sec. 18, lots 7 thru 14, inclusive, lots 17 thru 28, inclusive, and SE¼;
- Sec. 19, lots 5 thru 40, inclusive;
- Sec. 20;
- Sec. 21, lots 1 thru 22, inclusive;
- Sec. 22, lots 1 thru 12, inclusive, lots 15 thru 18, inclusive, and lots 20 thru 22, inclusive;
- Sec. 23, lots 1 thru 9, inclusive, lot 16, E½NE¼, and E½SE¼;
- Sec. 24;
- Sec. 27, lots 20 thru 22, inclusive;
- Sec. 28, lots 3 thru 10, inclusive, and lots 13 thru 26, inclusive;
- Sec. 29;
- Sec. 30;
- Sec. 31;
- Sec. 32;
- Sec. 33, lots 1 thru 20, inclusive, and SW¼SW¼;
- Sec. 34, lots 1 thru 11, inclusive;
- Sec. 35, lots 4 and 5;

Tract 52, tracts A, C, D, E, F, and H.

T. 17 S., R. 9 E.,
- Sec. 1, excluding Jacumba Wilderness Area CACA 35087;
- Sec. 2, lot 8;
- Sec. 3, lot 5;
- Sec. 4, lots 6 and 7.

T. 16½ S., R. 9½ E.,
- Sec. 1, lots 5 thru 8, inclusive, S½NE¼, S½NW¼, and S½;
- Sec. 2, excluding Jacumba Wilderness Area CACA 35087.

T. 16 S., R. 10 E.,
- Sec. 19.

T. 17 S., R. 10 E.,
- Sec. 5, lot 4, excluding Jacumba Wilderness Area CACA 35087;
- Sec. 6, lots 1 thru 3, inclusive, excluding Jacumba Wilderness Area CACA 35087.

Containing 12,436 acres.

This segregation is necessary to process the ROW application filed by Pattern Energy Group for the Ocotillo Express Wind Project on the above described lands while maintaining the status quo. The BLM is segregating the lands under the authority contained in 43 CFR 2091.3–1(e) and 2804.25(e) for a period of 2 years, subject to valid existing rights. This 2-year segregation period will commence on February 13, 2012. The public lands involved in this closure will be segregated from appropriation under the public land and mining laws, but not the mineral leasing or material sale laws. It has been determined that this segregation is necessary for the orderly administration of the public lands.

The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the mining laws, if one of the following events occurs: (1) Upon the BLM's issuance of a decision regarding whether to issue a ROW authorization for the Ocotillo Express Project; (2) upon publication of a **Federal Register** notice of termination of the segregation; or (3) without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. Any segregation made under this authority would be effective only for a period of up to 2 years. The lands to be segregated are identified in the legal description above.

**Thomas Pogacnik,**

*Deputy State Director, California.*

[FR Doc. 2012–3299 Filed 2–10–12; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notification of Minor Boundary Revision at Fort Laramie National Historic Site

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of Park Boundary Revision.

**FOR FURTHER INFORMATION CONTACT:** National Park Service, Glenna F. Vigil, Chief, Land Resources Program Center, Intermountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2610.

**DATES:** The effective date of this boundary revision is February 13, 2012.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, under 16 U.S.C. 460l–9(c)(1), the boundary of Fort Laramie National Historic Site is modified to include an additional 33.75 acres of land consisting of two tracts. Tract 01–121 (12.51 acres) was acquired as an uneconomic remnant during the purchase of larger tracts within the Ft. Laramie National Historic Site boundary, and Tract 01–136 (21.24 acres) was acquired by donation from the Corn Creek Irrigation District. Both tracts are located in Goshen County, Wyoming. Tract 01–121 is immediately adjacent to the current southern boundary of the Site; and, Tract 01–136 is located immediately adjacent to the current southeastern boundary of the Site. The boundary revision is depicted on National Park Service, Intermountain Region, Fort Laramie National Historic Site Proposed Boundary Revision Map; Map Number 375/106,732A dated April 2011. The map is available for inspection at the following locations: National Park Service, Intermountain Region Land Resources Program Center, 12795 W. Alameda Parkway, Lakewood, CO 80225–0287; and, National Park Service, Department of the Interior, Washington, DC 20240.

16 U.S.C. 460l—9 (c)(1) provides that after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register.** The Committees

have been notified of this boundary revision. Inclusion of these lands within the boundary will make a significant contribution to the purpose for which the Fort Laramie National Historic Site was established.

December 13, 2011.

**John Wessels,**

*Regional Director, Intermountain Region.*

[FR Doc. 2012–2869 Filed 2–10–12; 8:45 am]

**BILLING CODE 4312–CW–M**

## INTERNATIONAL TRADE COMMISSION

**[Docket No. 2875]**

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Mobile Electronic Devices Incorporating Haptics,* DN 2875; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Immersion Corporation on February 7, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile electronic devices incorporating haptics. The complaint names as respondents Motorola Mobility, Inc. of IL; and Motorola Mobility Holdings, Inc. of IL.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2875'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: February 8, 2012.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2012–3237 Filed 2–10–12; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–762]**

### Certain Strollers and Playards; Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (''ID'') (Order No. 11) granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 7, 2011, based on a complaint filed by Graco Children's Products Inc. of Atlanta, Georgia (''Graco''). 76 FR 12368 (Mar. 7, 2011). The complaint named as the sole proposed respondent Baby Trend, Inc. of Ontario, California (''Baby Trend''), and alleged a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain strollers and playards by reason of the infringement of certain claims of U.S. Patent Nos. 6,669,225; 7,044,497; 7,188,858; 7,404,569; and 6,510,570.

On January 6, 2012, Graco and Baby Trend jointly moved to terminate the investigation in its entirety on the basis of a settlement agreement. On January 18, 2012, the ALJ granted the motion as an ID. Order No. 11 at 2–3.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

Issued: February 7, 2012.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2012–3212 Filed 2–10–12; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62450, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Codeine-N-oxide (9053) | I |
| Dihydromorphine (9145) | I |
| Morphine-N-oxide (9307) | I |
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Phenylacetone (8501) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Oripavine (9330) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid extract (9620) | II |
| Opium tincture (9630) | II |
| Opium, powdered (9639) | II |
| Opium, granulated (9640) | II |
| Oxymorphone (9652) | II |
| Noroxymorphone (9668) | II |
| Tapentadol (9780) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 1, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–3268 Filed 2–10–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces a change in benefit period eligibility under the EB program for Alaska.

The following changes have occurred since the publication of the last notice regarding the State's EB status:

- Alaska's 13-week insured unemployment rate (IUR) for the week ending January 7, 2012 rose to meet the 6% threshold to trigger ''on'' to the EB program. Alaska's payable period in the Extended Benefits program began January 22, 2012.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

**Information for Claimants**

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone

number (202)–693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 2nd day of February 2012.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2012–3251 Filed 2–10–12; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of a Change in Status of the Payable Periods in the Emergency Unemployment Compensation 2008 (EUC08) Program for Alaska

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces a change in status of the payable periods in the Emergency Unemployment Compensation 2008 (EUC08) program for Alaska.

Public law 112–78 extended provisions in Public Law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

The following change has occurred since the publication of the last notice regarding the State's EUC08 status:

- Alaska's 13-week insured unemployment rate for the week ending January 7, 2012, rose to meet the 6% threshold to trigger ''on'' to Tier 4 of the EUC08 program. The payable period for Alaska in Tier Four of EUC08 began January 22, 2012. As a result, the current maximum potential entitlement for claimants in Alaska in the EUC08 program will increase from 47 weeks to 53 weeks.

### Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, and 112–78, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 2nd day of February, 2012.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2012–3253 Filed 2–10–12; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice Requesting Public Comment on Two Proposed Unemployment Insurance (UI) Program Performance Measures To Meet Requirements in the Improper Payments Elimination and Recovery Act of 2010 (IPERA)

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department) is seeking public comment on two proposed UI Performs Core Measures for UI Integrity: (1) UI Improper Payments; and (2) UI Overpayment Recovery.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before March 14, 2012.

**ADDRESSES:** Written comments may be submitted to the address specified below. All comments will be made available to the public. **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

- *Federal eRulemaking Portal: http://www.regulations.gov,* identified by Docket ID Number ETA–2012–0001. Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Mr. Andrew Spisak, U.S. Department of Labor, ETA/Office of Unemployment Insurance, 200 Constitution Avenue NW., Room S–4524, Washington, DC 20210. Be advised that mail delivery in the Washington, DC area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is a Federal portal, and all comments posted there are available and accessible to the public.

**SUPPLEMENTARY INFORMATION:**

### I. Background

IPERA [Pub. L. 111–204 (31 U.S.C. 3321 note)] amended the Improper Payments Information Act of 2002 (IPIA) [Pub. L. 107–300 (31 U.S.C. 3321 note)] and established several criteria that Federal agencies must meet in order to be in compliance with the law. According to section 3(a)(3) of IPERA:

> The term 'compliance' means that the agency (F) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 2(b) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

For the 2010 IPIA reporting period, the Department reported an improper payment rate of 11.2 percent (10.6 percent overpayment rate and 0.6 percent underpayment rate) in its Fiscal Year (FY) 2010 Agency Financial Report (AFR), p. 179, (*http://www.dol.gov/_sec/media/reports/annual2010/2010annualreport.pdf*). For the 2011 IPIA reporting period, the Department reported an improper payment rate of 12.0 percent (11.35 percent overpayment rate and 0.65 percent underpayment rate) in its FY 2011 AFR, p. 204 (*http://www.dol.gov/_sec/media/*

*reports/annual2011/2011annualreport.pdf*).

In addition, IPERA establishes requirements for payment recapture audits. Office of Management and Budget (OMB) guidelines in Appendix C of OMB Circular A–123, Part I(B)(3), established the follow requirements that Federal agencies must follow:

> [A]ll agencies are required to establish annual targets for their payment recapture audit programs that will drive their annual performance. The targets shall be based on the rate of recovery (*i.e.,* amount of improper overpayments recovered divided by the amount of improper overpayments identified).
>
> Agencies have the discretion to set their own payment recapture targets for review and approval by OMB, but agencies shall strive to achieve annual recapture targets of at least 85 percent within three years (with the first reporting year being FY 2011, the second FY 2012, and the third FY 2013).

In response, the Department has developed statistical models to set recovery targets based on historical performance data and the Administration's economic assumptions. These targets have been reviewed by OMB and published in the Department's FY 2011 AFR, p. 215.

Because the UI improper payment rate exceeds the 10 percent minimum performance level in IPERA, the Department has developed an Integrity Strategic Plan to bring the UI program into compliance. In June 2011, the Department issued a ''call to action'' in Unemployment Insurance Program Letter (UIPL) No. 19–11 to ensure that UI integrity is a top priority and to provide tools and support for State agencies to develop strategic plans to reduce improper payments.

UIPL No. 33–11 (September 21, 2011) launched an initiative to reduce unacceptably high levels of improper payments in six ''High Priority'' States. The Department will work closely with these States to support cross-functional teams and develop strategic plans to reduce improper payments below the 10 percent IPERA criterion. UIPL No. 34–11 (September 28, 2011) provided information on the definition and implementation of the UI Performs Benefit Year Earnings Core Measure to reduce the leading cause of UI improper payments—claimants who return to work and who continue to claim and collect UI benefits.

This notice describes and solicits comments on two proposed performance measures to meet the IPERA statutory requirements. The Department establishes measures that capture key dimensions of UI program performance in accordance with applicable legislation and sets criteria or target levels defining acceptable performance according to the measure. If a State's performance does not attain these levels, the State must take corrective action through its annual State Quality Service Plan (SQSP) (OMB No. 1205–0132, Expiration Date 10/31/2014). Comments should be submitted by the date and to the address provided in the addresses section of this notice.

## II. Proposed Improper Payments Measure Definition and Acceptable Level of Performance (ALP)

*Measure Definition:* Combined percentage of UI benefits overpaid and underpaid, estimated from the results of the Benefit Accuracy Measurement (BAM) survey of paid UI claims in the State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX) programs.

*ALP:* Section 3(a)(3)(F) of IPERA establishes ''an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under [IPIA].'' Section 2(e) of IPERA amends section 2 of IPIA and defines an improper payment as ''any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments).'' In accordance with IPERA requirements, the Department is proposing an ALP of less than 10 percent, first applicable to calendar year (CY) 2012 performance. State performance for the 2011 IPIA reporting period (July 2010 through June 2011) is provided in Attachment A. This ALP will be effective unless the IPERA and/or IPIA are amended, in which case the Department will bring its ALP into line with the amended requirement.

*Calculation:* The measure would be calculated from BAM data using the following data elements:

- *Total Overpayment Amount for Key Week (BAM data element h5)*—defines the amount overpaid to the claimant in the key week (the paid week selected for audit), excluding overpayments for improper payments caused by another State's workforce agency.

The amounts coded in h5 include overpayment codes 10, 11, 12, 13, and 15 in data element ei2 (Key Week Action). Overpayments attributable to a State workforce agency other than the State agency that selected and audited the payment are excluded (Prior Agency Action (data element ei6) codes 90 to 99).

- *Total Underpayment Amount for Key Week (BAM data element h6)*—defines the amount underpaid to the claimant in the key week, excluding underpayments for improper payments caused by another State's workforce agency.

The amounts coded in h6 include underpayment codes 20, 21, and 22 in data element ei2 (Key Week Action). Underpayments attributable to a State workforce agency other than the State agency that selected and audited the payment are excluded (Prior Agency Action (data element ei6) codes 90 to 99).

- *Original Amount Paid (BAM data element f13)*—defines the amount paid to the claimant in key week.

The Annual Report overpayment (OP) rate is the estimate of:

$$\mathbf{OP} = \frac{\textbf{Amount of UI benefits overpaid}}{\textbf{Amount of UI benefits paid}} \textbf{ X 100}$$

It is derived from the weekly BAM samples; each week's sample result is weighted by the number of paid UI weeks in the BAM survey population.

The Annual Report underpayment (UP) rate is the estimate of:

$$\mathbf{UP} = \frac{\textbf{Amount of UI benefits underpaid}}{\textbf{Amount of UI benefits paid}} \textbf{ X 100}$$

It is derived from the weekly BAM samples; each week's sample result is weighted by the number of paid UI weeks in the BAM survey population.

The improper payment (IP) rate (expressed as a percentage) is the sum of the Annual Report overpayment rate plus the underpayment rate:

IP = OP + UP.

Information on the BAM program is available at *http://oui.doleta.gov/unemploy/bqc.asp.*

*Performance Period:* The performance period would be based on BAM data for the CY. Per the BAM State Operations Handbook (ET Handbook 395, 5th edition), 95 percent of BAM cases must be completed within 90 days after the week ending date of the BAM sampling week (referred to as a batch), and 98 percent of BAM cases for the CY must be completed within 120 days after December 31. The first measurement period would be January 1, 2012, to December 29, 2012 (end date of the last BAM sampling batch in 2012).

*Sampling Error:* Because this measure would be based on sample data, the sampling error of the estimated BAM improper payment rate would be taken into account in determining whether a State meets its ALP. All estimates from samples are characterized as a distribution of values around the expected value of the universe. The sampling error is used to measure the variability of that distribution, and it is used to determine the probability that the value calculated from a particular sample drawn from a universe that meets an ALP may be below (or above) the true (universe) value.

*Failure to Meet the ALP:* States failing to meet the ALP would be expected to develop a Corrective Action Plan as part of the SQSP. Failures to attain an ALP in the first measurement period would be addressed in the 2014 SQSP (OMB No. 1205–0132, Expiration Date 10/31/2014).

*Data Collection Costs:* Because the performance measure would use data collected through the BAM survey, there would be no data collection start-up costs for this performance measure.

**III. Proposed UI Overpayment Recovery Measure Definition and ALP**

*Measure Definition:* OMB Issuance of Revised Parts I and II to Appendix C of OMB Circular A–123 [Part 1(B)(3)] defines the recovery rate as ''the amount of improper overpayments recovered divided by the amount of improper overpayments identified.'' This ratio will be expressed as a percentage.

*ALP:* The Department conducted an analysis of the UI recovery data and has established recovery targets of 64 percent in FY 2012 and 72 percent in FY 2013. These targets were reviewed by OMB and published in the Department's AFR, p 125. Attachment B outlines the methodology. The Department will use this methodology to compute future recovery targets based on the most recent recovery and other performance data available. State performance data for the period October 1, 2010, through September 30, 2011, the most recent 12-month reporting period available, are provided in Attachment C.

*Calculation:* The measure would be calculated from ETA Overpayment Detection and Recovery reports (ETA 227 and ETA 227 EUC):

- Total Overpayments Recovered—section C, the sum of line 302, columns 11, 12, 13, 14, 22, and 23.
- Total Overpayments Established Minus Overpayments Waived—section A, the sum of line 101, columns 4, 5, and 21, and line 103, columns 4, 5, and 21, minus section C, the sum of line 308, columns 13, 14, and 23.

$$\textbf{Recovery Rate} = \frac{\textbf{Amount of UI Overpayments Recovered}}{\textbf{Amt. of (UI Overpayments Established - Waived)}} \textbf{ X 100}$$

*Performance Period:* The performance period would be based on the ETA 227 and ETA 227 EUC data for the CY. Per the Unemployment Insurance Reports Handbook (ET Handbook 401, 4th edition), the December quarter ETA 227 reports are due February 1. The first measurement period would be January 1, 2012, to December 31, 2012.

*Sampling Error:* Not applicable; this measure would be based on population data reported on the ETA 227 reports.

*Failure to Meet the ALP:* States failing to meet the ALP would be expected to develop a Corrective Action Plan as part of the SQSP. Failures to meet the CY 2012 target will be addressed in the 2014 SQSP (OMB No. 1205–0132, Expiration Date 10/31/2014).

*Data Collection Costs:* Because the performance measure would use data collected through the ETA 227 and ETA 227 EUC reports, there would be no data collection start-up costs for this performance measure.

**Attachment A**

UNEMPLOYMENT INSURANCE INTEGRITY RATES

[From: CY 2010 QTR 3]

[To: CY 2011 QTR 2]

| ST | Amount paid | IPIA (OP+UP) (percent) | Annual report rate (percent) | Under payment rate (percent) |
|---|---|---|---|---|
| AK | $187,793,437 | 13.06 | 12.01 | 1.05 |
| AL | 423,475,745 | 24.38 | 24.15 | .24 |
| AR | 404,922,070 | 12.59 | 12.43 | .16 |
| AZ | 612,311,633 | 21.70 | 21.52 | .18 |
| CA | 7,878,548,634 | 6.28 | 5.78 | .51 |
| CO | 759,225,578 | 16.84 | 16.13 | .71 |
| CT | 910,540,113 | 6.62 | 5.64 | .98 |
| DC | 173,907,643 | 7.05 | 6.26 | .78 |
| DE | 130,506,869 | 11.07 | 9.35 | 1.72 |
| FL | 1,981,338,921 | 8.36 | 8.09 | .27 |
| GA | 1,051,141,752 | 5.36 | 5.05 | .31 |
| HI | 308,105,469 | 3.62 | 3.29 | .32 |

UNEMPLOYMENT INSURANCE INTEGRITY RATES—Continued

[From: CY 2010 QTR 3]
[To: CY 2011 QTR 2]

| ST | Amount paid | IPIA (OP+UP) (percent) | Annual report rate (percent) | Under payment rate (percent) |
|---|---|---|---|---|
| IA | 517,702,648 | 14.37 | 12.70 | 1.67 |
| ID | 244,089,005 | 9.60 | 9.52 | .08 |
| IL | 2,614,374,425 | 14.91 | 13.49 | 1.42 |
| IN | 950,389,758 | 60.33 | 59.90 | .42 |
| KS | 460,373,464 | 3.64 | 3.61 | .02 |
| KY | 574,241,696 | 8.42 | 7.95 | .47 |
| LA | 356,969,426 | 32.95 | 31.46 | 1.49 |
| MA | 1,808,499,194 | 5.54 | 4.20 | 1.34 |
| MD | 864,135,379 | 10.83 | 10.74 | .09 |
| ME | 198,708,529 | 17.76 | 16.97 | .78 |
| MI | 1,608,631,516 | 11.91 | 11.40 | .51 |
| MN | 1,040,046,493 | 10.72 | 10.25 | .47 |
| MO | 722,648,523 | 8.26 | 7.73 | .54 |
| MS | 234,393,333 | 13.73 | 13.15 | .58 |
| MT | 155,810,976 | 11.45 | 10.41 | 1.03 |
| NC | 1,564,424,194 | 10.66 | 10.42 | .24 |
| ND | 66,158,178 | 11.87 | 11.30 | .57 |
| NE | 161,824,757 | 16.46 | 15.94 | .52 |
| NH | 123,301,707 | 8.07 | 6.84 | 1.23 |
| NJ | 2,770,764,470 | 12.51 | 10.86 | 1.65 |
| NM | 270,220,624 | 22.71 | 21.83 | .88 |
| NV | 642,558,333 | 9.17 | 8.77 | .40 |
| NY | 3,760,176,447 | 7.39 | 6.99 | .40 |
| OH | 1,491,641,475 | 20.95 | 19.42 | 1.53 |
| OK | 347,057,290 | 6.61 | 6.14 | .47 |
| OR | 884,638,346 | 12.13 | 11.80 | .32 |
| PA | 3,329,117,904 | 11.82 | 11.24 | .58 |
| PR | 265,690,172 | 10.06 | 8.73 | 1.33 |
| RI | 289,317,413 | 6.06 | 5.65 | .41 |
| SC | 486,351,866 | 17.94 | 17.72 | .22 |
| SD | 43,851,969 | 17.12 | 16.69 | .43 |
| TN | 539,350,249 | 17.92 | 17.77 | .15 |
| TX | 2,548,344,654 | 12.54 | 12.00 | .54 |
| UT | 331,290,619 | 10.99 | 10.43 | .56 |
| VA | 692,676,373 | 16.73 | 16.57 | .16 |
| VT | 131,581,881 | 5.63 | 5.25 | .38 |
| WA | 1,509,672,386 | 15.71 | 15.52 | .19 |
| WI | 1,154,698,728 | 12.73 | 12.37 | .36 |
| WV | 217,742,942 | 5.52 | 5.01 | .51 |
| WY | 97,180,931 | 9.42 | 8.96 | .47 |

**Notes:** 1. Amount paid includes State UI, UCFE, and UCX payments.
2. Rates exclude agency errors by States other than the sampling State.
*Source:* Benefit Accuracy Measurement.
Prepared by: ETA Office of Unemployment Insurance on 18 Jan 12.

## Attachment B

### Methodology for Establishing Recovery Targets

*Background*

As required by the IPERA implementing guidance, ETA has developed UI overpayment recovery targets for FY 2011, FY 2012 and FY 2013. According to Part I(B)(3) of OMB's IPERA guidelines, ''Issuance of Revised Parts I and II to Appendix C of OMB Circular A–123'' (April 14, 2011):

[A]ll agencies are required to establish annual targets for their payment recapture audit programs that will drive their annual performance. The targets shall be based on the rate of recovery (*i.e.,* amount of improper overpayments recovered divided by the amount of improper overpayments identified).

*Methodology*

The UI recovery targets involve aggregating overpayments established and recovered under three UI program areas: State UI, permanent Extended Benefits (EB) and the temporary Emergency Unemployment Compensation (EUC) programs. Recoveries are made using the traditional tools available to States in addition to the Federal Tax Offset Program (TOP), implemented by only three States as of the date of the analysis. The recovery targets reflect separate methodologies for projecting recoveries or recovery rates for (a) State UI plus EB recoveries obtained using traditional tools; (b) recoveries of EUC overpayments made using traditional tools; and (c) recoveries of State UI, EB, and EUC overpayments through TOP. Administration economic assumptions as of the time of the analysis were taken into consideration for all projections.

a. *Traditional State UI and EB recoveries.* Recovery estimates for this segment are based on statistical (regression) models that use the historical establishment and recovery data reported on the ETA 227 report to project recoveries for State UI and EB overpayments. The models estimate the relationships between UI overpayments established and recovered for the State UI and EB programs based on several explanatory variables, including the amount of State UI and EB unemployment compensation (UC) program benefit payments, the Total Unemployment Rate (TUR), the overpayment balances available for collection, and the amount of EB program payments as a percentage of total UC benefits paid. The TUR, produced by the Department of Labor, Bureau of Labor Statistics, is used as the primary economic indicator of overall labor market conditions. UI overpayment recovery targets for FY 2011

were projected for the full FY based on actual performance data for the first three quarters. Model projections for FY 2012 and FY 2013 were based on the Administration's economic assumptions for the TUR and projections of UI and EB payments based on those assumptions. Estimates for FY 2012 and FY 2013 reflect TOP recoveries to the extent that those recoveries reduce overpayment balances available for collection by standard State recovery techniques, for example, recovery through cash, UI benefit offset, liens, wage garnishment, etc. These models exclude EUC establishments and recoveries because EUC is a temporary program without sufficient historical data.

b. *TOP Recoveries.* In 2008, State workforce agencies gained access to TOP to recover UI fraud overpayments that were not more than 10 years old. In December 2010, new legislation expanded TOP access to include nonfraud overpayments resulting from claimants' failures to report earnings and removed the 10-year limit on the debt. During FY 2011, three States—New York, Michigan, and Wisconsin—began participating in TOP, and data on their recoveries are reported by the U. S. Department of the Treasury. Projections of amounts recovered through TOP are based on the rates of TOP recoveries in these three States relative to the uncollected overpayment balance data from the ETA 227 report and fraud overpayments that the States wrote off as uncollectable before they gained access to TOP. At the beginning of FY 2011, States had uncollected fraud overpayment balances of approximately $3.2 billion, of which about $360 million was amounts written off during the past 10 years. Projected national totals for TOP for the country as a whole are based on very preliminary estimates of the rate at which States begin to access TOP.

c. *EUC Recoveries.* The recovery targets also take into account overpayment establishments and recoveries contributed by the EUC program. It is assumed that EUC overpayment establishments and recoveries will continue into FY 2013 and that collections through traditional techniques and TOP will be based on the amount of unrecovered EUC overpayments. The rates reflect existing information on amounts established and recovered reported on the ETA 227 EUC report. Existing data show that EUC recovery rates are considerably lower than State UI and EB recovery rates.

*Targets*

The following table summarizes the UI overpayment recovery rate targets, rounded down to the nearest integer. The UI recovery rates are constructed by dividing UI overpayment recoveries reported on the ETA 227 UI/EB and EUC reports by overpayments established, minus overpayments waived because they are unrecoverable under State law or policy. The sharp increase in recovery targets for FY 2012 and FY 2013 reflects the expected impact of the TOP program.

| FY | UI + EB + EUC including TOP (Adjusted for Waivers) |
|---|---|
| 2011 | 45% |
| 2012 | 64% |
| 2013 | 72% |

These targets are based on the following assumptions:

- The TUR and State UI/EB outlays will not differ significantly from the Administration assumptions in the FY 2012 Budget Midsession Review. The TUR is projected as part of the Administration economic assumptions, and ETA forecasts UI and EB outlays based on the TUR and other economic assumptions. Because amounts of overpayments made, established, and recovered are highly sensitive to economic conditions, any significant change in these economic assumptions will affect the recovery rate estimates of the model.
- Recovery activity for overpayments established for the EUC program is expected to continue into FY 2013 with residual recoveries for overpayments established after the expiration of the EUC program.
- State agencies will begin to participate in TOP according to the adoption path reflected in the model. Based on Treasury information on State plans for adopting TOP and implementation status, the model assumes that by the end of FY 2011 three States will have enrolled in TOP; by the end of FY 2012, 26 States will participate; and by the end of FY 2013 and beyond, 49 States will participate. The implementation model is quarterly because data from the first three States suggest that over 95 percent of recoveries by TOP occur in the first or second calendar quarters, so the calendar quarter during which a State begins to participate in TOP is critical for estimates of first-year recoveries. Changes in the TOP implementation schedule will have a significant impact on recovery rates.

It is important to note that these estimates are based on actual counts of UI overpayments identified and recovered by the State agencies and reported on the ETA 227 reports for the FY 1986 to the third quarter of FY 2011 period, not the estimated UI overpayment rates and amounts that are reported in the Department's AFR for the IPIA, which are based on the results of the BAM audits of paid claims samples. Targets are also adjusted to exclude overpayments that are waived as unrecoverable by State agencies, according to the definition in the UI Reports Handbook (ET Handbook 401, 4th edition).

Additionally, although these targets were developed using historical FY counts of UI overpayments identified and recovered as reported on the ETA 227, they may be applied to a calendar year measurement cycle. As actual data on recoveries accumulate—driven largely by the rate at which States implement TOP—the out-year targets are likely to be revised.

## Attachment C

STATE UI OVERPAYMENTS ESTABLISHED AND RECOVERED

[October 2010–September 2011]

| ST | UI + EB + EUC overpayments established | UI + EB + EUC adjusted OPs established | UI + EB + EUC overpayments recovered | Pct. rec. (percent) |
|---|---|---|---|---|
| AK | $10,786,946 | $10,786,946 | $4,926,536 | 45.67 |
| AL | 43,289,401 | 43,109,121 | 10,989,706 | 25.49 |
| AR | 15,834,291 | 15,535,040 | 3,548,631 | 22.84 |
| AZ | 49,972,545 | 49,153,663 | 17,927,220 | 36.47 |
| CA | 355,671,845 | 319,473,699 | 88,802,967 | 27.80 |
| CO | 68,391,997 | 61,271,197 | 29,375,647 | 47.94 |
| CT | 24,034,518 | 23,869,538 | 9,940,414 | 41.64 |
| DC | 12,220,616 | 12,202,781 | 3,673,039 | 30.10 |
| DE | 8,965,003 | 8,935,039 | 4,552,476 | 50.95 |
| FL | 147,623,645 | 145,775,041 | 44,571,895 | 30.58 |
| GA | 23,231,700 | 22,569,632 | 8,087,146 | 35.83 |
| HI | 2,770,116 | 2,357,971 | 1,435,108 | 60.86 |
| IA | 15,843,340 | 15,754,367 | 9,341,187 | 59.29 |
| ID | 15,065,271 | 14,128,402 | 7,303,007 | 51.69 |
| IL | 182,087,681 | 182,087,681 | 70,338,632 | 38.63 |
| IN | 42,788,522 | 42,788,522 | 26,348,519 | 61.58 |
| KS | 34,676,662 | 34,144,019 | 10,576,328 | 30.98 |
| KY | 19,160,015 | 19,160,015 | 8,310,033 | 43.37 |
| LA | 26,509,327 | 25,299,358 | 7,617,548 | 30.11 |
| MA | 52,507,008 | 49,520,685 | 19,786,563 | 39.96 |

STATE UI OVERPAYMENTS ESTABLISHED AND RECOVERED—Continued

[October 2010–September 2011]

| ST | UI + EB + EUC overpayments established | UI + EB + EUC adjusted OPs established | UI + EB + EUC overpayments recovered | Pct. rec. (percent) |
|---|---|---|---|---|
| MD | 74,634,081 | 73,857,637 | 24,762,560 | 33.53 |
| ME | 11,251,820 | 10,473,860 | 4,290,528 | 40.96 |
| MI | 159,904,300 | 154,893,349 | 46,695,875 | 30.15 |
| MN | 78,107,121 | 78,107,121 | 34,172,193 | 43.75 |
| MO | 43,124,208 | 43,124,208 | 17,194,165 | 39.87 |
| MS | 24,647,373 | 24,647,373 | 10,327,401 | 41.90 |
| MT | 8,315,543 | 8,243,443 | 3,282,896 | 39.82 |
| NC | 29,499,484 | 26,206,623 | 13,432,770 | 51.26 |
| ND | 2,829,616 | 2,819,461 | 1,590,573 | 56.41 |
| NE | 9,203,878 | 9,203,878 | 6,117,042 | 66.46 |
| NH | 8,765,741 | 6,758,020 | 2,106,741 | 31.17 |
| NJ | 217,078,665 | 216,569,050 | 173,289,168 | 80.02 |
| NM | 26,144,403 | 26,144,403 | 7,695,583 | 29.43 |
| NV | 79,263,713 | 75,184,087 | 11,304,039 | 15.04 |
| NY | 173,450,225 | 136,332,802 | 119,837,684 | 87.90 |
| OH | 110,977,907 | 110,839,890 | 40,467,585 | 36.51 |
| OK | 13,589,431 | 13,589,431 | 6,334,034 | 46.61 |
| OR | 52,034,282 | 43,226,825 | 15,972,461 | 36.95 |
| PA | 179,666,995 | 178,969,168 | 71,342,580 | 39.86 |
| PR | 9,015,270 | 9,015,270 | 4,352,634 | 48.28 |
| RI | 12,555,567 | 11,690,902 | 4,753,249 | 40.66 |
| SC | 42,786,170 | 42,315,788 | 18,882,525 | 44.62 |
| SD | 2,598,766 | 2,511,814 | 1,280,515 | 50.98 |
| TN | 26,502,776 | 25,426,645 | 9,965,361 | 39.19 |
| TX | 200,713,633 | 193,763,711 | 83,402,654 | 43.04 |
| UT | 24,886,880 | 24,659,843 | 11,568,309 | 46.91 |
| VA | 37,941,504 | 37,941,504 | 15,385,906 | 40.55 |
| VT | 3,181,382 | 2,097,223 | 917,377 | 43.74 |
| WA | 144,933,042 | 137,873,967 | 71,128,301 | 51.59 |
| WI | 81,590,555 | 78,734,237 | 53,254,357 | 67.64 |
| WV | 8,231,348 | 8,231,348 | 3,020,124 | 36.69 |
| WY | 6,047,490 | 5,741,420 | 2,155,330 | 37.54 |

**Notes:** 1. UI includes State UI, UCFE, and UCX overpayments.
2. Overpayments established exclude overpayments waived.
*Source:* ETA 227 and ETA 227 EUC Reports.
Prepared by Div. of Performance Management on: 18 Jan 12.

Signed in Washington, DC, this 2nd day of February, 2012.

**Jane Oates,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 2012–3252 Filed 2–10–12; 8:45 am]

**BILLING CODE 4510–FW–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Policy Letter 11–01, Performance of Inherently Governmental and Critical Functions

**AGENCY:** Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Notice; correction to final policy letter.

**SUMMARY:** The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is making a correction to the Final Policy Letter ''Performance of Inherently Governmental and Critical Functions'' (76 FR 56227–56242, September 12, 2011) to clarify that the Policy Letter applies to both Civilian and Defense Executive Branch Departments and Agencies. The original publication of the policy letter was inadvertently addressed only to the Heads of The Civilian Executive Departments and Agencies. Also, OFPP has corrected the citation for additional guidance about conduct of Federally Funded Research and Development Centers (FFRDCs), because the original notice referenced an incorrect Part of the Federal Acquisition Regulation. The corrections below should be used in place of text previously published in the September 12, 2011 notice. All other information from the published Final Policy remains unchanged. The full text of the original notice is available at *http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mathew Blum, OFPP, (202) 395–4953 or *mblum@omb.eop.gov,* or Jennifer Swartz, OFPP, (202) 395–6811 or *jswartz@omb.eop.gov.*

**Corrections**

In the **Federal Register** on September 12, 2011, correct the addressee section for the policy letter on page 56236 of the **Federal Register** to read as follows:

POLICY LETTER 11–01 TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Inherently Governmental and Critical Functions.

In the **Federal Register** on September 12, 2011, correct the last sentence in 5–1(c) on page 56238 to read:

Agencies shall also refer to the requirements in FAR Part 35 regarding requirements pertaining to the conduct of FFRDCs.

**Lesley A. Field,**

*Acting Administrator, Office of Federal Procurement Policy.*

[FR Doc. 2012–3190 Filed 2–10–12; 8:45 am]

**BILLING CODE P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

**TIME AND DATE:** 10:00 a.m., Thursday, February 16, 2012.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Merger Request Pursuant to Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. Consideration of Supervisory Activities (4). Closed pursuant to some or all of the following: exemptions (8), (9)(i)(B) and 9(ii).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. 2012–3391 Filed 2–9–12; 4:15 pm]

BILLING CODE 7535–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of permit applications received under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 14, 2012. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Polly A. Penhale at the above address or (703) 292–7420.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

**Permit Application: 2012–015**

1. *Applicant:* Laurie Connell, School of Marine Sciences, University of Maine, 5735 Hitchner Hall, Orono, ME 04469.

**Activity for Which Permit Is Requested**

Take and Import into the U.S.A. The applicant plans to salvage feathers and bones from dead seabird carcasses. The samples will be decontaminated and cleaned prior to shipment back to the home institution. The samples are to be used for K–12 educational outreach activities. In general, the bird parts will be an example of adaptation to be shown in conjunction with local (North American) bird parts.

**Location**

McMurdo Sound region, Antarctica.

**Dates**

October 1, 2012 to September 30, 2015.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2012–3204 Filed 2–10–12; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–326; NRC–2010–0217]**

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Renewal for University of California, Irvine Nuclear Reactor Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** A. Jason Lising, Project Manager, Research and Test Reactor Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: 301–415–3841; fax number: 301–415–3031; email: *Jason.Lising@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a renewed Facility License No. R–116, to be held by the Regents of the University of California (the licensee), which would authorize continued operation of the University of California, Irvine Nuclear Reactor Facility (UCINRF), located in Irvine, Orange County, California. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.21, the NRC is issuing this Environmental Assessment (EA) and Finding of No Significant Impact. The renewed license will be issued following the publication of this Notice.

**II. EA Summary**

*Identification of the Proposed Action*

The proposed action would renew Facility License No. R–116 for a period of 20 years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated October 18, 1999, as supplemented by letters dated October 23, and October 31, 1999, April 24, 2000, January 27, May 17, July 14, and October 20, 2010, June 7, June 24, August 1, October 3, October 5, and December 2, 2011 (2 letters). In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

*Need for the Proposed Action*

The proposed action is needed to allow the continued operation of the UCINRF to routinely provide teaching opportunities, research, and services to numerous institutions for a period of 20 years.

*Environmental Impacts of the Proposed Action*

The NRC has completed its safety evaluation of the proposed action to issue a renewed Facility License No. R–116 to allow continued operation of the UCINRF for a period of 20 years and concludes there is reasonable assurance that the UCINRF will continue to operate safely for the additional period of time. The details of the NRC staff safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The UCINRF is located on the main campus of the University of California, Irvine and is a part of Rowland Hall. The reactor is housed in the basement of the multipurpose building constructed with a structural steel frame and reinforced concrete floors acting as diaphragms in distributing loads to vertically resisting elements. The reactor area is comprised of the reactor room, the control room, and two laboratories which total approximately 186 square meters (2000 square feet) all located in the basement of Rowland Hall. Possession of both a door key and a key card are needed to enter the facility. Rowland Hall is one of many University buildings located around a circular field. The nearest permanent residences are located approximately 280 meters (310 yards) south east of Rowland Hall. The nearest dormitories are located approximately 180 meters (200 yards) west of the reactor.

The UCINRF is a pool-type, light water moderated and cooled research reactor licensed to operate at a steady-state power level of 250 kilowatt thermal power (kW). The reactor is also licensed to operate in a pulse mode. The fuel is located at the bottom of an aluminum tank 3 meters wide by 4.6 meters long and 7.6 meters deep (10 feet wide by 15 feet long and 25 feet deep) with a volume of approximately 87,000 liters (23,000 gallons), supported by a reinforced concrete foundation. The reactor is fueled with standard low-enriched TRIGA (Training, Research, Isotope production, General Atomics) uranium fuel. A detailed description of the reactor can be found in the UCINRF Safety Analysis Report (SAR). Since the operating license was issued on November 24, 1969, facility modifications have been minor as outlined in SAR Section 1.4.

The licensee has not requested any changes to the facility design or operating conditions as part of the application for license renewal. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. As discussed in the NRC staff's safety evaluation, the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of license renewal. As discussed in the NRC staff safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents.

Therefore, license renewal would not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application, as supplemented, and data reported to the NRC by the licensee for the last ten years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concludes that continued operation of the reactor would not have a significant environmental impact.

Radiological Impact

*Environmental Effects of Reactor Operations:*

Gaseous radioactive effluents are discharged by the facility exhaust system at a volumetric flow rate of approximately 2.0 cubic meters per second (4300 cubic feet per minute) via vents located on the roof of the reactor building. Other release pathways do exist. However they are normally secured during reactor operation and have insignificant volumetric flow rates compared to the facility exhaust system. The only significant nuclide found in the gaseous effluent stream is Argon-41. Licensee calculations, based on operation, indicate that annual Argon-41 releases result in a maximum concentration of less than 1.7 E–10 microCuries per milliliter (∓Ci/ml) in a year over the last 10 years, which is below the limit of 1.0E–8 ∓Ci/ml specified in 10 CFR Part 20, Appendix B for air effluent releases. The NRC staff performed an independent calculation and found the licensee's calculation to be reasonable. Gaseous radioactive releases reported to the NRC in the licensee's annual reports were less than two percent of the air effluent concentration limits set by 10 CFR Part 20, Appendix B. The potential radiation dose to a member of the general public resulting from this concentration is less than 0.01 milliSieverts (mSv) (1 millirem (mrem)) and this demonstrates compliance with the dose limit of 1 mSv (100 mrem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the air emissions dose constraint of 0.1 mSv (10 mrem) specified in 10 CFR 20.1101(d).

The licensee disposes of radioactive liquid waste by transfer to the University's Environmental Health & Safety (EHS) department. Since 1992, the facility has had no radiological liquid effluent releases. Radioactive materials have been transferred and disposed of in accordance with the requirements of the licensee's byproduct license. Currently, there are no plans to change any operating or radiological release practices or characteristics of the reactor during the license renewal period. During the past ten years, the licensee has transferred 15 gallons of liquid waste for a total of 3.2 milliCuries for proper disposal.

The EHS department oversees the handling of solid low-level radioactive waste generated at UCINRF. The bulk of the waste consists of sample waste. Upon removal from the facility, the waste enters the EHS Radioactive Waste Handling Program. The EHS department currently retains the waste for decay in storage. According to the licensee, no spent nuclear fuel has been shipped from the site to date. To comply with the Nuclear Waste Policy Act of 1982, the licensee has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the UCINRF and that DOE is obligated to take the fuel from the site for final disposition.

As described in past ten years of UCINRF annual reports, personnel exposures are well within the limits set by 10 CFR 20.1201, and are as low as is reasonably achievable (ALARA). Personnel exposures are usually less than 0.5 mSv (50 mrem) per year with the maximum individual receiving 1.67 mSv (167 mrem) of whole body exposure in one year. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of UCINRF operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at ten locations around the facility and at one control location away from any direct influence from the reactor. The locations have been chosen to monitor the confines of the reactor facility, more remote locations on campus and an off campus location that provides background radiation level information. Over the past ten years, the monitoring program has indicated that radiation exposures at the remote monitoring locations on campus were not significantly higher than at the offsite background monitoring locations. Year-to-year trends in exposures are consistent between monitoring locations. Also, no correlation exists

between total annual reactor operation and annual exposures measured at the monitoring locations. Based on the NRC staff's review of the past ten years of data, the NRC staff concludes that operation of the UCINRF does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of the proposed action.

*Environmental Effects of Accidents*

Accident scenarios are discussed in Chapter 13 of the UCINRF SAR. The maximum hypothetical accident (MHA) is the uncontrolled release of the gaseous fission products contained in the gap between the fuel and the fuel cladding in one fuel element to the reactor area and into the environment. The licensee conservatively calculated doses to facility personnel and the maximum potential dose to a member of the public. The NRC staff performed independent calculations to verify that the doses represent conservative estimates for the MHA. Occupational doses resulting from this accident would be well below 10 CFR Part 20 limit of 50 mSv (5000 mrem). Maximum doses for members of the public resulting from this accident would be well below 10 CFR Part 20 limit of 1 mSv (100 mrem). The proposed action will not increase the probability or consequences of accidents.

A. Non-Radiological Impacts

The UCINRF core is cooled by a light water primary system consisting of the reactor pool and a heat removal system to remove heat from the reactor pool. Core cooling occurs by natural convection, with the heated coolant rising out of the core and into the bulk pool water. The large heat sink provided by the volume of primary coolant allows several hours of full-power operation without any secondary cooling. The heat removal system transfers heat to the University chilled water system via a 258 kW (880,000 BTU/hr) heat exchanger. During operation, the chilled water system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system, and ultimately the environment. The licensee conducts tests which would detect leakage of the heat exchanger. A minor amount of heat removal from the pool occurs due to evaporation of coolant from the pool's surface. The small amount of replacement water is provided from the portable water system of the UCINRF.

Release of thermal effluents from the UCINRF will not have a significant effect on the environment. Given that the proposed action does not involve any change in the operation of the reactor and the heat load dissipated to the environment, the NRC staff concludes that the proposed action will not have a significant impact on the environment or the local water supply.

*National Environmental Policy Act (NEPA) Considerations*

The NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Costal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898 Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

A. Endangered Species Act

Federally-protected or State-protected listed species have not been found in the vicinity of the UCINRF. Effluents and emissions from the UCINRF have not had an impact on critical habitat.

B. Costal Zone Management Act

The UCINRF is not located within any managed coastal zones; nor would the UCINRF effluents and emissions impact any managed costal zones. The UCINRF is located approximately 1.0 km (0.6) miles away from the boundary of the Costal Zone Management Area.

C. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists one historical site located approximately 6.6 km (4 miles) north of Rowland Hall, the Lighter than Airship Hangers. Given the distance between the facility and the Lighter than Airship Hangers, continued operation of the UCINRF will not impact any historical sites. Based on this information, the NRC staff finds that the potential impacts of the proposed action would have no adverse effect on historic and archaeological resources.

D. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

E. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the UCINRF. Such effects may include biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around UCINRF, and all are exposed to the same health and environmental effects generated from activities at the UCINRF.

Minority Populations in the Vicinity of the UCINRF—According to 2000 census data, 63.8 percent of the population (approximately 13,353,000 individuals) residing within a 50-mile radius of the UCINRF identified themselves as minority individuals. The largest minority group was Hispanic or Latino (approximately 5,524,000 persons or 41.4 percent), followed by ''Some other race'' (approximately 3,298,000 persons or about 24.7 percent). According to the U.S. Census Bureau, about 48.7 percent of the Orange County population identified themselves as minorities, with persons of Hispanic or Latino origin comprising the largest minority group (30.8 percent). According to census data 3-year average estimates for 2005–2007, the minority population of Orange County, as a percent of total population, had increased to 52.9 percent.

Low-Income Populations in the Vicinity of the UCINRF—According to 2000 census data, approximately 383,700 families and 2,102,000 individuals (approximately 12.5 and 15.7 percent, respectively) residing within a 50-mile radius of the UCINRF were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to Census data in the 2005–2007 American Community Survey 3-Year Estimates, the median household income for the State of California was $58,361, while 13.0 percent of the state population and 9.7 percent of families were determined to be living below the Federal poverty threshold. Orange County had a higher median household income average ($71,601) and lower percentages (9.3 percent) of individuals and families (6.4 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological

effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the NRC staff concludes that the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the UCINRF.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to license renewal, the NRC considered denying of the proposed action. If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC staff notes that, even with a renewed license, the UCINRF will eventually require decommissioning, at which time the environmental effects of decommissioning will occur. Decommissioning will be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute only a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the UCINRF.

*Alternative Use of Resources*

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of the original Facility License R–116 to the Regents of the University of California for the UCINRF on November 24, 1969.

*Agencies and Persons Consulted*

The NRC staff provided a draft of this Environmental Assessment to the California Energy Commission for review on April 7, 2010. By telephone call on May 13, 2010, the California Energy Commission acknowledged receiving this draft Environmental Assessment and had no comments.

The NRC staff also provided information about the proposed activity to the State Office of Historical Preservation for review on April 7, 2010. By letter dated April 27, 2010, the Office of Historical Preservation agreed with the NRC regarding the conclusions of the historical assessment, and otherwise had no comments.

*Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

**III. Further Information**

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: October 18, 1999, ADAMS Accession No. ML083110112, as supplemented by letters dated October 23 and October 31, 1999 (ADAMS Accession Nos. ML083110488 and ML100332002, respectively), April 24, 2000 (ADAMS Accession No. ML003708602), January 27, May 17, July 14, and October 20, 2010 (ADAMS Accession Nos. ML100290365, ML101400027, ML101970039, and ML102980015, respectively), June 7, June 24, August 1, October 3, October 5, and December 2, 2011 (ADAMS Accession Nos. ML111950380, ML11188A083, ML11255A073, ML120110012, ML11290A041, ML113530010, and ML11348A104, respectively). Also see the license's annual reports 1999–2000, (ADAMS Accession No. ML003747460), 2000–2001 (ADAMS Accession No. ML012190047), 2001–2002 (ADAMS Accession No. ML022550427), 2002–2003 (ADAMS Accession No. ML032180735), 2003–2004 (ADAMS Accession No. ML042330395), 2004–2005 (ADAMS Accession No. ML052550050), 2005–2006 (ADAMS Accession No. ML062410426), 2006–2007 (ADAMS Accession No. ML072130493), 2007–2008 (ADAMS Accession No. ML082550403), 2008–2009 (ADAMS Accession No. ML092330118). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 2nd day of February, 2012.

For The Nuclear Regulatory Commission.

**Jessie F. Quichocho,**

*Branch Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2012–3298 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–264; NRC–2012–0026]**

## Dow Chemical Company; Dow Chemical TRIGA Research Reactor; Facility Operating License No. R–108

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License renewal application; opportunity to provide comments, request a hearing and to petition for leave to intervene, order.

**DATES:** Submit comments by March 14, 2012. Requests for a hearing or leave to intervene must be filed by April 13, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by February 23, 2012.

**ADDRESSES:** Please include Docket ID NRC–2012–0026 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2012–0026. Address questions about NRC dockets to Carol Gallagher,

telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Wertz, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The initial application and other related documents may be accessed in ADAMS under ADAMS Accession Nos.: ML091060739, ML092150443, ML102720859, ML110130501, ML110490391, ML113460120, ML112150327, ML11249A043, ML112930035, ML113410168, and ML113460038.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2012–0026.

## I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility Operating License No. R–108 (''Application''), which currently authorizes the Dow Chemical Company (the licensee) to operate the Dow Chemical TRIGA Research Reactor (DTRR) at a maximum steady-state thermal power of 300 kilowatts (kW) thermal. The renewed license would authorize the applicant to operate the DTRR up to a steady-state thermal power of 300 kW for an additional 20 years from the date of issuance.

On April 1, 2009, as supplemented by letters dated August 11, September 24, 2010, January 12, February 11, April 11, August 12, August 31, October 12, November 10, and December 6, 2011, the NRC received an application from the licensee filed pursuant to 10 CFR 50.51(a) to renew Facility Operating License No. R–108 for the DTRR.

The application contains SUNSI.

Based on its initial review of the application, the NRC staff determined that DTRR submitted sufficient information in accordance with 10 CFR 50.33 and 10 CFR 50.34 so that the application is acceptable for docketing. The current Docket No. 50–264 for Facility Operating License No. R–108 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' and ''Interim Staff Guidance (ISG) on the Streamlined Review Process for License Renewal for Research Reactors.'' The detailed review guidance (NUREG–1537 and the ISG) may be accessed online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for part one of NUREG–1537, ADAMS Accession No. ML042430048 for part two of NUREG–1537, and ADAMS Accession No. ML092240244 for the ISG.

## II. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''' Interested persons should consult 10 CFR part 2, § 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737. NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must

make to support the granting of a license renewal in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for license renewal that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for license renewal fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 13, 2012. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State, local governmental bodies, and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by April 13, 2012.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must

apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from February 13, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this opportunity to request a hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing),

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

For the Commission.

Dated at Rockville, Maryland, this 7th day of February, 2012.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/Activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2012–3246 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on March 6, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Tuesday, March 6, 2012—1 p.m. until 5 p.m.**

The Subcommittee will discuss the new Construction Reactor Oversight Process (cROP) Pilot Program Plan applicable to construction oversight of new plans being constructed under the 10 CFR 50 process. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Girija Shukla (Telephone 301–415–6855 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 6, 2012.

**Antonio Dias,**

*Technical Advisor, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2012–3295 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on March 7, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Wednesday, March 7, 2012—8:30 a.m. until 5 p.m.**

The staff will discuss the draft Commission paper and the progress made from the tabletop exercises in response to the SRM on SECY 10–0121, ''Modifying the Risk-Informed Regulatory Guidance For New Reactors.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 6, 2012.

**Antonio Dias,**

*Technical Advisor, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2012–3297 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 7, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, March 7, 2012—12 p.m. Until 1 p.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio. Dias@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 6, 2012.

**Cayetano Santos,**

*Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2012–3270 Filed 2–10–12; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collections for OMB Review; Comment Request; Reportable Events; Notice of Failure To Make Required Contributions

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of two collections of information under PBGC's regulation on Reportable Events and Certain Other Notification Requirements (OMB control numbers 1212–0013 and 1212–0041, expiring March 31, 2012). This notice informs the public of PBGC's request and solicits public comment on the collections of information.

**DATES:** Comments must be submitted by March 14, 2012.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments received, including personal information provided, will be posted to *www.pbgc.gov.*

Copies of the collections of information and comments may be obtained without charge by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; visiting the Disclosure Division; faxing a request to 202–326–4042; or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulation, forms, and instructions are available at *www.pbgc.gov.*

**FOR FURTHER INFORMATION CONTACT:** James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** On November 23, 2009, PBGC published (at 74 FR 61248) a proposed rule to amend the reportable events regulation to accommodate changes to the variable-rate premium rules made pursuant to the Pension Protection Act of 2006 (PPA 2006). The rule also proposed to eliminate most automatic waivers and filing extensions, create two new reportable events based on provisions in PPA 2006, and make other changes to the reportable events regulation as well as conforming changes. Public comment on the proposed rule was directed primarily at the proposed elimination of the waivers and extensions and was generally negative. In response to the comments and in the spirit of Executive Order 13563 on Improving Regulation and Regulatory Review, PBGC plans to issue a new proposal that will more effectively target troubled plans and sponsors while reducing burden for those that are financially sound. PBGC is requesting OMB to extend approval of the existing information collections since current approval will expire in March 2012.

Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and employer events to PBGC. The reporting requirements give PBGC notice of events that indicate plan or employer financial problems. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in PBGC's losses.

Section 303(k) of ERISA and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance

program under title IV of ERISA if (1) any person fails to make a contribution payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons committing payment failures to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

The provisions of section 4043 of ERISA and of sections 303(k) of ERISA and 430(k) of the Code have been implemented in PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043). Subparts B and C of the regulation deal with reportable events, and subpart D deals with failures to make required contributions.

PBGC has issued Forms 10 and 10–Advance and related instructions under subparts B and C (approved under OMB control number 1212–0013) and Form 200 and related instructions under subpart D (approved under OMB control number 1212–0041). OMB approval of both of these collections of information expires March 31, 2012. PBGC is requesting that OMB extend its approval for three years, with minor changes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 1,030 reportable event notices per year under subparts B and C of the reportable events regulation using Forms 10 and 10–Advance and that the average annual burden of this collection of information is 5,400 hours and $822,000. PBGC estimates that it will receive 110 notices of failure to make required contributions per year under subpart D of the reportable events regulation using Form 200 and that the average annual burden of this collection of information is 670 hours and $102,000.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, this 7th day of February, 2012.

**John H. Hanley,**

*Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 2012–3306 Filed 2–10–12; 8:45 am]

**BILLING CODE 7709–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form SE., OMB Control No. 3235–0327, SEC File No. 270–289.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form SE (17 CFR 239.64) is used by registrants to file paper copies of exhibits, reports or other documents that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is filed by individuals, companies or other entities that are required to file documents electronically. Approximately 50 registrants file Form SE and it takes an estimated 0.10 hours per response for a total annual burden of 5 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: February 7, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3220 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 3369; February 7, 2012; File No.: 801–71579]**

### In the Matter of Gravity Capital Partners, LLC, 6400 S. Fiddlers Green Circle, Suite 1900, Greenwood Village, CO 80111; Notice of Intention To Cancel Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Gravity Capital Partners, LLC, hereinafter referred to as the registrant.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A,

the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is relying on section 203A(a)(1)(A) of the Act to register with the Commission, which prior to September 19, 2011 prohibited an investment adviser from registering with the Commission unless it maintained assets under management of at least $25 million. Effective September 19, 2011, Congress increased the assets under management threshold under section 203A of the Advisers Act to prohibit an investment adviser from registering with the Commission if it is required to be registered in the state in which it maintains its principal office and place of business and has assets under management between $25 million and $100 million. Accordingly, an adviser currently registered with the Commission generally is required to withdraw from registration when its assets under management fall below $90 million, unless the adviser is not required to register in the state where it maintains its principal office and place of business.[1]

The registrant is prohibited from registering as an investment adviser under section 203A of the Act because the Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, maintain the required assets under management to remain registered with the Commission. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by March 5, 2012 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after March 5, 2012, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Alpa Patel, Attorney-Adviser at 202–551–6787 (Office of Investment Adviser Regulation).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3224 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. *See* Advisers Act section 203A(a)(2)(B)(ii) (amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)); Advisers Act rule 203A–1(a); Rules *Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011), available at *http://www.sec.gov/rules/final/2011/ia-3221.pdf.*

[2] 17 CFR 200.30–5(e)(2).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66340; File No. SR–OCC–2012–02]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit OCC To Clear and Settle Spot Gold Futures, Which Are Proposed To Be Traded by NASDAQ OMX Futures Exchange, Inc.

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 24, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)(ii)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4)(ii).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit OCC to clear and settle Spot Gold Futures, which are proposed to be traded by NASDAQ OMX Futures Exchange, Inc. (''NFX'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to permit OCC to clear and settle Spot Gold Futures, which are proposed to be traded by NFX. A Spot Gold Future is a U.S. dollar-settled futures contract based on the value of gold with an additional daily cost of carry/interest payment feature (''Cost of Carry Payment'') reflecting the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar. The Cost of Carry Payment will be in addition to the daily variation payment and is designed to make the economic effect of buying or selling a Spot Gold Future equivalent to the purchase or sale of gold in the spot market. Spot Gold Futures would simulate a spot market transaction that is continually ''rolled forward'' to the maturity date of the future with the Cost of Carry Payment being similar to the payment exchanged between the buyer and seller in a spot transaction each day the transaction is rolled forward.

The per-contract amount of the Cost of Carry Payment will be expressed in terms of ''swap points,'' which will be calculated and supplied to NFX by a third-party service provider. A positive swap point results in a credit for the holder of the short position with respect to a Spot Gold Futures contract, and a

[4] The Commission has modified the text of the summaries prepared by OCC.

debit for the holder of the long position. Similarly, a negative swap point results in a debit for the holder of the short position and a credit for the holder of the long position. NFX will provide the swap point data that it receives from the third-party service provider to OCC each day, and OCC will apply the swap point value to each Clearing Member account's final position at the end of each day and will settle the resultant payment along with regular cash settlements on the following business day. In the event that that NFX does not provide the swap point data by the deadline specified by OCC, settlement of the Cost of Carry Payment may be postponed until the business day following the business day on which such amount was provided. Furthermore, the amount of the Cost of Carry Payment provided by NFX will be conclusively presumed to be accurate, and OCC will not bear any liability as a result of any inaccuracy in such amount.

NFX plans to use as the final settlement price for each Spot Gold Future the published settlement price of the corresponding gold futures contract on COMEX.

OCC's Proposed By-Law and Rule Changes

OCC's current By-Laws and Rules do not provide for cash-settled futures with a daily cost of carry/interest payment between the buyer and seller of such contract in addition to the daily variation payment. In order to provide for the clearance of Spot Gold Futures, OCC proposes to add definitions for Spot Futures and the Cost of Carry Payment to its By-Laws and to amend its Rules to describe the manner in which Cost of Carry Payments will be calculated and made.

Changes to Agreement for Clearing and Settlement Services

OCC performs the clearing function for NFX pursuant to the Clearing Agreement between OCC and NFX. The Clearing Agreement provides that NFX will provide settlement prices to OCC and will indemnify OCC in the event that OCC uses an incorrect settlement price provided by NFX. It does not, however, contemplate the transmission of separate settlement items such as swap points. The Clearing Agreement will be amended to address NFX's provision of swap point data to OCC and to provide protection for OCC in the event that NFX provides incorrect swap point data.[5]

Pursuant to the terms of the Clearing Agreement, OCC has agreed to clear the specific types of contracts enumerated in the Clearing Agreement and may agree to clear additional types through the execution by both parties of a new ''Schedule C'' to the Agreement.[6]

OCC believes that the proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to OCC because the proposed changes are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(4)(ii)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2012–02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2012–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_02.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–02 and should be submitted on or before March 5, 2012.

[5] A copy of the proposed second amended and restated Clearing Agreement is attached to the proposed rule change filing as Exhibit 5A.

[6] A copy of the proposed new Schedule C providing for the clearance of Spot Gold Futures is attached to the proposed rule change filing as Exhibit 5B.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3213 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66342; File No. SR–NYSEArca–2011–82]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to the Listing and Trading of Shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund Under NYSE Arca Equities Rule 8.600

February 7, 2012.

### I. Introduction

On November 14, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 5, 2011.[3] On January 17, 2012, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] On January 18, 2012, the Exchange filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[5] On January 23, 2012, the Exchange further extended the time period for Commission action to February 8, 2012. On January 25, 2012, the Exchange filed Amendment No. 3 to the proposed rule change (''Amendment No. 3'').[6] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 3.

### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the WisdomTree Emerging Markets Inflation Protection Bond Fund (''Fund'') pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund. The Shares will be offered by the WisdomTree Trust (''Trust''), which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company, and the Fund has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[7] WisdomTree Asset Management, Inc. is the investment adviser (''Adviser'') to the Fund, and Mellon Capital Management serves as sub-adviser for the Fund (''Sub-Adviser''). The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust, and ALPS Distributors, Inc. serves as the distributor for the Trust.[8] The Exchange states that, while WisdomTree Asset Management is not affiliated with any broker-dealer, the Sub-Adviser is affiliated with multiple broker-dealers. As a result, the Sub-Adviser has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.[9]

*Description of the Fund*

The Fund seeks to provide a high level of income and capital appreciation representative of investments in inflation-linked debt of emerging market issuers. The Fund intends to achieve its investment objectives through direct and indirect investments in inflation-protected Fixed Income Securities [10] of emerging market countries. The Fund expects that it will have at least 70% of its assets invested in Fixed Income Securities. The Fund will invest in Fixed Income Securities linked to inflation rates in emerging markets throughout the world. The Fund may invest in Fixed Income Securities that are not linked to inflation, such as U.S. or non-U.S. government bonds, as well as Fixed Income Securities that pay variable or floating rates. The Fund may also invest in Money Market Securities and derivative instruments, as described below.

The Fund intends to invest in inflation-linked Fixed Income Securities of issuers in the following regions: Asia, Latin America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund is likely to invest in countries such as Brazil, Chile, Colombia, Hungary, Indonesia, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, South Korea, Thailand, and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity, and other criteria. As a general matter, and subject to the Fund's investment guideline to provide

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65846 (November 29, 2011), 76 FR 75932 (''Notice'').

[4] The Exchange withdrew Amendment No. 1 on January 18, 2012 and extended the time period for Commission action to January 25, 2012.

[5] The Exchange withdrew Amendment No. 2 on January 25, 2012.

[6] The proposed rule change originally stated that ''[t]he Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities and (2) [sic] Rule 144A securities.'' *See* Notice, 76 FR at 75936, *supra* note 3. Amendment No. 3 amended the proposed rule change by replacing the term ''invest'' with ''hold.'' The purpose of Amendment No. 3 was to make the proposed rule change more consistent with the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') requirements relating to restrictions on holdings of illiquid securities by registered open-end management investment companies. Because Amendment No. 3 seeks to maintain consistency with the 1940 Act and rules and regulations thereunder, and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, the amendment is not subject to notice and comment.

[7] *See* Post-Effective Amendment No. 54 to Registration Statement on Form N–1A for the Trust, dated July 1, 2011 (File Nos. 333–132380 and 811–21864).

[8] The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458) (''Exemptive Order''). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[9] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[10] For these purposes, ''Fixed Income Securities'' include bonds, notes, or other debt obligations, such as government or corporate bonds, denominated in local currencies or U.S. dollars, as well as issues denominated in emerging market local currencies that are issued by ''supranational issuers,'' such as the International Bank for Reconstruction and Development and the International Finance Corporation, as well as development agencies supported by other national governments.

exposure across geographic regions and countries, the Fund generally will invest a higher percentage of its assets in countries with larger and more liquid debt markets. The Fund's exposure to any single country generally will be limited to 20% of the Fund's assets. The percentage of Fund assets invested in a specific region, country, or issuer will change from time to time.

The Fund expects that it will have at least 70% of its assets invested in investment grade securities, and no more than 30% of its assets invested in non-investment grade securities. Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities; however, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of ''comparable quality,'' the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

While the Fund intends to focus its investments in Fixed Income Securities on bonds and other obligations of governments and agencies of emerging market countries, the Fund may invest up to 20% of its net assets in corporate bonds. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund, and (iii) such investment is deemed consistent with the Fund's goal of providing broad exposure to inflation-linked Fixed Income Securities.

The Fund may invest in Fixed Income Securities with effective or final maturities of any length. The Fund will seek to keep the average effective duration of its portfolio between 2 and 8 years. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations, and, therefore, more volatile, than a fund with a shorter effective duration. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers and will not concentrate 25% or more of the value of its total assets in any one industry, as that term is used in the 1940 Act. The Fund further intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

In addition to satisfying the above-referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund's portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by short-term U.S. government securities or non-U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated Money Market Securities. However, it may do so to a limited extent, such as where a rated Money Market Security becomes unrated, if such Money Market Security is determined by the Adviser and Sub-Adviser to be of comparable quality.

Consistent with the Exemptive Order, the Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include exchange-listed futures contracts, forward currency contracts, non-deliverable forward currency contracts, currency swaps, interest rate swaps, inflation rate swaps, currency options, options on futures contracts, swap agreements, and structured notes. The Fund's use of derivatives contracts (other than structured notes) will be collateralized or otherwise backed by investments in short-term, high quality U.S. Money Market Securities.

The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. For example, the Fund may engage in swap transactions that provide exposure to inflation rates, inflation-linked bonds, inflation-sensitive indices, or interest rates.[11] The Fund also may buy or sell listed futures contracts on U.S. Treasury securities,

[11] An inflation-linked swap is an agreement between two parties to exchange payments at a future date based on the difference between a fixed payment and a payment linked to an inflation rate or value at a future date. A typical interest rate swap involves the exchange of a floating interest rate payment for a fixed interest payment.

non-U.S. government securities, and major non-U.S. currencies.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures and forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will ''set aside'' liquid assets, or engage in other measures to ''cover'' open positions with respect to such transactions. The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.[12]

The Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds). The Fund may hold up to an aggregate amount of 15% of its net assets in (a) illiquid securities and (b) Rule 144A securities.[13] The Commission staff has interpreted the term ''illiquid'' in this context to mean a security that cannot be sold or disposed of within seven days in the ordinary course of business at approximately the amount at which a fund has valued such security. The Fund will not invest in any non-U.S. equity securities.

Additional details regarding the Trust, Shares, trading policies of the Fund, creations and redemptions of the Shares, Fixed Income Securities, Money Market Securities, investment risks, net asset value (''NAV'') calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statements, as applicable.[14]

## III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 and Commentaries thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV'') for the Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[18] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time. On each business day, before commencement of trading in Shares in the Core Trading Session, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[19] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund and the characteristics of such assets. Intra-day, executable price quotations on emerging market Fixed Income Securities, as well as Money Market Securities and derivative instruments, are available from major broker-dealer firms, as well as subscription services such as Bloomberg and Thomson Reuters. In addition, the Web site for the Fund will contain the prospectus and additional data relating to NAV and other applicable quantitative information calculated on a daily basis.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[20] The Exchange represents that the Sub-Adviser, which is affiliated with multiple broker-dealers, has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the

[12] The Fund will invest only in currencies, and instruments that provide exposure to such currencies, that have significant foreign exchange turnover and are included in the Bank for International Settlements, *Triennial Central Bank Survey, Report on Global Foreign Exchange Market Activity in 2010* (December 2010) (''BIS Survey''). The Fund may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

[13] *See supra* note 6.

[14] *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively.

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[18] The Core Trading Session is 9:30 a.m. to 4:00 p.m. Eastern time. During hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the PIV will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations. According to the Exchange, several major market data vendors display and/or make widely available PIVs published on CTA or other data feeds.

[19] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[20] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

Fund's portfolio.[21] The Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[22] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[23] The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

(6) The Fund: (a) May hold up to an aggregate amount of 15% of its net assets in (i) illiquid securities and (ii) Rule 144A securities; (b) will not invest in any non-U.S. equity securities; and (c) expects that no more than 30% of the value of its net assets will be invested in derivative instruments, which will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(7) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[24]

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3 thereto, is consistent with Section 6(b)(5) of the Act[25] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSEArca–2011–82), as modified by Amendment No. 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3215 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[21] *See supra* note 9 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[22] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[23] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[24] *See* 17 CFR 240.10A–3.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66344; File No. SR–CBOE–2012–012]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that the AIM Contra Execution Fee (the ''Fee'') does not apply to Clearing Trading Permit Holder (''CTPH'') Proprietary facilitation orders.

On January 17, 2012, the Exchange made a number of amendments to its Fees Schedule, including to add to footnote 11 a waiver of the transaction fees for CTPH Proprietary facilitation orders (other than SPX, VIX or other volatility indexes, OEX or XEO) executed in Automate [sic] Improvement Mechanism (''AIM'') or open outcry, or as a QCC or FLEX Options transaction (the ''CTPH Proprietary Facilitation Waiver'').[3] In adopting the CTPH Proprietary Facilitation Waiver, the Exchange intended to waive all transaction fees for CTPH Proprietary facilitation orders, including the AIM Contra Execution Fee.[4] However, footnote 18 continued to state that the Fee applies to all AIM executions (other than SPX, VIX or other volatility indexes, OEX or XEO), which would include AIM executions for CTPH Proprietary facilitation orders. As such, footnotes 11 and 18 are in conflict due to the Exchange's inadvertent omission of a clarification in footnote 18 that the Fee does not apply to CTPH Proprietary [sic] facilitation orders. The Exchange hereby proposes to amend footnote 18 to make that clarification.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] of the Act in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. By removing any potential confusion caused by the conflicting provisions, the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system, thereby protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–012 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3217 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* SR–CBOE–2012–008, which replaced SR–CBOE–2011–121, which was filed on December 30, 2011 and withdrawn on January 17, 2012, and Exchange Fees Schedule, Footnote 11.

[4] *See* SR–CBOE–2012–008.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66346; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Changes, as Modified by Amendments No. 1, Adopting NYSE Rule 107C To Establish a Retail Liquidity Program for NYSE-Listed Securities on a Pilot Basis Until 12 Months From Implementation Date, Which Shall Occur No Later Than 90 Days After Approval, If Granted and Adopting NYSE Amex Rule 107C To Establish a Retail Liquidity Program for NYSE Amex Equities Traded Securities on a Pilot Basis Until 12 Months From Implementation Date, Which Shall Occur No Later Than 90 Days After Approval, If Granted

February 7, 2012.

### I. Introduction

On October 19, 2011, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'' and together with NYSE, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Liquidity Program (''Program'') on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule changes were published for comment in the **Federal Register** on November 9, 2011.[3] The Commission received 28 comments on the NYSE proposal [4] and 4 comments on the NYSE Amex proposal.[5] On December 19, 2011, the Commission designated a longer period for Commission action on the proposed rule change, until February 7, 2012.[6] In connection with the proposals, the Exchanges requested exemptive relief from Rule 612(c) of Regulation NMS,[7] which prohibits a national securities exchange from accepting or ranking certain orders based on an increment smaller than the minimum pricing increment.[8] The Exchanges submitted a consolidated response letter on January 3, 2012.[9] On January 17, 2012, each Exchange filed Amendment No. 1 to its proposal.[10]

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule changes.

### II. Description of the Proposals

Each Exchange is proposing to establish a Retail Liquidity Program on a pilot basis, limited to trades occurring at prices equal to or greater than $1.00 per share. According to the Exchanges, the Retail Liquidity Program is intended to attract retail order flow to the NYSE for NYSE-listed securities, and to NYSE Amex for NYSE Amex-listed securities as well as securities listed on the Nasdaq Stock Market and traded pursuant to unlisted trading privileges. The proposed Retail Liquidity Program would allow such order flow to receive potential price improvement.

Under the proposed Program, a new class of market participants called Retail Member Organizations could submit a new type of order, called a Retail Order, to the Exchange. Once a Retail Member Organization submitted a Retail Order, a new class of market participants called Retail Liquidity Providers would then be required to provide potential price improvement, in the form of non-displayed interest that is better than the best protected bid or offer (''PBBO''),[11] called a Retail Price Improvement Order. Other Exchange member organizations would be allowed, but not required, to submit Retail Price Improvement Orders. The Exchanges would approve member organizations to be Retail Liquidity Providers and/or Retail Member Organizations.

*Types of Orders and Identifier*

As set forth in the proposals, a Retail Order would be an immediate or cancel order, and could have two different sources of origination. A Retail Order could be an agency order that originated from a natural person and not a trading algorithm or any other computerized methodology. The Retail Member Organization may not alter the terms of such order with respect to price or side

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR–NYSE Amex–2011–84); 65672 (November 2, 2011), 76 FR 69788 (SR–NYSE–2011–55).

[4] *See* Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011 (''Themis Letter''); Garret Cook, dated November 4, 2011 (''Cook Letter''); James Johannes, dated November 27, 2011 (''Johannes Letter''); Ken Voorhies, dated November 28, 2011 (''Voorhies Letter''); William Wuepper, dated November 28, 2011 (''Wuepper Letter''); A. Joseph, dated November 28, 2011 (''Joseph Letter''); Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011 (''Knight Letter''); Kevin Basic, dated November 28, 2011 (''Basic Letter''); J. Fournier, dated November 28, 2011 (Fournier Letter''); Ullrich Fischer, CTO, PairCo, dated November 28, 2011 (''PairCo Letter''); James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011 (''Angel Letter''); Jordan Wollin, dated November 29, 2011 (''Wollin Letter''); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 29, 2011 (''Great Mountain Capital Letter''); Wayne Koch, Trader, Bright Trading, dated November 29, 2011 (''Koch Letter''); Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011 (''CFA Letter''); David Green, Bright Trading, dated November 30, 2011 (''Green Letter''); Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011 (''Bright Trading Letter''); Bodil Jelsness, dated November 30, 2011 (''Jelsness Letter''); Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011 (''TD Ameritrade Letter''); Laura Kenney, dated November 30, 2011 (''Kenney Letter''); Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011 (''Hudson River Trading Letter''); Bosier Parsons, Bright Trading LLC, dated November 30, 2011 (''Parsons Letter''); Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011 (''UBS Letter''); Dr. Larry Paden, Bright Trading, dated December 1, 2011 (''Paden Letter''); Thomas Dercks, dated December 1, 2011 (''Dercks Letter''); Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011 (''BATS Letter''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011 (''SIFMA Letter''); and Al Patten, dated December 29, 2011 (''Patten Letter'').

[5] *See* Knight Letter; CFA Letter; TD Ameritrade Letter; and letter to the Commission from Shannon Jennewein, dated November 30, 2011 (''Jennewein Letter'').

[6] *See* Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).

[7] 17 CFR 242.612(c).

[8] The Exchanges amended the exemptive relief request on January 13, 2012. *See* Letter from Janet M. McGinness, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission.

[9] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 (''Exchanges' Response Letter'').

[10] In Amendment No. 1, the Exchanges modified the proposals as follows: (1) To state that Retail Member Organizations may receive free executions for their retail orders and the fees and credits for liquidity providers and Retail Member Organizations would be determined based on experience with the Retail Liquidity Program in the first several months; (2) to correct a typographical error referring to the amount of minimum price improvement on a 500 share order; (3) to indicate the Retail Liquidity Identifier would be initially available on each Exchange's proprietary data feeds, and would be later available on the public market data stream; and (4) to limit the Retail Liquidity Program to securities that trade at prices equal to or greater than $1 per share.

[11] The terms protected bid and protected offer would have the same meaning as defined in Rule 600(b)(57) of Regulation NMS. Rule 600(b)(57) of Regulation NMS defines ''protected bid'' and ''protected offer'' as ''a quotation in an NMS stock that: (i) [i]s displayed by an automated trading center; (ii) [i]s disseminated pursuant to an effective national market system plan; and (iii) [i]s an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.'' 17 CFR 242.600(b)(57).

of the market. Alternately, Retail Order could be proprietary order of a Retail Member Organization that resulted from liquidating a position acquired from the internalization of a Retail Order.

The Retail Liquidity Provider would be required to submit Retail Price Improvement Orders for securities that are assigned to the Retail Liquidity Provider. The Retail Price Improvement Order would be priced better than the PBBO by at least $0.001. The Exchange systems would determine whether a Retail Price Improvement Order could interact with incoming Retail Orders.

When a Retail Price Improvement Order is available, the Exchange would disseminate an identifier, called a Retail Liquidity Identifier. The identifier would initially be disseminated through an Exchange proprietary data feed, and as soon as practicable, the Exchange would disseminate the identifier through the Consolidated Quotation System.

*Retail Member Organizations*

In order to become a Retail Member Organization, an Exchange member organization must conduct a retail business or handle retail orders on behalf of another broker-dealer. The member organization must submit an application with supporting documentation and an attestation to the Exchange that the order flow would qualify as Retail Orders.

The Exchange would review the application and notify the member organization of the Exchange's decision in writing. If a member organization did not receive approval to become a Retail Member Organization, then the member organization could appeal as provided below or reapply 90 days after the Exchange issued the disapproval.

The Exchange would require a Retail Member Organization to have written policies and procedures in place to assure that only bona fide retail orders are designated as such. The written policies and procedures would require that the Retail Member Organization exercise due diligence to assure that entry of a Retail Order is in compliance with the proposed rule, prior to such entry. In addition, the Retail Member Organization must monitor whether the Retail Order meets the requirements of the proposed rule.

If the Retail Member Organization represented the Retail Order from another broker-dealer, then the Retail Member Organization must have adequate supervisory procedures to assure that the Retail Order meets the proposed definition. Every year, the Retail Member Organization must obtain from each broker-dealer a written representation that the Retail Orders the broker-dealer sends comply with the proposed rule and must monitor the broker-dealer's order flow to meet the requirements of the proposed rule.

*Retail Order Interactions*

Under the proposal, a Retail Member submitting a Retail Order could choose one of three ways for the Retail Order to interact with available contra-side interest. First, a Retail Order could interact only with available contra-side Retail Price Improvement Orders. The Exchange would label this a Type 1 Retail Order and such orders would not interact with other available contra-side interest in Exchange systems or route to other markets. Portions not executed would be cancelled.

Second, a Retail Order could interact first with available contra-side Retail Price Improvement Orders and any remaining portion would be executed as a Regulation NMS-compliant Immediate or Cancel Order (such order would sweep the Exchange's book without being routed to other markets, and any remaining portion would be cancelled). The Exchange would label this a Type 2 Retail Order.

Finally, a Retail Order could interact first with available contra-side Retail Price Improvement Orders and any remaining portion would be executed as a NYSE Immediate or Cancel Order (such order would sweep the Exchange's book and be routed to other markets to comply with Regulation NMS and any remaining portion would be cancelled). The Exchange would label this a Type 3 Retail Order.

*Priority and Allocation*

The proposals set forth how Retail Price Improvement Orders are ranked in the same security. The Exchange would follow a price and time allocation, ranking Retail Price Improvement Orders according to price and then time of entry. Executions would occur at the price that completes the incoming order. If there are remaining Retail Price Improvement Orders, they would be available for further incoming Retail Orders. As noted earlier, Retail Orders not executed would be cancelled.

*Retail Liquidity Providers Qualifications and Admission*

The proposed rule would set forth the qualifications, application process, requirements, and penalties of Retail Liquidity Providers.

To qualify, a member organization must be approved as a Designated Market Maker [12] or Supplemental Liquidity Provider [13] on the Exchange and demonstrate an ability to meet the requirements of a Retail Liquidity Provider. Moreover, the member organization must have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange Retail Liquidity Provider trading activity in assigned securities.[14] Finally, to qualify, the member organization must have adequate trading infrastructure and technology to support electronic trading.

A member organization must submit an application with supporting documentation to the Exchange. Thereafter, the Exchange would notify whether the member organization is approved as a Retail Liquidity Provider. More than one member organization could act as a Retail Liquidity Provider for a security, and a member organization could act as a Retail Liquidity Provider for more than one security. A member organization could request the Exchange to be assigned certain securities. Once approved, the member organization must establish connectivity with relevant Exchange systems prior to trading.

The Exchange would notify a member organization in writing if the Exchange does not approve the member organization's application to be a Retail Liquidity Provider. Such member organization could request an appeal as provided below. The member organization could also reapply 90 days after the Exchange issues the disapproval notice.

Once approved as a Retail Liquidity Provider, a member organization could withdraw by providing notice to the Exchange. The withdrawal would become effective when the Exchange reassigns the securities to another Retail Liquidity Provider, no later than 30 days after the Exchange receives the withdrawal notice. In the event that the Exchange takes longer than 30 days to reassign the securities, the withdrawing Retail Liquidity Provider would have no further obligations under the proposed rule.

*Retail Liquidity Provider Requirements*

The proposed rule would impose several requirements on Retail Liquidity Providers. First, a Retail Liquidity

[12] *See* NYSE Rule 103 and NYSE Amex Rule 103.

[13] *See* NYSE Rule 107B and NYSE Amex Rule 107B.

[14] The member organization would not be allowed to use the mnemonic or designation for non-Retail Liquidity Provider trading activities. Further, the member organization would not receive credit for Retail Liquidity Provider trading activity if the member organization did not use mnemonic or designation.

Provider could only enter a Retail Price Improvement Order electronically into Exchange systems specifically designated for this purpose, and only for the securities to which the Retail Liquidity Provider is assigned. The Retail Liquidity Provider must maintain Retail Price Improvement Orders that are better than the PBBO at least 5% of the trading day for each assigned security.

To calculate the 5% quoting requirement, the Exchange would determine the average percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order in each assigned security during the regular trading day on a daily and monthly basis. The Exchange would use the following definitions. The ''Daily Bid Percentage'' would be calculated by determining the percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order with respect to the best protected bid during each trading day for a calendar month. The ''Daily Offer Percentage'' would be calculated by determining the percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order with respect to the best protected offer during each trading day for a calendar month. The ''Monthly Average Bid Percentage'' would be calculated for each security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in such month. The ''Monthly Average Offer Percentage'' would be calculated for each security by summing the security's ''Daily Offer Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in such month.

The proposed rule specifies that only Retail Price Improvement Orders entered through the trading day would be used when calculating the 5% quoting requirements. Further, a Retail Liquidity Provider would have a two-month grace period from the 5% quoting requirement. The Exchange would impose the 5% quoting requirements on the first day of the third consecutive calendar month after the member organization began operation as a Retail Liquidity Provider.

*Penalties for Failure To Meet Requirements*

The proposed rules provide for penalties when a Retail Liquidity Provider or a Retail Member Organization fails to meet the requirements of the rule.

If a Retail Liquidity Provider fails to meet the 5% quoting requirements in any assigned securities for three consecutive months, the Exchange, in its sole discretion, may: (1) Revoke the assignment of all affected securities; (2) revoke the assignment of unaffected securities; or (3) disqualify the member organization to serve as a Retail Liquidity Provider. If the Exchange moves to disqualify a Retail Liquidity Provider's status, then the Exchange would notify, in writing, the Retail Liquidity Provider one calendar month prior to the determination. Likewise, the Exchange would notify the Retail Liquidity Provider in writing if the Exchange determined to disqualify the status of that Retail Liquidity Provider. As noted earlier, a Retail Liquidity Provider that is disqualified may appeal as provided below or reapply.

With respect to Retail Member Organizations, the Exchange could disqualify a Retail Member Organization if the Retail Order submitted by the Retail Member Organization did not comply with the requirements of the proposed rule. The Exchange would have sole discretion to make such determination. The Exchange would provide written notice to the Retail Member Organization when disqualification determinations are made. Similar to a disqualified Retail Liquidity Provider, a disqualified Retail Member Organization could appeal as provided below or reapply.

*Appeal Process*

Under the proposals, the Exchange would establish a Retail Liquidity Program Panel to review disapproval or disqualification decisions. An affected member organization would have five business days after notice to request an adverse review. If a member organization is disqualified as a Retail Liquidity Provider and has appealed, the Exchange would stay the reassignment of securities.

The Panel would consist of the Exchange's Chief Regulatory Officer or its designee, and two officers of the Exchange as designated by the co-head of U.S. Listings and Cash Execution. The Panel would review the appeal and issue a decision within the time frame prescribed by the Exchange. The Panel's decision would constitute final action by the Exchange, and the Panel could modify or overturn any Exchange action taken under the proposed rule.

## III. Comments Letters and the Exchanges' Response

As noted above, the Commission received 28 comment letters concerning the NYSE proposal and 4 comment letters concerning the NYSE Amex proposal. Several commenters expressed support for some or all elements of the Exchanges' proposed Program.[15] For instance, one commenter expressed general support for the proposals [16] and another commenter offered support for the Exchanges' efforts to enhance price competition for retail customer order flow.[17] Another commenter was supportive of the proposals to the extent they promoted transparency, competition, efficiency, and greater investor choice in the capital markets.[18] Two other commenters expressed broad support for the proposals' potential to benefit individual retail investors.[19]

However, a number of commenters raised concerns about the proposed rule changes. The main areas of concern were: (1) The time and manner of the Commission's action on the proposed rule changes, given the potential impact on overall market structure; (2) the proposals' impact on the Sub-Penny Rule; (3) whether the proposals impede fair access; and (4) whether the proposals implicate rules and standards relating to best execution and order protection.

1. Time and Manner of Commission Action

Several commenters requested that the Commission delay taking action on the proposals until the Commission has had additional time to examine the proposals' potential impact on market structure.[20] For example, several commenters stated their belief that the issues raised by the proposals should be considered through Commission rulemaking, rather than through a self-regulatory organization's proposed rule change, because of the proposals' impact on the Sub-Penny Rule (Rule 612) of Regulation NMS [21] as well as the competitive landscape of the markets.[22] Commenters questioned whether the standard action period applicable to self-regulatory organizations' proposed rule changes was enough time for the Commission to analyze relevant data

[15] *See* Johannes Letter, Knight Letter, Angel Letter, TD Ameritrade Letter, UBS Letter, Dercks Letter, and BATS Letter.

[16] *See* TD Ameritrade Letter (stating that the proposals are ''quite appealing'' to the interests of ''fair and transparent markets that benefit retail investors'' although there were still specific issues to be addressed).

[17] *See* BATS Letter.

[18] *See* UBS Letter.

[19] *See* Johannes Letter and Dercks Letter.

[20] In contrast, one commenter requested the Commission to expedite approval of the proposals. *See* Johannes Letter.

[21] *See* Knight Letter and SIFMA Letter.

[22] *See* Knight Letter and Hudson River Trading Letter.

and sufficiently consider the effects the proposals might have on the equities markets.[23] Another commenter did not oppose Commission approval of the proposals on a pilot basis, but cautioned that to the extent the Commission approves an effective reduction in the minimum price variation, or ''tick size,'' below $0.01, the Commission should do so on the basis of industry-wide pilot studies that test various tick sizes and publish the studies' data for public review and comment.[24]

The Exchanges responded that the proposed Program is designed to attract retail order flow to the Exchanges by competing with the current practices of broker-dealers who internalize much of the market's retail order flow. Additionally, the Exchanges represent that the fees and credits they would implement as part of the Program would replicate the current structure between over-the-counter internalization venues and retail order flow providers.[25]

2. Impact on the Sub-Penny Rule

A number of commenters raised concerns about the proposed Program's use of sub-penny price improvement for retail order flow, and its implications with respect to the Sub-Penny Rule (Rule 612) of Regulation NMS.[26] One commenter noted that by accepting and ranking non-displayed orders in sub-penny increments, the proposals could discourage liquidity by allowing ''dark'' liquidity to step ahead of posted limit orders for only a trivial amount.[27] The same commenter observed that allowing non-displayed liquidity to gain an execution advantage over posted limit orders for trivial per share amounts could result in wider bid-ask spreads.[28]

Other commenters articulated similar concerns about the protection of public limit orders and public price discovery,[29] and one commenter stated that the proposals might lead to a potential increase in sub-penny trading.[30] In addition, one commenter pointed out the potential technical systems and capacity issues that could result from effectively reducing the minimum price variant from $.01 to $.001, thereby substantially increasing the number of price points between each dollar level.[31]

In response, the Exchanges stated that currently, over-the-counter market makers internalize retail order flow at negotiated prices and not at their publicly displayed quotes. The Exchanges believe that this aspect of the market warrants further Commission consideration, but argued that it does not provide independent basis to disapprove the proposals.

The Exchanges also stated that the bulk of commenters' concerns about non-displayed liquidity stepping ahead of displayed limit orders for insignificant amounts are misguided. According to the Exchanges, the Commission's stated guidance with respect to the Sub-Penny Rule concerns market professionals using displayed orders to gain execution priority over customer limit orders. The Exchanges distinguished the proposed Program from such concerns by noting that the Retail Liquidity Identifier would not be priced and Retail Price Improvement Orders would not be displayed. Accordingly, the Exchanges contend that the Program would limit its sub-penny activity to sub-penny executions, and they cite to a statement in the Regulation NMS adopting release articulating the Commission's belief that sub-penny executions do not raise the same concerns as displayed sub-penny quotes. Similarly, in response to comments about the consequences of moving the ''tick size'' to $0.001, the Exchanges stated that the ''tick size'' would not in fact be altered because the sub-penny components of the Program would not be displayed.

Finally, in response to the concern that the proposals might lead to more sub-penny trading, the Exchanges stated that they do not anticipate such a result. Instead, the Exchanges stated their belief that the proposals would likely reallocate existing retail order market share, which the Exchanges stated that is already subject to ''regular'' sub-penny executions due to current internalization agreements. Moreover, the Exchanges further stated that if the proposals led to additional sub-penny executions for retail order flow, then it would benefit the market as retail investors would be receiving greater price improvement than they are today.

3. Fair Access

Commenters also highlighted several elements of the Program that potentially implicate the Commission's rules governing fair access. First, several commenters raised questions about whether the proposals would, in essence, create a private market. Some commenters wrote that the proposed segmentation of retail order flow would amount to unfair discrimination,[32] for example, by creating trading interest that would not be accessible by institutional investors.[33] One commenter suggested that the proposed Program would be akin to operating a limited access dark pool that could have the effect of creating a two-tiered market.[34] Relatedly, some commenters took issue with the proposals to the extent that the Retail Liquidity Identifier would be disseminated only through a proprietary data feed rather than the public market data stream.[35] These commenters felt that limiting dissemination of the Retail Liquidity Identifier to a proprietary data feed could unfairly harm small firms who do not pay for the proprietary feed [36] or create a private, two-tiered market where those who can afford the proprietary feed receive the best prices.[37]

The Exchanges responded that the proposals do not create a fair access issue because the Retail Liquidity Identifier does not satisfy the definition of ''quotation'' under Regulation NMS. The Exchanges stated their belief that the Retail Liquidity Identifier is not a protected ''quotation'' because a ''quotation'' is, by definition, a ''bid or an offer,'' [38] terms which are in turn defined as the price ''communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, either as

[23] *See* Knight Letter and SIFMA Letter.

[24] *See* Angel Letter. Expressing similar general concerns but not offering specific comment on the proposal, one commenter urged the Commission to exercise caution when considering expert testimony offered by for-profit industry participants as it relates to market structure regulation. *See* Themis Letter.

[25] *See also* UBS Letter (stating that the proposed programs would not necessarily lead to more sub-penny activity, but would rather shift some of that activity from the over-the-counter markets to the Exchanges).

[26] *See* 17 CFR 242.612.

[27] *See* Angel Letter.

[28] *Id.*

[29] *See* Voorhies Letter; Joseph Letter; Fournier Letter; PairCo Letter; Wollin Letter; Great Mountain Capital Letter; Koch Letter; CFA Institute Letter; Green Letter; Bright Trading Letter; TD Ameritrade Letter; Kenney Letter; Parsons Letter; and BATS Letter.

[30] *See* TD Ameritrade Letter.

[31] *See* Knight Letter.

[32] *See* CFA Institute Letter and Hudson River Trading Letter. At least one commenter took the opposite view and supported market participant segmentation programs so long as such segmentation is done in an objective and transparent manner. *See* UBS Letter.

[33] *See* SIFMA Letter.

[34] *See* Knight Letter.

[35] *See* SIFMA Letter and BATS Letter. As noted below, the Exchanges amended their proposals to indicate their intent to disseminate the Retail Liquidity Identifier through the public data feed as soon as practicable.

[36] *See* SIFMA Letter.

[37] *See* BATS Letter.

[38] *See* Exchanges' Response Letter (citing 17 CFR 242.600(b)(62)).

principal or agent, but shall not include indications of interest.'' [39] The Exchanges stated their belief that the Retail Liquidity Identifier falls beyond the definition of ''bid'' or ''offer'' because the identifier would not contain a price. According to the Exchanges, there would be no fairness issue in signifying the presence of liquidity by distributing the Retail Liquidity Identifier through a proprietary data feed, especially because participation in the proposed program would be discretionary, likely reduce message traffic from ''pinging,'' and potentially stimulate additional price competition to the benefit of retail investors. However, in response to concerns about the scope of the Retail Liquidity Identifier's dissemination, the Exchanges amended the proposals to state that the identifier would be available through the Consolidated Quotation System as soon as practicable.

Another fair access-related issue raised by the commenters relates to the clarity and transparency of certain defined terms in the proposals. Specifically, some commenters expressed concern that under the proposals, the Exchanges would have too much discretion to certify or approve Retail Member Organizations and Retail Liquidity Providers, creating the potential for discriminatory treatment.[40] Two commenters also stated that the definition of ''Retail Order,'' which relies on the representation of the broker sending the order, may not be sufficiently clear,[41] and one commenter noted that the definition may impose too great of an administrative burden.[42]

The Exchanges responded that they would continually monitor and evaluate all aspects of the Retail Member Organization certification process during the pilot period. The Exchanges disagreed that the definition of ''Retail Order'' and the Retail Member Organization certification process are unclear or not subject to enforcement. According to the Exchanges, the authentication and certification procedures, together with the requirement that Retail Member Organizations have written policies and procedures to assure that they only submit qualifying retail orders, would result in reliable identification and segmentation of retail order flow. The Exchanges further stated that the proposals would be subject to regulatory review by FINRA pursuant to a regulatory services agreement with the Exchanges.

The commenters also raised issues related to access fees. One commenter suggested that the appropriate amount of access fees would need to be revisited if the ''tick size'' is reduced from $.01 to $.001 because with a tenth of a penny spread, the maximum allowable fee of $.003 per share would have the effect of increasing the economic spread by 600%.[43] Another commenter noted that the proposals could open the door to revisiting whether access fees may be included in quotes, assuming the Program leads to sub-penny quotations.[44] Finally, one commenter questioned whether the proposals would result in true price competition because non-Retail Liquidity Providers would most likely not be able to quote aggressively as a result of being charged higher access fees for executions with Retail Orders.[45]

The Exchanges responded that approval of the proposals does not require reexamination of any access fee issue. The Exchanges noted that there would be no visible prices disseminated as part of the program and stated their belief that the proposals would not use any ''quotes'' subject to the Commission's fair access rules. The Exchanges also expressed their belief that a broker's obligations under Regulation NMS would not require it to route a retail order to the Exchanges to interact with a Retail Price Improvement Order. The Exchanges stated further that the proposals comport with the principles behind the Commission's access rules because the Exchanges intend to welcome broad participation in the Program.

4. Best Execution and Order Protection

Several commenters took the position that the Program would complicate broker-dealers' best execution duties. According to one commenter, the Exchanges' dissemination of the Retail Liquidity Identifier would raise a number of issues, including whether broker-dealers would be required to route to the Exchanges when they see a Retail Liquidity Identifier; whether, if other exchanges were to adopt similar proposals and disseminate flags similar to the Retail Liquidity Identifier, a broker-dealer would be required to sweep all liquidity inside the spread before executing at the NBBO; whether the Exchanges would be required to route Retail Orders they receive to other market centers if those away markets offered the possibility of further price improvement; and whether broker-dealers would be required to subscribe to the Exchanges' proprietary feed to be able to receive the Retail Liquidity Identifier.[46]

Another commenter questioned whether, if other exchanges were to adopt competing programs and disseminate liquidity interest flags over their proprietary feeds, a broker-dealer would be required to subscribe to each proprietary feed in order to fill its best execution obligations.[47] Relatedly, another commenter stated that the proposals would result in confusion among broker-dealers unsure of how the dissemination of the Retail Liquidity Identifier would affect their smart order router programming.[48] Finally, one commenter suggested that FINRA's best execution and interpositioning rules would need to be updated to reflect the fact that Retail Liquidity Identifiers would be widely disseminated yet not accessible by non-retail clients.[49]

The Exchanges responded that they believe the proposals do not raise any best execution challenges that are not already confronted by broker-dealers in the current market environment. The Exchanges stated that best execution is a facts and circumstances determination and requires many factors to be considered.[50]

One commenter also raised related concerns about the proposals' potential impact on broker-dealer obligations under FINRA Rule 5320, also known as the ''Manning'' rule.[51] FINRA Rule 5320 generally prohibits broker-dealers from trading ahead of their customer orders. The commenter noted that firms that both offer Retail Price Improvement Orders and accept customer orders will likely find themselves frequently in a position where they must fill the customer order at a loss, assuming their Retail Price Improvement Orders get executed before the customer order.[52]

In response to this comment, the Exchanges stated their position that the Manning obligations of a Retail Liquidity Provider would be no different from the obligations on an

[39] *Id.* (citing 17 CFR 242.600(b)(8)).

[40] *See* Hudson River Trading Letter and BATS Letter.

[41] *See* Hudson River Trading Letter and Knight Letter.

[42] *See* Knight Letter.

[43] *See* Knight Letter.

[44] *See* SIFMA Letter.

[45] *See* BATS Letter.

[46] *See* Knight Letter.

[47] *See* BATS Letter.

[48] *See* SIFMA Letter.

[49] *See* UBS Letter.

[50] *See* Exchanges' Response Letter (citing Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000) (''Disclosure of Order Execution and Routing Practices'' Adopting Release)).

[51] *See* Knight Letter.

[52] *See id.*

over-the-counter market maker that internalizes orders. The Exchanges stated that over-the-counter market makers commonly rely on the ''no-knowledge'' exception contained in Supplementary Material .02 of FINRA Rule 5320 to separate their proprietary trading from their handling of customer orders. The Exchanges expressed their view that this exception should be equally applicable to Retail Liquidity Providers participating in the Program.

## IV. Proceedings To Determine Whether To Disapprove SR–NYSE–2011–55 and SR–NYSEAmex–2011–84 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [53] to determine whether the proposals should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposals. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposals.

Pursuant to Section 19(b)(2)(B),[54] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act [55] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, Section 6(b)(5) prohibits the rules of an Exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The rules of an Exchange also must not, absent an exemption, violate the Sub-Penny Rule (Rule 612) of Regulation NMS which, among other things, prohibits an exchange from displaying, ranking, or accepting a bid or offer in an NMS stock priced in an increment smaller than $0.01 if such bid or offer is priced equal to or greater than $1.00 per share.[56]

According to the Exchanges, the proposals are designed to attract additional retail order flow to the Exchanges and provide the potential for price improvement to retail orders. However, the proposals also raise novel market structure issues that warrant further comment and Commission consideration.

For example, as noted above, the proposals are inconsistent with the Sub-Penny Rule because they contemplate the Exchanges accepting and ranking orders in securities priced at $1.00 or more per share in sub-penny increments, and the Exchanges separately have requested an exemption from that Rule. In addition, the proposals would create a new exchange order type—the Retail Price Improvement Order—that is available only to a subset of market participants, namely Retail Member Organizations. While the Exchanges state that the proposals are designed to attract retail orders to the Exchanges and provide the potential for price improvement to retail orders, the Exchanges define the ''Retail Order'' that is permitted to interact with Retail Price Improvement Orders as including not only orders that originate from a natural person, but also broker-dealer proprietary orders that liquidate positions acquired from internalizing orders that originate from natural persons. Thus, under the proposals, the connection between the ''Retail Order'' that is entitled to execute with sub-penny price improvement against Retail Price Improvement Orders and the original retail investor order may be attenuated, and under these circumstances it is unclear whether the benefit of the sub-penny price improvement ultimately would reach the retail investor. Accordingly, given the breadth of the proposed definition of a ''Retail Order,'' the Commission believes questions are raised as to the scope of the requested exemption under the Sub-Penny Rule, and whether the Exchanges have fairly and reasonably determined the subset of market participants that would be allowed to access Retail Price Improvement Orders.

In addition, the proposals do not describe with precision the attributes of the Retail Liquidity Identifier that would be disseminated when a Retail Price Improvement Order exists. Depending on those details, the Retail Liquidity Identifier could fall within the definition of ''bid or offer'' in Rule 600(b)(8) of Regulation NMS, which would implicate Rule 602 of Regulation NMS,[57] also known as the Quote Rule. Rule 602 generally requires that a national securities exchange collect, process, and make available to venders the best bid, the best offer, and aggregate quotation sizes for each NMS security traded on the exchange. Accordingly, the Commission believes the Exchanges should provide additional detail regarding the proposed Retail Liquidity Identifier, to allow the Commission and commenters to assess whether the Quote Rule is implicated and, if so, to understand whether the Exchanges intend to comply with or seek an exemption from some or all of its requirements.

The Commission believes that these concerns raise questions as to whether the Exchanges' proposals are consistent with the requirements of the Section 6(b)(5) of the Act, including whether they would promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination. The Commission also believes questions are raised as to whether, given the breadth of the definition of ''Retail Order'' in the Exchanges' proposals, an exemption for the Program from the Sub-Penny Rule would be in the public interest and consistent with the protection of investors.

## V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[58]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be

[53] 15 U.S.C. 78s(b)(2)(B).

[54] *See id.*

[55] 15 U.S.C. 78f(b)(5).

[56] 17 CFR 242.612.

[57] 17 CFR 242.602.

[58] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

disapproved by March 5, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 19, 2012.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–55 or SR–NYSEAmex–2011–84 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–55 or SR–NYSEAmex–2011–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–55 or SR–NYSEAmex–2011–84 and should be submitted on or before March 5, 2012. Rebuttal comments should be submitted by March 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [59]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3219 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66350; File No. SR–NYSEArca–2012–14]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .05 to NYSE Arca Rule 6.4 To Allow Trading of Options on iShares® Silver Trust [1] and United States Oil Fund at $0.50 Strike Price Intervals Where the Strike Price Is Less Than $75

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 6, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to NYSE Arca Rule 6.4 to allow trading of options on iShares® Silver Trust [5] and United States Oil Fund at $0.50 strike price intervals where the strike price is less than $75. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

[59] 17 CFR 200.30–3(a)(57).

[1] ''iShares®'' is a registered trademark BlackRock Institutional Trust Company, N.A.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

[5] ''iShares®'' is a registered trademark BlackRock Institutional Trust Company, N.A.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Commentary .05 of Rule 6.4 to allow trading of options on iShares® Silver Trust (''SLV'' or ''SLV Trust'') and United States Oil Fund (''USO'' or ''USO Fund'') at $0.50 strike price intervals where the strike price is less than $75.

The Underlying ETFs

Two popular exchange traded funds (''ETFs''), which are known on the Exchange as Exchange-Traded Fund Shares, underlie SLV and USO options.[6] SLV and USO options are currently traded on several exchanges.[7]

The iShares® Silver Trust is a grantor trust that is designed to provide a vehicle for investors to own interests in silver. The purpose of the SLV Trust is to own silver transferred to the trust in exchange for shares that are issued by the trust. Each of such shares represents a fractional undivided beneficial interest in the net assets of the SLV Trust. The objective of the SLV Trust is for the value of the iShares® to reflect, at any given time, the price of silver owned by the trust at that time.

The United States Oil Fund is a domestic exchange traded security designed to track the movements of light, sweet crude oil that is known as West Texas Intermediate. The investment objective of the USO Fund is for the changes in percentage terms of

[6] As of July 31, 2011, the average daily volume (''ADV'') over the previous three calendar months was 60,087,539 for SLV and 13,881,380 for USO.

[7] These exchanges include, in addition to NYSEArca: NYSEAmex (''Amex''), BATS Global Markets (''BATS''), Boston Options Exchange (''BOX''), Chicago Board Options Exchange (''CBOE''), C2 Options Exchange (''C2''), International Securities Exchange (''ISE''), NASDAQ OMX PHLX (''PHLX'') and NASDAQ Options Exchange (''NOM'').

its units' net asset value to reflect the changes in percentage terms of the spot price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the price of the futures contract for light, sweet crude oil traded on the New York Mercantile Exchange (the ''NYMEX''), less USO's expenses.

The ETFs underlying SLV and USO options, which are listed on NYSE Arca, are not affected or changed by this filing.

The Proposal

Commentary .05 of Rule 6.4 currently states that the interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is more than $200. This is similar to the applicable ETF option interval standards of other options markets.[8]

The Commission has recently approved a CBOE proposal to allow $0.50 strike price intervals for options on certain ETFs and individual equity securities on which CBOE would calculate volatility (known as ''volatility options'').[9] The Exchange is, in this filing, proposing $0.50 strike price intervals for options on ETFs similarly to what CBOE proposed in respect of volatility options. The Exchange notes that its $0.50 strike price interval proposal is, however, limited in several respects. First, the proposed $0.50 intervals are limited to only one type of underlying instrument, namely Exchange-Traded Fund Shares. Second, the $0.50 intervals are proposed for two option products, namely iShares® Silver Trust and United States Oil Fund. And third, the intervals are limited to strike prices that are less than $75.

Other than options in $0.50 strike price intervals approved for CBOE as noted, options on ETFs or Exchange Trades Fund Shares trade at $1 intervals where the strike price is below $200. As demonstrated in this filing, however, this $1 strike price interval is no longer always appropriate, and in fact may be counter-productive and more costly, for ETF option traders and investors that are trying to achieve optimum trading, hedging, and investing objectives.

The Exchange believes that reducing these strike price intervals would make excellent economic sense, would allow better tailored investing and hedging opportunities, and would potentially enable traders and investors to save money.

The number of low-priced strike interval options have increased significantly over the last decade, such that now there are approximately 935 equity options and 225 ETF options listed at $1 strike price intervals.[10]

There are also, in addition to the newly enabled CBOE $0.50 strike price options, approximately 7 options listed at $0.50 strike price intervals pursuant to the $0.50 Strike Program.[11] Clearly, however, this is no longer sufficient in the current volatile and economically challenging environment. Traders and investors are requesting more low-priced interval ETF options so that they may better tailor investing and hedging strategies and opportunities.[12]

By way of example, if an investor wants to gain exposure to the silver market or hedge his position, he may invest in options on the iShares® Silver Trust (SLV). Today an investor must choose a strike price that might lack the precision he is looking for in order to gain or reduce exposure to the silver market. Thus, an investor executing a covered call strategy may be looking to sell calls on SLV. Assume the investor's SLV cost basis is $38.35. The nearest out-of-the-money strike call is the 39.00 strike, which is 1.69% out of the money. If the 38.50 strike were available, however, the investor could sell calls in a strike price only .39% out-of-the-money, thus offering 1.29% additional risk protection. To an investor writing covered calls on an equity position, this extra protection could be significant on an annual basis.

With United States Oil Fund (USO), a similar lack of precision exists at the current strike prices. For an investor looking to purchase out-of-the-money put protection against a USO purchase of $31.65, the investor must choose the 31.00 strike, which is 2.05% out-of-the-money. If the 31.50 strike were available, the investor could avail himself of a superior strike price that is only .47% out of the money, thus offering 1.58% additional protection. The smaller strike price offers an increased amount of downside protection to the investor at a more precisely factored cost for the hedging opportunity.

Moreover, an investor may want to execute an investment or hedging strategy whereby the investor would close one position and open another through use of a complex order. Implementing $0.50 strike intervals would, again, offer more precision and an opportunity to improve returns and/or risk protection. Thus, using the previous SLV example, the investor who purchased SLV at $38.35 and sold the $38.50 call might later wish to purchase a call to close the original position and roll into a new position as the stock moves away from the original strike price. By offering $0.50 strike prices, the investor may be able to again avail himself of a better return or hedging opportunity.

The Exchange also believes that with the increase in inter-market trading and hedging,[13] the ability to offer potentially similarly-situated products at more similar strike intervals gains importance. Thus, options on futures underlying USO and SLV are traded at $0.50 and lower strike price intervals. Options on USO futures listed for trading on the NYMEX have $0.50 strike price intervals.[14] And options on silver futures listed on NYMEX have strike price intervals as low as $0.05.[15] The Exchange is not, in this filing, proposing to go to sub-$0.50 strike price intervals but is proposing reasonable, requested, and needed $0.50 intervals only where

[8] *See, e.g.,* CBOE Rule 5.5 Interpretation and Policy .08; and NOM Chapter IV Section 6, Supplementary Material .01 to Section 6.

[9] *See* Securities Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011) (SR–CBOE–008) (order granting approval of $0.50 and $1 strike price intervals for certain volatility options where the strike prices are less than $75 and between $75 and $150, respectively). Other Exchanges have submitted similar immediately effective proposals. See Securities Exchange Act Release Nos. 64325 (April 22, 2011), 76 FR 23632 (April 27, 2011) (SR–NYSEAmex–2011–26); 64324 (April 22, 2011), 76 FR 23849 (April 28, 2011) (SR–NYSEArca–2011–19); 64359 (April 28, 2011), 76 FR 25390 (May 4, 2011) (SR–ISE–2011–27); and 64589 (June 2, 2011), 76 FR 33387 (June 8, 2011) (SR–Phlx–2011–74).

[10] Figures were based on July 2011 data using symbols with a 2011 expiration date.

[11] The noted $0.50 intervals were established per the $0.50 Program found in Commentary .13 of Rule 6.4. The $0.50 Program has inherent price limitations that make it unsuitable for SLV and USO options.

[12] The Exchange is not aware of any material market surveillance issues arising because of the $0.50 or $1.00 the strike price intervals.

[13] Particularly between options markets and futures markets that also trade options on futures.

[14] Per the NYMEX Web site, *http://www.cmegroup.com/product-codeslisting/nymex-market.html,* options on crude oil futures are listed nine years forward whereby consecutive months are listed for the current year and the next five years, and in addition, the June and December contract months are listed beyond the sixth year. Additional months will be added on an annual basis after the December contract expires, so that an additional June and December contract would be added nine years forward, and the consecutive months in the sixth calendar year will be filled in.

[15] Per the NYMEX Web site, *http://www.cmegroup.com/product-codeslisting/nymex-market.html,* options on silver futures are listed for the first three months at strike price intervals of $.05. An additional ten strike prices will be listed at $.25 increments above and below the highest and lowest five-cent increment, respectively, beginning with the strike price evenly divisible by $.25. For all other trading months, strike prices are at an interval of $.05, $.10, and $.25 per specified parameters.

the strike price of the underlying is less than $75.

By establishing $0.50 strike intervals for SLV and USO options, investors would have greater flexibility for trading and hedging the underlying ETFs or hedging market exposure [16] through establishing appropriate options positions tailored to meet their investment, trading and risk profiles.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. This would be achieved by establishing $0.50 strike intervals for SLV and USO options so that traders, market participants, and investors in general may have greater flexibility for trading and hedging the underlying ETFs or hedging market exposure through establishing appropriate options positions tailored to meet their investment, trading and risk profiles.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of another exchange that has been approved by the Commission that permit such exchange to allow trading of options on iShares® Silver Trust and United States Oil Fund at $0.50 strike price intervals where the strike price is less than $75.[21] Therefore, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–14 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3260 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[16] A trader or investor may, for example, use a commodity-oriented ETF such as the SLV Trust or USO Fund to counter-balance (hedge) an equity or ETF position that tends to move inversely to the price movement of SLV or USO.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement.

[21] *See* Securities Exchange Act Release No. 34–66285 (February 1, 2012) (SR–Phlx–2011–175).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66349; File No. SR–NYSEAmex–2012–09]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .05 to NYSE Amex Options Rule 903 To Allow Trading of Options on iShares® Silver Trust [1] and United States Oil Fund at $0.50 Strike Price Intervals Where the Strike Price Is Less Than $75

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 6, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to NYSE Amex Options Rule 903 to allow trading of options on iShares® Silver Trust [5] and United States Oil Fund at $0.50 strike price intervals where the strike price is less than $75. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Commentary .05 of Rule 903 to allow trading of options on iShares® Silver Trust (''SLV'' or ''SLV Trust'') and United States Oil Fund (''USO'' or ''USO Fund'') at $0.50 strike price intervals where the strike price is less than $75.

*The Underlying ETFs*

Two popular exchange traded funds (''ETFs''), which are known on the Exchange as Exchange-Traded Fund Shares, underlie SLV and USO options.[6] SLV and USO options are currently traded on several exchanges.[7]

The iShares® Silver Trust is a grantor trust that is designed to provide a vehicle for investors to own interests in silver. The purpose of the SLV Trust is to own silver transferred to the trust in exchange for shares that are issued by the trust. Each of such shares represents a fractional undivided beneficial interest in the net assets of the SLV Trust. The objective of the SLV Trust is for the value of the iShares® to reflect, at any given time, the price of silver owned by the trust at that time.

The United States Oil Fund is a domestic exchange traded security designed to track the movements of light, sweet crude oil that is known as West Texas Intermediate. The investment objective of the USO Fund is for the changes in percentage terms of its units' net asset value to reflect the changes in percentage terms of the spot price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the price of the futures contract for light, sweet crude oil traded on the New York Mercantile Exchange (the ''NYMEX''), less USO's expenses.

The ETFs underlying SLV and USO options, which are listed on NYSE Arca, are not affected or changed by this filing.

*The Proposal*

Commentary .05 of Rule 903 currently states that the interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is more than $200. This is similar to the applicable ETF option interval standards of other options markets.[8]

The Commission has recently approved a CBOE proposal to allow $0.50 strike price intervals for options on certain ETFs and individual equity securities on which CBOE would calculate volatility (known as ''volatility options'').[9] The Exchange is, in this filing, proposing $0.50 strike price intervals for options on ETFs similarly to what CBOE proposed in respect of volatility options. The Exchange notes that its $0.50 strike price interval proposal is, however, limited in several respects. First, the proposed $0.50 intervals are limited to only one type of underlying instrument, namely Exchange-Traded Fund Shares. Second, the $0.50 intervals are proposed for two option products, namely iShares® Silver Trust and United States Oil Fund. And third, the intervals are limited to strike prices that are less than $75.

Other than options in $0.50 strike price intervals approved for CBOE as noted, options on ETFs or Exchange Trades Fund Shares trade at $1 intervals where the strike price is below $200. As demonstrated in this filing, however, this $1 strike price interval is no longer always appropriate, and in fact may be counterproductive and more costly for ETF option traders and investors that are trying to achieve optimum trading, hedging, and investing objectives.

The Exchange believes that reducing these strike price intervals would make excellent economic sense, would allow better tailored investing and hedging opportunities, and would potentially

[1] ''iShares®'' is a registered trademark of BlackRock Institutional Trust Company, N.A.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

[5] ''iShares®'' is a registered trademark of BlackRock Institutional Trust Company, N.A.

[6] As of July 31, 2011, the average daily volume (''ADV'') over the previous three calendar months was 60,087,539 for SLV and 13,881,380 for USO.

[7] These exchanges include, in addition to NYSEAmex: NYSEArca (''Arca''), BATS Global Markets (''BATS''), Boston Options Exchange (''BOX''), Chicago Board Options Exchange (''CBOE''), C2 Options Exchange (''C2''), International Securities Exchange (''ISE''), NASDAQ OMX PHLX (''PHLX'') and NASDAQ Options Exchange (''NOM'').

[8] *See, e.g.,* CBOE Rule 5.5 Interpretation and Policy .08; and NOM Chapter IV Section 6, Supplementary Material .01 to Section 6.

[9] *See* Securities Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011) (SR–CBOE–008) (order granting approval of $0.50 and $1 strike price intervals for certain volatility options where the strike prices are less than $75 and between $75 and $150, respectively). Other Exchanges have submitted similar immediately effective proposals. See Securities Exchange Act Release Nos. 64325 (April 22, 2011), 76 FR 23632 (April 27, 2011) (SR–NYSEAmex–2011–26); 64324 (April 22, 2011), 76 FR 23849 (April 28, 2011) (SR–NYSEArca–2011–19); 64359 (April 28, 2011), 76 FR 25390 (May 4, 2011) (SR–ISE–2011–27); and 64589 (June 2, 2011), 76 FR 33387 (June 8, 2011) (SR–Phlx–2011–74).

enable traders and investors to save money.

The number of low-priced strike interval options have increased significantly over the last decade, such that now there are approximately 935 equity options and 225 ETF options listed at $1 strike price intervals.[10]

There are also, in addition to the newly enabled CBOE $0.50 strike price options, approximately 5 options listed at $0.50 strike price intervals pursuant to the $0.50 Strike Program.[11] Clearly, however, this is no longer sufficient in the current volatile and economically challenging environment. Traders and investors are requesting more low-priced interval ETF options so that they may better tailor investing and hedging strategies and opportunities.[12]

By way of example, if an investor wants to gain exposure to the silver market or hedge his position, he may invest in options on the iShares® Silver Trust (SLV). Today an investor must choose a strike price that might lack the precision he is looking for in order to gain or reduce exposure to the silver market. Thus, an investor executing a covered call strategy may be looking to sell calls on SLV. Assume the investor's SLV cost basis is $38.35. The nearest out-of-the-money strike call is the 39.00 strike, which is 1.69% out of the money. If the 38.50 strike were available, however, the investor could sell calls in a strike price only .39% out-of-the-money, thus offering 1.29% additional risk protection. To an investor writing covered calls on an equity position, this extra protection could be significant on an annual basis.

With United States Oil Fund (USO), a similar lack of precision exists at the current strike prices. For an investor looking to purchase out-of-the-money put protection against a USO purchase of $31.65, the investor must choose the 31.00 strike, which is 2.05% out-of-the-money. If the 31.50 strike were available, the investor could avail himself of a superior strike price that is only .47% out of the money, thus offering 1.58% additional protection. The smaller strike price offers an increased amount of downside protection to the investor at a more precisely factored cost for the hedging opportunity.

Moreover, an investor may want to execute an investment or hedging strategy whereby the investor would close one position and open another through use of a complex order. Implementing $0.50 strike intervals would, again, offer more precision and an opportunity to improve returns and/or risk protection. Thus, using the previous SLV example, the investor who purchased SLV at $38.35 and sold the $38.50 call might later wish to purchase a call to close the original position and roll into a new position as the stock moves away from the original strike price. By offering $0.50 strike prices, the investor may be able to again avail himself of a better return or hedging opportunity.

The Exchange also believes that with the increase in inter-market trading and hedging,[13] the ability to offer potentially similarly situated products at more similar strike intervals gains importance. Thus, options on futures underlying USO and SLV are traded at $0.50 and lower strike price intervals. Options on USO futures listed for trading on the NYMEX have $0.50 strike price intervals.[14] And options on silver futures listed on NYMEX have strike price intervals as low as $0.05.[15] The Exchange is not, in this filing, proposing to go to sub-$0.50 strike price intervals but is proposing reasonable, requested, and needed $0.50 intervals only where the strike price of the underlying is less than $75.

By establishing $0.50 strike intervals for SLV and USO options, investors would have greater flexibility for trading and hedging the underlying ETFs or hedging market exposure[16] through establishing appropriate options positions tailored to meet their investment, trading and risk profiles.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. This would be achieved by establishing $0.50 strike intervals for SLV and USO options so that traders, market participants, and investors in general may have greater flexibility for trading and hedging the underlying ETFs or hedging market exposure through establishing appropriate options positions tailored to meet their investment, trading and risk profiles.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

[10] Figures were based on July 2011 data using symbols with a 2011 expiration date.

[11] The noted $0.50 intervals were established per the $0.50 Program found in Commentary .13 of Rule 903. The $0.50 Program has inherent price limitations that make it unsuitable for SLV and USO options.

[12] The Exchange is not aware of any material market surveillance issues arising because of the $0.50 or $1.00 strike price intervals.

[13] Particularly between options markets and futures markets that also trade options on futures.

[14] Per the NYMEX Web site, *http://www.cmegroup.com/product-codeslisting/nymex-market.html,* options on crude oil futures are listed nine years forward whereby consecutive months are listed for the current year and the next five years, and in addition, the June and December contract months are listed beyond the sixth year. Additional months will be added on an annual basis after the December contract expires, so that an additional June and December contract would be added nine years forward, and the consecutive months in the sixth calendar year will be filled in.

[15] Per the NYMEX Web site, *http://www.cmegroup.com/product-codeslisting/nymex-market.html,* options on silver futures are listed for the first three months at strike price intervals of $.05. An additional ten strike prices will be listed at $.25 increments above and below the highest and lowest five-cent increment, respectively, beginning with the strike price evenly divisible by $.25. For all other trading months, strike prices are at an interval of $.05, $.10, and $.25 per specified parameters.

[16] A trader or investor may, for example, use a commodity-oriented ETF such as the SLV Trust or USO Fund to counter-balance (hedge) an equity or ETF position that tends to move inversely to the price movement of SLV or USO.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of another exchange that has been approved by the Commission that permit such exchange to allow trading of options on iShares® Silver Trust and United States Oil Fund at $0.50 strike price intervals where the strike price is less than $75.[21] Therefore, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2012–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–09 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3259 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66347; File No. SR–NASDAQ–2012–023]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Post-Only Orders

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2012, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASDAQ is filing with the Securities and Exchange Commission (''Commission'') a proposal for the NASDAQ Options Market (''NOM'') to change the date of implementation of Post-Only Orders from February 2012 to March 2012. While the Exchange expects to implement the new order type by March 5, 2012, this date is not certain and the Exchange will announce the specific date via an Options Trader Alert.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The Exchange recently adopted a new order type called Post-Only Order,[3] which is an order that will not remove liquidity from the System and is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market.[4]

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at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement.

[21] *See* Securities Exchange Act Release No. 34–66285 (February 1, 2012) (SR–Phlx–2011–175).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65761 (November 16, 2011), 76 FR 72230 (November 22, 2011) (SR–NASDAQ–2011–152).

[4] Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the national best bid or offer as reflected in the protected quotation of another market center, the order will

Continued

Thereafter, the Exchange amended the order type and delayed implementation until February 2012.[5] At this time, the Exchange proposes to delay implementation until March 2012. While the Exchange expects to implement the new order type by March 5, 2012, this date is not certain and the Exchange will announce the specific date via an Options Trader Alert. No further changes are proposed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that delaying implementation should not be problematic for its participants, because it is a new order type, and, therefore, the proposal is designed to promote just and equitable principles of trade and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(1)[9] thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, it does not change a rule, but rather affects the implementation date of an existing rule, as explained above.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–023 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–023 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3250 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

be handled pursuant to Chapter VI, Section 7(b)(3)(C).

[5] *See* Securities Exchange Act Release No. 65929 (December 9, 2011), 76 FR 78057 (December 15, 2011) (SR–NASDAQ–2011–171).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66325; File No. SR–BYX–2012–004]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Reference to an Additional Variation of an Existing Routing Strategy

February 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing with the Commission a proposed rule change to amend BYX Rule 11.13(a)(3)(G) to add reference to a variation of the TRIM routing strategy.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add reference in Rule 11.13(a)(3)(G) to a variation of the TRIM routing strategy, to be identified as TRIM2. The TRIM routing strategy checks the System for available shares and then routes to destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange's System routing table. No changes to the functionality of the TRIM routing strategy are proposed by this filing. The Exchange, however, is proposing to offer an additional variation for TRIM routing, TRIM2, which will offer a different routing table to be used pursuant to the TRIM routing strategy. Specifically, TRIM2 will route to fewer venues than the full list of TRIM routing venues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[3] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[4] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed change to introduce an additional variation of an existing routing strategy will provide market participants with greater flexibility in routing orders consistent with Regulation NMS without developing complicated order routing strategies on their own.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay will allow market participants and their customers to benefit from the greater flexibility in routing their orders and minimize their trading costs without further delay. The Exchange notes that the introduction of the additional optional variation of the TRIM routing strategy will not require any systems changes by Exchange Users that would necessitate a delay, as selection of the TRIM2 variation is entirely optional and Exchange Users will not be affected by the change unless they select to use the newly offered variation. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal as operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–004 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] *Id.*

[9] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2012–004 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3249 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66324; File No. SR–BATS–2012–007]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Reference To Additional Variations of an Existing Routing Strategy

February 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend BATS Rule 11.13(a)(3)(G) to add reference to two variations of the TRIM routing strategy.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add references in Rule 11.13(a)(3)(G) to two variations of the TRIM routing strategy, to be identified as TRIM2 and TRIM3. The TRIM routing strategy checks the System for available shares if so instructed by the entering User and then routes to destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange's System routing table. No changes to the functionality of the TRIM routing strategy are proposed by this filing. The Exchange, however, is proposing to offer two additional variations for TRIM routing, TRIM2 and TRIM3, which in each case will offer a different routing table to be used pursuant to the TRIM routing strategy. Specifically, both TRIM2 and TRIM3 will route to fewer venues than the full list of TRIM routing venues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[3] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[4] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed change to introduce additional variations of an existing routing strategy will provide market participants with greater flexibility in routing orders consistent with Regulation NMS without developing complicated order routing strategies on their own.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay will allow market participants and their customers to

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] *Id.*

benefit from the greater flexibility in routing their orders and minimize their trading costs without further delay. The Exchange notes that the introduction of the additional optional variations of the TRIM routing strategy will not require any systems changes by Exchange Users that would necessitate a delay, as selection of the TRIM2 and TRIM3 variations is entirely optional and Exchange Users will not be affected by the change unless they select to use the newly offered variations. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal as operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–007 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–007 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3248 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[9] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66345; File No. SR–NYSEArca–2011–84]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to the Listing and Trading of the Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF Under NYSE Arca Equities Rule 8.600

February 7, 2012.

## I. Introduction

On November 16, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF (each, a ''Fund'' and, collectively, ''Funds'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 6, 2011.[3] On January 13, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On January 18, 2012, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On January 23, 2012, the Exchange further extended the time period for Commission action to February 8, 2012. On January 25, 2012, the Exchange filed Amendment No. 3 to the proposed rule change.[6] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 3 thereto.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65859 (December 1, 2011), 76 FR 76205 (''Notice'').

[4] The Exchange withdrew Amendment No. 1 on January 18, 2012 and extended the time period for Commission action to January 25, 2012.

[5] The Exchange withdrew Amendment No. 2 on January 25, 2012.

[6] Amendment No. 3 amended three aspects of the proposed rule change. First, Amendment No. 3 deleted the sentence: ''A minimum of 30% of Fund [Russell Global Opportunity ETF] assets will be invested in securities of non-U.S. issuers through Underlying ETFs.'' This amendment was intended to clarify that, with respect to the Russell Global Opportunity ETF, while investments by the Underlying ETFs (which are all listed and traded on a national securities exchange) may be in non-U.S. securities, there will not be a required minimum level of investment in securities of non-U.S. issuers and, therefore, less than 30% of the Russell Global Opportunity ETF's assets may be invested in securities of non-U.S. issuers through Underlying ETFs. Second, Amendment No. 3 amended the following sentence: ''Each Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities, and (b) Rule 144A securities.'' As amended, the sentence reads: ''Each Fund may hold up to an aggregate amount of 15% of its net assets in (a) illiquid securities, and (b) Rule 144A securities.'' Amendment No. 3 also deleted the following sentence: ''This limitation is applied at the time of purchase.'' The purpose of these amendments was to make the proposed rule change more consistent with the Investment Company Act of 1940 (''1940 Act'') requirements relating to restrictions on holdings of illiquid securities by registered open-end management investment companies. Third, Amendment No. 3 replaced the sentence: ''A Creation Unit of the Funds will consist of 50,000 Shares'' with the sentence: ''A Creation Unit of the Funds will consist of at least 50,000 Shares.'' This amendment was intended to reflect the possibility that the issuer may determine to apply a minimum Creation Unit size of greater than 50,000 Shares with respect to the Funds. Because the changes made in Amendment No. 3 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

Managed Fund Shares on the Exchange. The Funds are series of the Russell Exchange Traded Funds Trust (''Trust'').[7] Each of the Funds is a ''fund of funds,'' which means that each Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the 1940 Act (''Underlying ETFs''). The Funds also may invest in other types of U.S. exchange-traded products, such as Exchange Traded Notes (''ETNs'') and exchange-traded pooled investment vehicles (collectively, with Underlying ETFs, ''Underlying ETPs'').[8] Russell Investment Management Company (''Adviser'') is the adviser for the Funds. State Street Bank & Trust Company serves as the custodian and transfer agent, and Russell Fund Services Company serves as the administrator for the Funds. The Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios.[9]

*Russell Global Opportunity ETF*

The Fund's investment objective will be to seek to provide long-term capital growth. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various indices.[10] These indices include those that track the performance of equity, fixed income, real estate, commodities, infrastructure or currency markets. There is no maximum limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs.[11] The Fund also may invest in other Underlying ETPs.

The Adviser will employ an asset allocation strategy that seeks to provide exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's asset allocation strategy will establish a target asset allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired asset classes, sectors and strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets generally and/or relative market valuation of the asset classes, sectors or strategies represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold equity securities of large, medium and small capitalization companies across the globe including developed countries and emerging countries. Equity securities may include common and preferred stocks, warrants and rights to subscribe to common stock and convertible securities. The Adviser also intends to invest in Underlying ETPs that (1) hold U.S. and non-U.S. government issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or ''junk''), and mortgage and asset backed securities, and (2) track performance of commodities, real estate, infrastructure and currency markets by investing in energy, metals, agriculture, REITs, utilities, roads and bridges or construction/engineering companies. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

*Russell Bond ETF*

The Fund will seek total return. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various fixed income indices.[12] These indices include those that track the performance of fixed income securities issued by governments and corporations in the United States, Europe and Asia, as well as other developed and emerging markets. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Fund will invest, under normal circumstances, such that at least 80% of the value of its net assets is exposed to bonds through Underlying ETPs. The Fund considers bonds to include fixed income equivalent instruments, which may be represented by forwards or derivatives such as options, futures contracts, or swap agreements.

The Adviser will employ an asset allocation strategy that provides exposure to multiple fixed income asset classes or sectors in a variety of U.S. and non-U.S. markets. The Adviser's allocation strategy will establish a target allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired exposures including asset classes or sectors. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or

[7] The Trust is registered under the 1940 Act. On May 9, 2011, the Trust filed with the Commission Post-Effective Amendment No. 6 under the Securities Act of 1933 (15 U.S.C. 77a) and Amendment No. 9 under the 1940 Act to the Trust's registration statement on Form N–1A relating to the Funds (File Nos. 333–160877 and 811–22320) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) (''Exemptive Order'').

[8] ''Underlying ETPs,'' which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

[9] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[10] The terms ''normally'' and ''under normal circumstances'' as used herein include, but are not limited to, the absence of extreme volatility or trading halts in the debt or equities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[11] *See supra* note 6.

[12] *See supra* note 10.

underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets generally and/or relative market valuation of the asset classes or sectors represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold government-issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or ''junk'') and mortgage and asset backed securities. Issuers of debt securities may be U.S. or non-U.S. (including developed and emerging markets countries) governments or corporate issuers. The Adviser also intends to select Underlying ETPs based on their exposure to asset class or sectors and the duration and credit quality of their portfolios within broader sectors of a fixed income market. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class or sector to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

*Russell Real Return ETF*

The Fund will seek a total return that exceeds the rate of inflation over an economic cycle. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various indices.[13] These indices include indices that track the performance of equity, fixed income (including Treasury Inflation-Protected Securities or ''TIPS'') and real assets such as real estate, commodities and infrastructure assets. The Fund will invest in Underlying ETFs that invest in U.S. and non-U.S. (including developed and emerging markets) securities. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Adviser will employ an asset allocation strategy that provides exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's allocation strategy will establish a target asset allocation for the Fund and the Adviser will then implement the strategy by selecting Underlying ETPs that represent each of the desired asset classes, sectors or strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, inflation expectations, financial markets generally and/or relative market valuation of the asset classes, sectors or strategies represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold equity securities of large, medium and small capitalization companies and fixed income securities, including government issued debt, investment grade corporate bonds, below investment grade bonds and mortgage and asset backed securities issued by companies across the globe including developed countries and emerging countries. The Adviser also intends to invest in Underlying ETPs that hold U.S. inflation-indexed securities and have exposure to commodities, real estate, infrastructure markets and other real assets. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

*Other Investments of the Funds*

The Funds will not invest in derivatives. The Underlying ETPs in which the Funds invest may, to a limited extent, invest in derivatives; however, the Funds will not invest in Underlying ETPs that use derivatives as a principal investment strategy unless the Underlying ETP uses futures contracts and related options for bona fide hedging, attempting to gain exposure to a particular market, index or instrument, or other risk management purposes. To the extent an Underlying ETP uses futures and/or options on futures, it will do so in accordance with the Commodity Exchange Act[14] and applicable rules and regulations promulgated by the Commodity Futures Trading Commission and the National Futures Association.

Underlying ETPs may enter into swap agreements including interest rate, index, and credit default swap agreements. An Underlying ETP may invest in commodity-linked derivative instruments, such as structured notes, swap agreements, commodity options, futures and options on futures, to gain exposure to commodities markets. Financial futures contracts may be used by an Underlying ETP during or in anticipation of adverse market events such as interest rate changes. An Underlying ETP may purchase a put and/or sell a call option on a stock index futures contract instead of selling a futures contract in anticipation of an equity market decline.

Money market instruments, including repurchase agreements, or funds that invest exclusively in money market instruments, including affiliated money market funds (subject to applicable limitations under the 1940 Act), convertible securities, variable rate demand notes, or commercial paper may be used by a Fund in seeking to meet its investment objective and in managing cash flows.

The Funds expect to invest almost entirely in Underlying ETPs but may also invest in, among other investments, common stocks; sponsored American Depositary Receipts (''ADRs''), American Depositary Shares (''ADSs'') and European Depositary Receipts (''EDRs''), Global Depositary Receipts (''GDRs''); short-term instruments (including money market instruments); U.S. government securities; TIPS; commercial paper; and other debt instruments described in the Registration Statement. The Funds and the Underlying ETPs may enter into repurchase and reverse repurchase agreements.

*Investment Policies and Restrictions*

Each Fund will seek to qualify for treatment as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[15]

Each Fund may hold up to an aggregate amount of 15% of its net assets in (a) illiquid securities, and (b) Rule 144A securities.[16] The term ''illiquid,'' in this context, means a security that cannot be sold or disposed of within seven days in the ordinary

[13] *See supra* note 10.

[14] 7 U.S.C. 1 *et seq.*

[15] 26 U.S.C. 851.

[16] *See supra* note 6.

course of business at approximately the amount at which a Fund has valued such security.

Each Fund may invest in securities of other investment companies, including ETFs, closed end funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act or exemptions granted thereunder.

A Fund may not:

1. (i) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[17]

2. Invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in a particular industry or group of industries; except that, to the extent the underlying index selected for a particular passive Underlying ETF is concentrated in a particular industry or group of industries, the Funds will necessarily be concentrated in that industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies, including the Underlying ETPs.

Underlying ETPs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETPs may hold non-U.S. equity securities, the Funds will not invest in non-U.S. listed equity securities. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Funds will not hold leveraged, inverse and inverse leveraged Underlying ETPs. Consistent with the Exemptive Order, the Funds will not invest in options contracts, futures contracts or swap agreements.

Additional information regarding the Trust, Funds, Shares, Funds' investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and the Registration Statement, as applicable.[18]

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The intra-day and closing values of Underlying ETPs also will be disseminated by the U.S. exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of net asset value (''NAV'') at the end of the business day.[24] The NAV of each Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4 p.m. Eastern Time) on each business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[25] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[26] Further, the

[17] The diversification standard is contained in Section 5(b)(1) of the 1940 Act. 15 U.S.C. 80a–5.

[18] *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[24] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

[25] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(C). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or

Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[27] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with multiple broker-dealers, and the Adviser has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios.[28] Further, the Commission notes that the Exchange can obtain surveillance information from other exchanges that trade the Underlying ETPs that are members of the Intermarket Surveillance Group or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Trust will be in compliance with Rule 10A–3 under the Exchange Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(6) The Funds will not: (a) Invest in non-U.S. registered equity securities (except for Underlying ETPs, which may hold non-U.S. equity securities); (b) use investments to enhance leverage; (c) hold leveraged, inverse, and inverse leveraged Underlying ETPs; and (d) consistent with the Exemptive Order, invest in options, swaps, or futures.

(7) Each Fund may hold up to an aggregate amount of 15% of its net assets in (a) illiquid securities, and (b) Rule 144A securities.[30]

(8) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[31] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NYSEArca–2011–84), as modified by Amendment No. 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3218 Filed 2–10–12; 8:45 am]

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for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[28] *See supra* note 9. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[29] 17 CFR 240.10A–3.

[30] *See supra* note 6.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66343; File No. SR–NYSEArca–2011–85]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to the Listing and Trading of SPDR SSgA Real Assets ETF; SPDR SSgA Income Allocation ETF; SPDR SSgA Conservative Global Allocation ETF; SPDR SSgA Global Allocation ETF; and SPDR SSgA Aggressive Global Allocation ETF Under NYSE Arca Equities Rule 8.600

February 7, 2012.

## I. Introduction

On November 16, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the SPDR SSgA Real Assets ETF; SPDR SSgA Income Allocation ETF; SPDR SSgA Conservative Global Allocation ETF; SPDR SSgA Global Allocation ETF; and SPDR SSgA Aggressive Global Allocation ETF (each, a ''Fund'' and, collectively, ''Funds'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on December 7, 2011.[3] On January 17, 2012, the Exchange filed Amendment No. 1 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65860 (December 1, 2011), 76 FR 76464 (''Notice'').

change (''Amendment No. 1'').[4] On January 18, 2012, the Exchange filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[5] On January 23, 2012, the Exchange further extended the time period for Commission action to February 8, 2012. On January 25, 2012, the Exchange filed Amendment No. 3 to the proposed rule change (''Amendment No. 3'').[6] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 3 thereto.

## II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by SSgA Active ETF Trust (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[7] SSgA FM serves as the investment adviser to the Funds (''Adviser''). State Street Global Markets, LLC (''Distributor'') is the principal underwriter and distributor of the Funds' Shares. State Street Bank and Trust Company (''Administrator,'' ''Custodian,'' or ''Transfer Agent'') serves as administrator, custodian, and transfer agent for the Funds. The Exchange states that the Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Funds' portfolios.[8]

*SPDR SSgA Real Assets ETF*

The SPDR SSgA Real Assets ETF will seek to achieve a real return consisting of capital appreciation and current income. The Fund will invest substantially all of its assets in the SSgA Real Assets Portfolio (''Real Assets Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Real Assets Portfolio. The Adviser will invest, under normal circumstances,[9] at least 80% of the Real Assets Portfolio's net assets among exchange-traded products (''ETPs'') that provide exposure to ''real assets.'' The Adviser considers ''real assets'' to include the following four primary asset classes: (i) Inflation protected securities issued by the U.S. government, its agencies, and/or instrumentalities, as well as inflation protected securities issued by foreign governments, agencies, and/or instrumentalities; (ii) domestic and international real estate securities; (iii) commodities; and (iv) publicly-traded companies in natural resources and/or commodities businesses. The Real Assets Portfolio will concentrate at least 25% of its assets in companies primarily involved in the energy sector and real estate industry through ETPs. The Real Assets Portfolio's allocation among those asset classes will be in proportions consistent with the Adviser's evaluation of the expected returns and risks of each asset class as well as the allocation that, in the Adviser's view, will best meet the Real Assets Portfolio's investment objective. The allocations to each asset class will change over time as the Adviser's expectations of each asset class shift. The Real Assets Portfolio's indirect holdings by virtue of investing in ETPs representing those asset classes will consist of a diversified mix of domestic and international equity securities, government and corporate bonds, inflation protected securities, commodities, and real estate investment trusts (''REITs''). ETPs may include exchange-traded funds that seek to track the performance of a market index (''Underlying ETFs'') (including Underlying ETFs managed by the Adviser), exchange-traded commodity trusts, and exchange-traded notes (''ETNs'').[10]

*SPDR SSgA Income Allocation ETF*

The SPDR SSgA Income Allocation ETF will seek to provide a total return by focusing on investments in income and yield-generating assets. The Fund will invest substantially all of its assets in the SSgA Income Portfolio (''Income Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Income Portfolio. The Adviser will invest the assets of the Income Portfolio among ETPs that provide exposure to four primary asset classes: (i) Equity, domestic, and international securities; (ii) investment grade and high yield debt securities; (iii) hybrid equity/debt (such as preferred stock and convertible securities); and (iv) REITs. The Income Portfolio's allocation among those asset classes will be in proportions consistent with the Adviser's evaluation of the expected returns and risks of each asset class as well as the allocation that, in the Adviser's view, will best meet the Income Portfolio's investment objective. The allocations to each asset class will change over time as the Adviser's expectations of each asset class shift. The Income Portfolio's indirect holdings by virtue of investing in ETPs representing these asset classes will consist of a diversified mix of domestic and international equity securities, investment grade and high yield government and corporate bonds, hybrid securities, such as preferred

[4] The Exchange withdrew Amendment No. 1 on January 18, 2012, and extended the time period for Commission action to January 25, 2012.

[5] The Exchange withdrew Amendment No. 2 on January 25, 2012.

[6] The proposed rule change originally stated that ''[e]ach Fund may invest in the aggregate up to 15% of its net assets (taken at the time of investment) in: (1) Illiquid securities, (2) Rule 144A securities, and (3) loan participation interests.'' Notice at 76468, *supra* note 3. Amendment No. 3 amended the proposed rule change by deleting the phrase ''(taken at the time of investment)'' and replacing the term ''invest'' with ''hold.'' Because Amendment No. 3 seeks to maintain consistency with the Investment Company Act of 1940 (''1940 Act'') and the rules and regulations thereunder and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, the amendment is not subject to notice and comment.

[7] The Trust is registered under the 1940 Act. On September 12, 2011, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Funds (File Nos. 333–173276 and 811–22542) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[8] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, such adviser and/or sub-adviser will implement a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[9] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] For each of the Funds, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs all will be listed and traded in the U.S. on registered exchanges.

stock and convertible securities, Build America Bonds, commodities, and REITs.

*SPDR SSgA Conservative Global Allocation ETF*

The SPDR SSgA Conservative Global Allocation ETF will seek to provide current income, capital preservation, and the avoidance of excessive portfolio volatility. The Fund will invest substantially all of its assets in the SSgA Conservative Global Allocation Portfolio (''Conservative Allocation Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Conservative Allocation Portfolio. The Adviser will invest the assets of the Conservative Allocation Portfolio among ETPs that provide exposure to domestic and international debt and equity securities with a larger allocation to debt securities than to other asset classes. The Conservative Allocation Portfolio has a higher allocation to fixed income securities than to equity securities. These fixed income securities tend to be less volatile than traditional equity securities. The Conservative Allocation Portfolio typically will allocate approximately 60% of its assets to debt related securities, though this percentage can vary based on the Adviser's tactical decisions. The allocations to each asset class will change over time as the Adviser's expectations of each asset class shift. The Conservative Allocation Portfolio's indirect holdings by virtue of investing in ETPs representing these asset classes will consist of a diversified mix of domestic and international, including emerging markets, equity securities across all market capitalizations, investment grade and high yield government and corporate bonds, inflation protected securities, mortgage pass through securities, commercial mortgage backed securities, asset backed securities, commodities, and REITs.

*SPDR SSgA Global Allocation ETF*

The SPDR SSgA Global Allocation ETF will seek to provide current income and capital preservation, with a secondary emphasis on capital appreciation. The Fund will invest substantially all of its assets in the SSgA Global Allocation Portfolio (''Global Allocation Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Global Allocation Portfolio. The Adviser will invest the assets of the Global Allocation Portfolio among ETPs that provide balanced exposure to domestic and international debt and equity securities. The Global Allocation Portfolio typically will allocate approximately 60% of its assets to equity securities, though this percentage can vary based on the Adviser's tactical decisions. The allocations to each asset class will change over time as the Adviser's expectations of each asset class shift. The Global Allocation Portfolio's indirect holdings by virtue of investing in ETPs representing these asset classes will consist of a diversified mix of domestic and international, including emerging market, equity securities across all market capitalizations, investment grade and high yield government and corporate bonds, inflation protected securities, mortgage pass through securities, commercial mortgage backed securities, asset backed securities, commodities, and REITs.

*SPDR SSgA Aggressive Global Allocation ETF*

The SPDR SSgA Aggressive Global Allocation ETF will seek to provide capital appreciation, with a secondary emphasis on current income. The Fund will invest substantially all of its assets in the SSgA Aggressive Global Allocation Portfolio (''Aggressive Allocation Portfolio'' and, together with the Real Assets Portfolio, Income Portfolio, Conservative Allocation Portfolio, and Global Allocation Portfolio, collectively, ''Portfolios''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Aggressive Allocation Portfolio. The Adviser will invest the assets of the Aggressive Allocation Portfolio among ETPs that provide exposure to domestic and international debt and equity securities with a larger allocation to equity securities than the other asset classes. The Aggressive Allocation Portfolio will have a higher allocation to equity securities than to fixed income securities. These equity securities will tend to be more volatile than traditional equity securities. The Aggressive Allocation Portfolio typically will allocate approximately 80% or more of its assets to equity securities, though this percentage can vary based on the Adviser's tactical decisions. The Aggressive Allocation Portfolio's indirect holdings by virtue of investing in ETPs representing these asset classes will consist of a diversified mix of domestic and international, including emerging market, equity securities across all market capitalizations, investment grade and high yield government and corporate bonds, inflation protected securities, mortgage pass through securities, commercial mortgage backed securities, asset backed securities, government and corporate bonds, commodities, and REITs.

*Master-Feeder Structure of the Funds*

The Funds are intended to be managed in a ''master-feeder'' structure, under which each Fund will invest substantially all of its assets in a corresponding ''master fund,'' which is a separate mutual fund that has an identical investment objective. As a result, each Fund (*i.e.,* a ''feeder fund'') will have an indirect interest in all of the securities owned by each corresponding master fund.[11] Because of this indirect interest, each Fund's investment returns should be the same as those of the corresponding master fund, adjusted for the expenses of the feeder fund. In extraordinary instances, each Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of each respective Portfolio. Under the master-feeder arrangement, investment advisory fees charged at the master fund level are deducted from the advisory fees charged at the feeder fund level. This arrangement avoids a ''layering'' of fees, *e.g.,* a Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. In addition, each Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees determines that doing so would be in the best interests of shareholders.

Each Fund is classified as a ''diversified'' investment company under the 1940 Act. The Funds, other than the SPDR SSgA Real Assets ETF, will not concentrate their investments in any particular industry or sector. The SPDR SSgA Real Assets ETF will concentrate its investments (*i.e.,* invest more than 25% of its assets) in companies primarily involved in the energy and real estate industries. In addition, the Funds intend to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

*Other Investments*

While each Fund will invest substantially all of its assets in its respective Portfolio, each Fund may

[11] Each master fund is registered under the 1940 Act.

directly invest in certain other investments, as described below.

Each Fund may (either directly or through its investments in its corresponding Portfolio) invest in the following types of investments: money market instruments, such as repurchase agreements, money market funds (including money market funds managed by the Adviser), variable rate demand notes, U.S. government and U.S. government agency securities, loan-focused closed-end funds, and collateralized loan obligation debt securities. Each Fund may invest in preferred securities and in convertible securities.[12]

Each Fund may invest in bonds, including corporate bonds, high yield debt securities, sovereign debt,[13] and U.S. government obligations.[14] Each Fund may also invest in Variable Rate Demand Obligations (''VRDOs'').[15]

The Funds may invest in inflation protected public obligations, commonly known as ''TIPS,'' of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the U.S.[16]

The Funds may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies).

Each Fund may invest in repurchase agreements with commercial banks, brokers, or dealers to generate income from its excess cash balances and to invest securities lending cash collateral.[17]

Each Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed upon price, date, and interest payment and have the characteristics of borrowing.

Each Fund may invest in commercial paper.[18] In addition to repurchase agreements, each Fund may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), repurchase agreements, cash and cash equivalents, on an ongoing basis to provide liquidity or for other reasons.

In certain situations or market conditions, a Fund may (either directly or through the corresponding Portfolio) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund.[19] For example, a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress. Each Fund may (either directly or through its investments in its corresponding Portfolio) borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Fund, but only for temporary or emergency purposes.

In addition to ETPs, each Fund may invest in the securities of other investment companies, including money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. A Fund may also invest in the securities of other investment companies if such securities are the only investment securities held by the Fund, such as through a master-feeder arrangement. Each Fund will pursue its respective investment objective through such an arrangement. To the extent allowed by law, regulation, each Fund's investment restrictions, and the Trust's exemptive relief under the 1940 Act, a Fund may invest its assets in securities of investment companies that are money market funds, including those advised by the Adviser or otherwise affiliated with the Adviser, in excess of the limits discussed above.

The Funds may purchase U.S. exchange-listed common stocks and preferred securities of foreign corporations, as well as U.S.-registered, dollar-denominated bonds of foreign corporations, governments, agencies, and supra-national entities.

A Fund's investments in common stock of foreign corporations may also be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), and European Depositary Receipts (''EDRs'') (collectively ''Depositary Receipts'').[20] Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign corporation. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. For other Depositary Receipts, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. Depositary Receipts will not necessarily be denominated in the same currency as their underlying securities. Generally, ADRs, in registered form, are designed for use in the U.S. securities market, and EDRs, in bearer form, are designated for use in European securities markets. GDRs are tradable both in the U.S. and in Europe

[12] Convertible securities are bonds, debentures, notes, preferred stocks, or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio. A convertible security may also be called for redemption or conversion by the issuer after a particular date and under certain circumstances (including a specified price) established upon issue. If a convertible security held by a Fund is called for redemption or conversion, the Fund could be required to tender it for redemption, convert it into the underlying common stock, or sell it to a third party.

[13] Sovereign debt obligations are issued or guaranteed by foreign governments or their agencies. Sovereign debt may be in the form of conventional securities or other types of debt instruments such as loans or loan participations. Governmental entities responsible for repayment of the debt may be unable or unwilling to repay the principal and pay interest when due, and may require renegotiation or reschedule of debt payments. In addition, prospects for repayment of principal and payment of interest may depend on political as well as economic factors. Although some sovereign debt, such as Brady Bonds, is collateralized by U.S. government securities, repayment of principal and payment of interest is not guaranteed by the U.S. government.

[14] U.S. government obligations are a type of bond and include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies or instrumentalities.

[15] VRDOs are short-term tax exempt fixed income instruments whose yield is reset on a periodic basis. VRDO securities tend to be issued with long maturities of up to 30 or 40 years; however, they are considered short-term instruments because they include a put feature which coincides with the periodic yield reset. For example, a VRDO with a yield that resets weekly will have a put feature that is exercisable upon seven days notice. VRDOs are put back to a bank or other entity that serves as a liquidity provider, who then tries to resell the VRDOs or, if unable to resell, holds them in its own inventory. VRDOs are generally supported by either a Letter of Credit or a Stand-by Bond Purchase Agreement to provide credit enhancement.

[16] TIPS are a type of security issued by a government and are designed to provide inflation protection to investors.

[17] A repurchase agreement is an agreement under which a Fund acquires a financial instrument (*e.g.,* a security issued by the U.S. government or an agency thereof, a banker's acceptance, or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities.

[18] Commercial paper consists of short-term, promissory notes issued by banks, corporations, and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing.

[19] Such situations and conditions include, but are not limited to, trading halts in the equities or fixed income markets or disruptions in the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[20] The foreign equity securities in which the Funds may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

and are designed for use throughout the world. Each Fund may invest up to 10% of its assets in unsponsored Depositary Receipts. The issuers of unsponsored Depositary Receipts are not obligated to disclose material information in the U.S., and, therefore, there may be less information available regarding such issuers and there may not be a correlation between such information and the market value of the Depositary Receipts.

Each Fund may hold in the aggregate up to 15% of its net assets in: (1) Illiquid securities, (2) Rule 144A securities, and (3) loan participation interests. An illiquid asset is any asset which may not be sold or disposed of in the ordinary course of business within seven days at approximately the value at which a Fund has valued the investment.

In accordance with the Exemptive Order, the Funds will not invest in options, futures, or swaps. Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

Except for ETPs that may hold non-U.S. issues and Depositary Receipts, the Funds will not otherwise invest in non-U.S.-registered issues.

Additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Notice and/or Registration Statement, as applicable.[21]

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [22] and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line and, for the ETPs, will be available from the national securities exchange(s) on which they are listed.[26] In addition, the Indicative Optimized Portfolio Value (''IOPV''),[27] which is the Portfolio Indicative Value (''PIV'') as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[28] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of the net asset value (''NAV'') at the end of the business day.[29] The NAV of a Fund will be determined once each business day, normally 4:00 p.m. Eastern Time. A basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Funds' Web site will also include a form of the prospectus for the Funds, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[30] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[31] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the

[21] *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively.

[22] 15 U.S.C. 78f.

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] The intra-day, closing, and settlement prices of the portfolio securities are also readily available on automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters.

[27] The IOPV calculations will be estimates of the value of the Funds' NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Funds, which will be calculated only once a day.

[28] According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the Consolidated Tape Association or other data feeds. *See* Notice at 76470, *supra* note 3.

[29] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds and of the Portfolios the following information: Ticker symbol (if applicable); name of security or financial instrument; number of shares or dollar value of financial instruments held in the portfolio; and percentage weighting of the security or financial instrument in the portfolio.

[30] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[31] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

portfolio.[32] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also represents that the Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Funds' portfolios.[33] The Commission also notes that the Exchange can obtain information with respect to the ETPs from the U.S. exchanges, which are all members of the ISG, listing and trading such ETPs.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading and other information.

(5) For initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[34] as provided by NYSE Arca Equities Rule 5.3.

(6) Each Fund: (a) Will not invest in non-U.S.-registered issues (except for ETPs that may hold non-U.S. issues and Depositary Receipts);[35] (b) may hold in the aggregate up to 15% of its net assets in (i) illiquid securities, (ii) Rule 144A securities, and (iii) loan participation interests; and (c) in accordance with the Exemptive Order, will not invest in options, futures, or swaps.

(7) Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

(8) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3 thereto, is consistent with Section 6(b)(5) of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSEArca–2011–85), as modified by Amendment No. 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3216 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

[32] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[33] *See supra* note 8 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[34] *See* 17 CFR 240.10A–3.

[35] *See supra* note 20 and accompanying text.

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66341; File No. SR–ICEEU–2012–01]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Proposed Rule Change To Revise Rules and Procedures Related to Certain Technical and Operational Changes Relating to Credit Default Swap Contracts

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe is in regular communication with representatives of its Clearing Members, as that term is defined in the Rules of ICE Clear Europe[3] (the ''Rules''), in relation to the operation of clearing processes and arrangements. ICE Clear Europe has published these proposed rule and procedural changes, has carried out a public consultation process in respect of all of the changes described below, and has presented and agreed to the changes described below with its Clearing Members. These changes seek to improve drafting and cross-references within the ICE Clear Europe Rules and CDS Procedures, and to clarify the timing and operation of various clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* ICE Clear Europe Rule 101. The Rules of ICE Clear Europe are available on-line at: *https://www.theice.com/Rulebook.shtml?clearEuropeRulebook=.*

processes, for existing clearing activities. ICE Clear Europe takes the view that the proposed rule changes are improvements in operational services that are administrative in nature.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed changes were set out in revisions to the Rules and CDS Procedures that were published in circular no. C11/170 published on November 25, 2011 (available on the Internet Web site of ICE Clear Europe at: *https://www.theice.com/publicdocs/clear_europe/circulars/C11170_att1.pdf* and *https://www.theice.com/publicdocs/clear_europe/circulars/C11170_att2.pdf*). ICE Clear Europe makes these rule changes for the purpose of specifying technical operational changes relating to CDS Contracts (as defined at ICE Clear Europe Rule 101), principally those that arise under its rules on an occasional basis as part of the end-of-day price submission process by Clearing Members.

Specifically, these changes can be grouped into three categories:

First, under the current Rules, CDS Contracts that arise following the end-of-day pricing process give rise to non-cleared transactions that may later be submitted for clearing. However, since the applicable CDS Contract is typically intended to be cleared between the parties, and since trades that arise following end-of-day pricing arise at the direction of the clearing house, ICE Clear Europe believes that it is more efficient and reduces risk for such CDS Contract to arise upon notice by ICE Clear Europe, rather than to require the applicable parties to submit the CDS Contract later. Once ICE Clear Europe has notified the two affected clearing members of a contract under Rule 401(a)(xi), the contract will stand, unless it is voidable under Rule 404 (for example due to illegality or manifest error). The first change therefore establishes Rule 401(a)(xi) to permit ICE Clear Europe to specify the time and terms of entry into a CDS Contract arising following the submission of end-of-day prices by a Clearing Member. This change gives rise to the majority of the proposed rule changes in the text of the ICE Clear Europe Rules and the CDS Procedures. As a practical matter, this change operationalizes a technical service by which the terms of a CDS Contract entered into following submission of end-of-day prices can be promptly cleared by ICE Clear Europe. In order to operationalize this change, certain conforming changes are required. For example, various Rules establishing procedures for other automatically effective CDS Contracts are amended to include new Rule 401(a)(xi). Also, a corresponding amendment amends Rule 602 to provide for Rule 602(c), which deems Clearing Members not to be in violation of Position Limits (as defined in the Rules) as a result of CDS Contracts that arise by notice of ICE Clear Europe. During consultations with Clearing Members, it was pointed out that such CDS Contracts could otherwise cause a breach of Position Limits, if any are in place (which they currently are not). Rule 602(c) provides a procedure under which the Clearing Member can close out such a position within five business days of the applicable Position Limit adoption or determination date. In this manner, both the policy of ensuring the pricing process through automatically effective trades and the policy of ensuring Position Limits are respected. ICE Clear Europe notes that these provisions relating to accommodation of Clearing Members in respect of Position Limits that may be applicable to CDS Contracts that are automatically effective applies not only to Rule 401(a)(xi), but also to Rules 401(a)(v), (vi), and (x). In the case of Rule 401(a)(v), new Rule 602(c) would apply to CDS Contracts that arise from transactions generated by ICE Futures Europe or the ICE OTC Operator as a result of the operation of their contra trade, error trade, invalid trade, cancelled trade, error correction or similar policies and rules and procedures relating thereto or otherwise. In the case of Rule 401(a)(vi), new Rule 602(c) would apply to CDS Contracts that form as a result of another Contract being invoiced back by ICE Clear Europe. Finally, in the case of Rule 401(a)(x), new Rule 602(c) would apply to CDS Contracts arising pursuant to Rule 903(a)(xii), which generally governs the creation of new CDS Contracts between ICE Clear Europe and non-defaulting Clearing Members to replace any remaining CDS Contracts of a defaulting Clearing Member.

Second, settlement and coupon payments under CDS Contracts will, under the Rule changes, take place through the ICE Clear Europe's payment banking network used for other cleared products, and not through the CLS Bank International (''CLS'') system. At present, Section 8.9 of the CDS Procedures provides that where a CDS Contract is to be settled in circumstances in which Rule 1514 (CDS Alternative Delivery or Settlement Procedure) does not apply, relevant cash payments between ICE Clear Europe and CDS Clearing Members will take place through The Depository Trust and Clearing Corporation using CLS, unless otherwise specified by ICE Clear Europe in a circular prior to the date on which such cash payments are due. However, following consultation with Clearing Members, ICE Clear Europe has determined it is more efficient if settlement and coupon payments are effected through ICE Clear Europe's current payment system (which is also permitted by the current CDS Procedures). ICE Clear Europe has determined to harmonize the system described at Section 8.9 of the CDS Procedures into a single payment system. This is achieved through the deletion of Section 8.9 of the CDS Procedures. It should be noted that this proposed change also serves to further harmonize the ICE Clear Europe Rules and CDS Procedures with those of ICE Clear Credit LLC, the U.S.-based clearing agency affiliate of ICE Clear Europe.

Third, various immaterial other cross-reference and typographical amendments to the processes for submission of CDS Contracts are made. The typographical changes are as follows: (i) Section 4.2 of the CDS Procedures, the words ''Bilateral CDS Contract'' are changed to ''Bilateral CDS Transaction'', and (ii) Section 8.4 of the

[4] Per discussions with Shearman & Sterling, LLP, counsel to ICE Clear Europe, the staff has made minor modifications to the text of the summaries prepared by ICE Clear Europe to (1) incorporate information from the form filed by ICE Clear Europe addressing the statutory basis for the proposed rule change, (2) remove conclusory language from the description of the rule changes, and (3) revise the description of certain of ICE Clear Europe's existing rules and processes solely for purposes of clarification. Telephone conference between Russell Sacks and Michael Blankenship, Shearman & Sterling LLP, and Andrew Bernstein, Securities and Exchange Commission, Division of Trading and Markets, on February 6, 2012.

CDS Procedures, the words ''submission of'' are added. These changes are made solely to correct typographical and cross-reference drafting in the text of the Rules and make no substantive changes to the Rules.

As noted above, the proposed rule changes consist of technical rule changes that are designed to implement operational improvements that have been published for public consultation by ICE Clear Europe and discussed with and approved by the Clearing Members of ICE Clear Europe. In each case, the principal purpose of the proposed rule change is for the rule or procedural provisions to be updated to reflect such improvements, in particular relating to (i) CDS Contracts that arise as a result of the end-of-day pricing process and (ii) to settlement and to coupon payments under CDS Contracts that will, under the rule changes, take place solely through ICE Clear Europe's payment banking network used for other cleared products, not through either such payment network or through third-party systems.

As regards the changes relating to CDS contracts, ICE Clear Europe has engaged in extensive private consultation with its CDS Clearing Members involving both operational and legal consultation groups and has presented the changes to its CDS Risk Committee, which approved the changes. ICE Clear Europe has also engaged in a public consultation process in relation to all the changes, pursuant to the Circulars referred to above, and as required under applicable U.K. legislation. This public consultation involved the publication of such Circulars on a publicly accessible portion of the Internet Web site of ICE Clear Europe. ICE Clear Europe has received no opposing views from its Clearing Members in relation to the proposed rule amendments and received no responses to its public consultations during the consultation period.

2. Statutory Basis

The proposed rule amendments incorporate changes that seek to improve drafting and cross-references within the ICE Clear Europe Rules and CDS Procedures, and to clarify the timing and operation of various clearing processes, for existing clearing activities. The proposed rule changes are improvements in the services of ICE Clear Europe that are administrative in nature. In particular, the changes relating to CDS Contracts arising following end-of-day pricing are being implemented to provide a more efficient mechanism for the clearing of CDS Contracts already agreed to by the applicable parties, and do not relate to the safeguarding of funds or securities or to the rights or obligations of ICE Clear Europe or its Clearing Members in relation to such CDS Contracts. The timing improvements arising from the faster processing of such agreed-to CDS Contracts does not impact the consistency of the services of ICE Clear Europe with applicable requirements and standards under the Act. Similarly, the harmonization of payment systems for settlement and coupon payments does not impact the custody of securities or funds, nor does it impact the rights or obligations of ICE Clear Europe or its Clearing Members or the consistency of the payment systems with statutory requirements and standards. This is particularly so since the harmonized system is already operative and eligible for use under ICE Clear Europe Rules and CDS Procedures. Further, the changes do not change the substantial provisions of the Rules or CDS Procedures, or the rights and obligations of ICE Clear Europe Clearing Members, in relation to the underlying CDS Contracts, nor do they impact the guarantee fund or custody functions of ICE Clear Europe.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have been solicited by ICE Clear Europe pursuant to public consultation processes in the Circular referred to above. No comments have been received. The time period for the public consultation required by U.K. law has closed, and ICE Clear Europe does not expect to receive any further written comments as a result of this process.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2012–01 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2012–01 and should be submitted on or before March 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–3214 Filed 2–10–12; 8:45 am]

BILLING CODE 8011–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 02/02–0646]**

### Riverside Micro-Cap Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Riverside Micro-Cap Fund II, L.P., 45 Rockefeller Center, New York, NY 10111, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Riverside Micro-Cap Fund II, L.P. proposes to provide equity security financing to Employment Law Training, Inc., 160 Pine Street, San Francisco, CA 94111 (''ELT'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Riverside Capital Appreciation Fund V, L.P. and Co-Invest Vehicle, both Associates of Riverside Micro-Cap Fund II, L.P., own more than ten percent of ELT, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: February 1, 2012.

**Sean J. Greene,**

*Associate Administrator for Investment.*

[FR Doc. 2012–3287 Filed 2–10–12; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### Renewal of Discretionary Advisory Committees

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of Renewal of Discretionary Advisory Committees.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act and its implementing regulations, SBA is issuing this notice to announce the renewal of two discretionary advisory committees. These advisory committees are being renewed to help the agency serve the small business community.

**FOR FURTHER INFORMATION CONTACT:** Questions about SBA's Advisory Committees can be directed to SBA's Committee Management Officer, Dan Jones, telephone (202) 205–7583, fax (202) 481–6536, email *dan.jones@sba.gov* or mail, U.S. Small Business Administration, 409 3rd Street SW., 7th Floor, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** As required by the Federal Advisory Committee Act, 5 U.S.C. app., SBA is renewing the following advisory committees pursuant to Section 8(b)(13) of the Small Business Act (15 U.S.C. 637(b)): (1) Small Business Administration Audit and Financial Management Advisory Committee; and (2) Small Business Administration Buffalo District Advisory Council.

Dated: February 7, 2012.

**Dan Jones,**

*SBA Committee Management Officer.*

[FR Doc. 2012–3308 Filed 2–10–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF STATE

**[Public Notice 7795]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Inventing the Modern World: Decorative Arts at the World's Fairs, 1851–1939''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Inventing the Modern World: Decorative Arts at the World's Fairs, 1851–1939'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Nelson-Atkins Museum of Art, Kansas City, MO, from, on or about April 14, 2012, until on or about August 19, 2012; the Carnegie Museum of Art, Pittsburgh, PA, from on or about October 13, 2012, until on or about February 24, 2013; the New Orleans Museum of Art, New Orleans, LA, from on or about April 12, 2013, until on or about August 4, 2013; the Mint Museum of Art, Charlotte, NC, from on or about September 21, 2013, until on or about January 19, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 6, 2012.

**Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–3269 Filed 2–10–12; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending January 28, 2012

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT–OST–2012–0015.

*Date Filed:* January 27, 2012.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 696, Resolution 024d, Currency Names, Codes, Rounding Units and Acceptability of Currencies –Denmark, Norway, Sweden (Memo 1657).

[5] 17 CFR 200.30–3(a)(12).

Intended Effective Date: 30 January 2012.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2012–3240 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA FAA–2012–0156]**

### Advisory Circular: Public Aircraft Operations

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** This notice announces the availability of a proposed revision to Advisory Circular 00–1.1 regarding public aircraft operations. This advisory circular provides information for any person who engages in public aircraft operations as defined by statute.

**DATES:** Written comments must be received on or before April 13, 2012.

**ADDRESSES:** Send comments identified by docket number FAA–2012–0156 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Carl N. Johnson, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385–9600; facsimile: (202) 385–9597.

*Background:* This advisory circular (AC) provides updated information on the application of the statutory requirements for public aircraft operations (PAO) and FAA policy regarding the use of contract operators. This AC is not mandatory and does not constitute a regulation. Nothing in this AC changes the requirement to comply with the statute.

On March 23, 2011, the FAA published a Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations) (76 FR 16349). This advisory circular provides additional information on the application of that policy.

The agency will consider all comments received by April 13, 2012. Comments received after that date may be considered if consideration will not delay publication of the advisory circular. A copy of the advisory circular is available for review in the assigned docket at *http://www.regulations.gov.*

Issued in Washington, DC, on February 7, 2012.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. 2012–3254 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice for Waiver for Aeronautical Land-Use Assurance at Will Rogers World Airport, Oklahoma City, OK

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Intent for Waiver of Aeronautical Land-Use.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the conversion of the airport property. The proposal consists of three parcels of land containing a total of approximately 127 acres located on the east side of the airport between South Portland Avenue and Interstate Highway 44.

These parcels were originally acquired under the following grants: Airport Improvement Program (AIP) Nos. 3–40–0072–03 and 3–40–0072–07 in 1990; AIP No. 3–40–0072–23 in 1992; and AIP No. 3–40–0072–24 in 1993. The land comprising these parcels is outside the forecasted need for aviation development and, thus, is no longer needed for indirect or direct aeronautical use. The Airport wishes to develop this land for compatible commercial, nonaeronautical use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before March 14, 2012.

**ADDRESSES:** Send comments on this document to Mr. Edward N. Agnew, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office Manager, 2601 Meacham Boulevard, Fort Worth, TX 76137.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Kranenburg, Director of Airports, The City of Oklahoma City, 7100 Terminal Drive, Oklahoma City, OK 73159, telephone (405) 316–3200; or Mr. Edward N. Agnew, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office Manager, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5630, FAX (817) 222–5987. Documents reflecting this FAA action may be reviewed at the above locations.

Issued in Fort Worth, TX, on February 1, 2012.

**Kelvin L. Solco,**

*Manager, Airports Division, FAA, Southwest Region.*

[FR Doc. 2012–3146 Filed 2–10–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0324]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 11 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

**DATES:** Comments must be received on or before March 14, 2012.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0324 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 11 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

### Qualifications of Applicants

*John E. Chitty*

Mr. Chitty, age 60, has had retinal detachment in his right eye, due to a traumatic injury sustained 48 years ago. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''Based on the vision exam, Mr. Chitty has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Chitty reported that he has driven straight trucks for 20 years, accumulating 550,000 miles and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A Commercial Driver's License (CDL) from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

*Roger L. Courson*

Mr. Courson, 58, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''It was and still is my professional opinion, that Mr. Courson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Courson reported that he has driven straight trucks for 4 years, accumulating 200,000 miles and tractor-trailer combinations for 17 years, accumulating 1.7 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Revis D. Durbin*

Mr. Durbin, 69, has had esotropia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his optometrist noted, ''It is my clinical impression that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Durbin reported that he has driven straight trucks for 52 years, accumulating 260,000 miles and tractor-trailer combinations for 41 years, accumulating 2.5 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James D. Evans*

Mr. Evans, 54, has had a prosthetic right eye for the past 30 years. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, ''He has sufficient vision to operate a commercial vehicle.'' Mr. Evans reported that he has driven straight trucks for 32 years, accumulating 49,920 miles and tractor-trailer combinations

for 32 years, accumulating 25,600 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lowell S. Johnson*

Mr. Johnson, 56, has had a prosthetic left eye since 1989. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, ''In summary it is my expert opinion that Mr. Johnson not only passes but exceeds all requirements for a federal exemption regarding this waiver.'' Mr. Johnson reported that he has driven straight trucks for 38 years, accumulating 760,000 miles and tractor-trailer combinations for 38 years, accumulating 950,000. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Chet A. Keen*

Mr. Keen, 52, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, ''It is my professional opinion that Mr. Keen has demonstrated visual ability to safely operate both private and commercial vehicles.'' Mr. Keen reported that he has driven straight trucks for 11 years, accumulating 440,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Julian A. Mancha*

Mr. Mancha, 38, has had complete loss of vision in his right eye since childhood. The best corrected visual acuity in left eye is 20/20. Following an examination in 2011, his optometrist noted, ''In my medical opinion, I certify that Mr. Julian Mancha has sufficient vision to drive and operate commercial vehicles.'' Mr. Mancha reported that he has driven tractor-trailer combinations for 9 years, accumulating 787,500 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV. He exceeded the speed limit by 10 mph.

*Daniel I. Miller*

Mr. Miller, 41, has had a pituitary tumor in his left eye since 1982. The best corrected visual acuity in his right eye is 20/20 and in his left eye, from perception only. Following an examination in 2011, his optometrist noted, ''In summary, Mr. Miller in my professional opinion, has adequate vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Miller reported that he has driven straight trucks for 6 years, accumulating 120,000 miles and tractor-trailer combinations for 8 years accumulating, 496,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Elijah Mitchell*

Mr. Mitchell, 42, has a macular scar in his left eye due to a traumatic injury sustained in 1994. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Mitchell reported that he has driven straight trucks for 10 years, accumulating 660,000 miles and tractor-trailer combinations for 6 years, accumulating 750,000. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Gregory M. Quilling*

Mr. Quilling, 57, has a damaged retina in his left eye due to a traumatic injury sustained in 1983. The visual acuity in his right eye is 20/20 and in his left eye, light perception. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Quilling has sufficient vision to operate a commercial vehicle.'' Mr. Quilling reported that he has driven straight trucks for 39 years, accumulating 1.3 million miles. He holds an Operator's license from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Donald L. Schaeffer*

Mr. Schaeffer, 59, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, light perception. Following an examination in 2011, his optometrist noted, ''Mr. Schaeffer can safely operate a motor vehicle based on his field vision at this time.'' Mr. Schaeffer reported that he has driven straight trucks for 39 years, accumulating 2.7 million miles. He holds a Class E operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 14, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 7, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–3263 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2011–0165]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on extension of a currently approved collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for motor vehicle tire and rim labeling requirements for which NHTSA intends to seek renewed OMB approval. The **Federal Register** notice with a 60-day comment period was published on December 1, 2011 (76 FR 74846).

**DATES:** Comments must be received on or before March 14, 2012.

**ADDRESSES:** Send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention: NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Woods, NHTSA, 1200 New Jersey Avenue SE., Room W43–467, NVS–122, Washington, DC 20590. Telephone: (202) 366–6206.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA published a notice in the **Federal Register** providing a 60-day comment period, and we received no public comments on the renewal of this information collection (76 FR 74846). Today's notice provides a 30-day comment period in which public comments on the renewal of this information collection may be submitted to OMB.

*Title:* Tires and Rims Labeling.

*OMB Control Number:* 2127–0503.

*Type of Request:* Extension of a currently approved collection of information.

*Form Number:* This collection of information uses no standard form.

*Abstract:* Each tire manufacturer and rim manufacturer must label their tires and rims with applicable safety information. In addition, each vehicle manufacturer must affix a label to each vehicle indicating the designated tire size for the vehicle. These labeling requirements ensure that tires are mounted on the appropriate rims, and that the rims and tires are mounted on the vehicle for which they are intended.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 274,491 hours.

*Estimated Number of Respondents:* 1,780.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Issued on: February 8, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2012–3303 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2011–0164]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on extension of a currently approved collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for 49 CFR Part 574, Tire Identification and Recordkeeping, for which NHTSA intends to seek renewed OMB approval. The **Federal Register** notice with a 60-day comment period was published on December 1, 2011 (76 FR 74845).

**DATES:** Comments must be received on or before March 14, 2012.

**ADDRESSES:** Send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Attention: NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Woods, NHTSA, 1200 New Jersey Avenue SE., Room W43–467, NVS–122, Washington, DC 20590. Telephone: (202) 366–6206.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA published a notice in the **Federal Register** providing a 60-day comment period, and we received no public comments on the renewal of this information collection (76 FR 74845). Today's notice provides a 30-day comment period in which public comments on the renewal of this

information collection may be submitted to OMB.

*Title:* Tire Identification and Recordkeeping.

*OMB Control Number:* 2127–0050.

*Form Number:* This collection of information uses no standard form.

*Type of Request:* Extension of a currently approved collection of information.

*Summary of the Collection of Information:* 49 U.S.C. 30117(b) requires each tire manufacturer to collect and maintain records of the first purchasers of new tires. To carry out this mandate, 49 CFR Part 574, Tire Identification and Recordkeeping, requires tire dealers and distributors to record the names and addresses of retail purchasers of new tires and the identification numbers(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are retained for not less than five years. Part 574 requires independent tire dealers and distributors to provide a registration form to consumers with the tire identification number(s) already recorded and information identifying the dealer/distributor. The consumer can then record his/her name and address and return the form to the tire manufacturer via U.S. mail, or alternatively, the consumer can provide this information electronically on the tire manufacturer's Web site if the tire manufacturer provides this capability. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers (for purposes other than resale), together with the identification numbers of the tires on the new vehicle, and retain this information for not less than five years.

*Description of the Need for the Information and the Use of the Information:* The information is used by a tire manufacturer after it or the agency determines that some of its tires either fail to comply with an applicable safety standard or contain a safety related defect. With the information, the tire manufacturer can notify the first purchaser of the tire and provide them with any necessary information or instructions to remedy the non-compliance situation or safety defect.

Without this information, efforts to identify the first purchaser of tires that have been determined to be defective or nonconforming pursuant to Sections 30118 and 30119 of Title 49 U.S.C. would be impeded. Further, the ability of the purchasers to take appropriate action in the interest of motor vehicle safety may be compromised.

*Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information):* We estimate that the collection of information affects 10 million respondents annually. This group consists of approximately 20 tire manufacturers, 59,000 new tire dealers and distributors and 10 million consumers who choose to register their tire purchases with tire manufacturers. A response is required by motor vehicle manufacturers upon each sale of a new vehicle and by non-independent tire dealers with the each sale of a new tire. A consumer may elect to respond when purchasing a new tire from an independent tire dealer.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* The estimated burden is as follows:

*New tire dealers and distributors:* 59,000.

*Consumers:* 10,000,000.

*Total tire registrations (manual):* 54,000,000.

*Total tire registration hours (manual):* 225,000.

*Recordkeeping hours (manual):* 25,000.

*Total annual tire registration and recordkeeping hours:* 250,000.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Issued on: February 8, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2012–3302 Filed 2–10–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: February 3, 2012.

**Michael J. Caballero,**

*International Tax Counsel (Tax Policy).*

[FR Doc. 2012–3090 Filed 2–10–12; 8:45 am]

**BILLING CODE 4810–25–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Information Regarding General Licenses A and B Under the New Executive Order of February 5, 2012

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is providing information regarding General Licenses A and B issued pursuant to the new Executive Order of February 5, 2012 (''Blocking Property of the Government of Iran and Iranian Financial Institutions'') (''new Executive Order'').

**DATES:** General Licenses A and B went into effect on February 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Sanctions, Compliance, & Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are

available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

**Background**

On February 5, 2012, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued a new Executive Order (''Blocking Property of the Government of Iran and Iranian Financial Institutions'') (''new Executive Order''), in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, particularly in light of the deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned parties, the deficiencies in Iran's anti-money laundering regime and the weaknesses in its implementation, and the continuing and unacceptable risk posed to the international financial system by Iran's activities.

The new Executive Order blocks the property and interests in property of the Government of Iran, including the Central Bank of Iran, any Iranian financial institution, and any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the new Executive Order.

Certain general licenses set forth in the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), and certain specific licenses issued pursuant to 31 CFR chapter V, including Part 560, authorize transactions with the ''Government of Iran,'' as the term is defined in section 7(d) of the new Executive Order, or ''Iranian financial institutions,'' as the term is defined in section 7(f) of the new Executive Order. The issuance of the new Executive Order, blocking the property and interests in property of the Government of Iran and Iranian financial institutions, would have rendered these general and specific licenses invalid to the extent that they authorized transactions with the Government of Iran or an Iranian financial institution. OFAC has taken action to preserve these licenses under the new Executive Order.

In addition, OFAC has taken action to ensure that noncommercial, personal remittances may continue to flow to or from Iran. The issuance of the new Executive Order, blocking all Iranian financial institutions, would have prohibited U.S. persons from processing noncommercial, personal remittances to or from Iran that involve Iranian financial institutions. General License B authorizes United States depository institutions and United States registered brokers or dealers in securities to process transfers of funds to or from Iran or for or on behalf of an individual ordinarily resident in Iran, in cases in which the transfer involves a noncommercial, personal remittance, subject to certain restrictions.

General Licenses A and B are set forth below. They also are available on OFAC's Web site at: *www.treasury.gov/ofac.*

**General License A—Certain Transactions Otherwise Authorized Under General or Specific Licenses Set Forth in or Issued Pursuant to 31 CFR Chapter V Authorized**

(a) Effective February 6, 2012, all transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under general licenses set forth in the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), are hereby authorized under the new Executive Order of February 5, 2012 (''Blocking Property of the Government of Iran and Iranian Financial Institutions'') (''new Executive Order''), except as set forth in paragraphs (c) and (d) of this general license.

(b) Effective February 6, 2012, all transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under specific licenses issued pursuant to any part of 31 CFR chapter V, including specific licenses issued pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201–7211), are hereby authorized under the new Executive Order, and such specific licenses shall remain in effect according to their terms, provided that such specific licenses have an expiration date. If a specific license has no expiration date:

(1) If it was issued pursuant to any part or parts of 31 CFR chapter V, but was not issued under 31 CFR part 535, then all transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under such a specific license are hereby authorized under the new Executive Order until April 6, 2012;

(2) If it was issued pursuant to 31 CFR part 535, including a specific license issued pursuant to 31 CFR part 535 and another part or other parts of 31 CFR chapter V, then all transactions involving property and interests in property of the Government of Iran or Iranian financial institutions authorized under such a specific license are hereby authorized under the new Executive Order, and such a specific license shall remain in effect according to its terms.

(c) This general license does not authorize any transactions authorized by § 560.517(a)(3) or (b)(2) of the ITR. Such transactions involving property and interests in property of the Government of Iran or an Iranian financial institution are prohibited by the new Executive Order.

(d) This general license does not authorize any payments from blocked funds or debits to blocked accounts, except for payments from funds or debits to accounts blocked pursuant to 31 CFR part 535 that are authorized by specific licenses issued pursuant to 31 CFR chapter V.

(e) *Definitions.* As used in this general license:

(1) The term *Government of Iran* shall have the meaning set forth in section 7(d) of the new Executive Order; and

(2) The term *Iranian financial institutions* shall have the meaning set forth in section 7(f) of the new Executive Order.

**General License B—Certain Noncommercial, Personal Remittances to or From Iran Authorized**

(a) Effective February 6, 2012, United States depository institutions and United States registered brokers or dealers in securities are authorized to process transfers of funds to or from Iran or for or on behalf of an individual ordinarily resident in Iran who is not included within the term ''Government of Iran,'' as defined in section 7(d) of the new Executive Order of February 5, 2012 (''Blocking Property of the Government of Iran and Iranian Financial Institutions'') (''new Executive Order''), to the extent the transfer is otherwise prohibited by the new Executive Order, in cases in which the transfer involves a noncommercial, personal remittance, provided the transfer is not by, to, or through any of the following:

(1) A person whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544 (''WMDPSR''), or the Global Terrorism Sanctions Regulations, 31 CFR part 594 (''GTSR''); or

(2) A person whose property and interests in property are blocked

pursuant to any other part of 31 CFR chapter V, or any Executive order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to the new Executive Order.

(b) Noncommercial, personal remittances do not include charitable donations to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned enterprise.

**Note to paragraph (b) of General License B:** Charitable donations of funds to or for the benefit of an entity in Iran require a specific license.

(c) The transferring institutions identified in paragraph (a) of this general license may rely on the originator of a funds transfer with regard to compliance with paragraph (a) of this general license, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) of this general license.

(d) *Example.* A United States depository institution may transmit a noncommercial, personal remittance from a customer in the United States to her mother in Iran, provided the remittance is routed through a third-country financial institution to an Iranian financial institution that has not been designated under the WMDPSR or the GTSR or any other part of 31 CFR chapter V, or any Executive order, but whose property and interests in property are blocked solely under the new Executive Order.

Dated: February 6, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–3197 Filed 2–10–12; 8:45 am]

BILLING CODE 4810–AL–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part II

## Regulatory Information Service Center

Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

## REGULATORY INFORMATION SERVICE CENTER

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Regulatory Information Service Center.

**ACTION:** Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

**SUMMARY:** The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Executive Order 12866 ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735), and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry.

The *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Unified Agenda) helps agencies fulfill these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of the Unified Agenda.

Editions of the Unified Agenda prior to fall 2007 were printed in their entirety in the **Federal Register**. Beginning with the fall 2007 edition, the Internet is the basic means for conveying regulatory agenda information to the maximum extent legally permissible. The complete Unified Agenda for fall 2011, which contains the regulatory agendas for 59 Federal agencies, is available to the public at *http://reginfo.gov.*

The fall 2011 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

**ADDRESSES:** Regulatory Information Service Center (MI), General Services Administration, One Constitution Square, 1275 First Street NE., 651A, Washington, DC 20417.

**FOR FURTHER INFORMATION CONTACT:** For further information about specific regulatory actions, please refer to the agency contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: John C. Thomas, Executive Director, Regulatory Information Service Center (MI), General Services Administration, One Constitution Square, 1275 First Street NE., 642, Washington, DC 20417, 202 482–7340. You may also send comments to us by email at: *RISC@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

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**Introduction to the Fall 2011 Regulatory Plan**

*AGENCY REGULATORY PLANS*

Cabinet Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Other Executive Agencies

Architectural and Transportation Barriers Compliance Board
Environmental Protection Agency
Equal Employment Opportunity Commission
Financial Stability Oversight Council
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
Office of Personnel Management
Pension Benefit Guaranty Corporation
Small Business Administration
Social Security Administration

Independent Regulatory Agencies

Consumer Financial Protection Bureau
Consumer Product Safety Commission
Federal Trade Commission
National Indian Gaming Commission
Nuclear Regulatory Commission

*AGENCY AGENDAS*

Cabinet Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury

Other Executive Agencies

Architectural and Transportation Barriers Compliance Board
Environmental Protection Agency
General Services Administration
National Aeronautics and Space Administration
Small Business Administration

Joint Authority

Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

Independent Regulatory Agencies

Consumer Financial Protection Bureau
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Reserve System
Nuclear Regulatory Commission
Securities and Exchange Commission

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

#### I. What Is the Unified Agenda?

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. To further the objective of using modern technology to deliver better service to the American people for lower cost, beginning with the fall 2007 edition, the Internet is the basic means for conveying regulatory agenda information to the maximum extent legally permissible. The complete Unified Agenda is available to the public at *http://reginfo.gov.* The online Unified Agenda offers flexible search tools and will soon offer access to the entire historic Unified Agenda database.

The fall 2011 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small

entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at *http://reginfo.gov.*

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866, as well as move the Agenda process toward the goal of e-Government, at a substantially reduced printing cost compared with prior editions. The current format does not reduce the amount of information available to the public, but it does limit most of the content of the Agenda to online access. The complete online edition of the Unified Agenda includes regulatory agendas from 59 Federal agencies. Agencies of the United States Congress are not included.

The following agencies have no entries identified for inclusion in the printed regulatory flexibility agenda. An asterisk (*) indicates agencies that appear in *The Regulatory Plan.* The regulatory agendas of these agencies are available to the public at *http://reginfo.gov.*

Department of Housing and Urban Development*
Department of State
Department of Veterans Affairs*
Agency for International Development
Commission on Civil Rights
Committee for Purchase From People Who Are Blind or Severely Disabled
Corporation for National and Community Service
Court Services and Offender Supervision Agency for the District of Columbia
Equal Employment Opportunity Commission*
Federal Mediation and Conciliation Service
Financial Stability Oversight Council*
Institute of Museum and Library Services
National Archives and Records Administration*
National Endowment for the Humanities
National Science Foundation
Office of Government Ethics
Office of Management and Budget
Office of Personnel Management*
Peace Corps
Pension Benefit Guaranty Corporation*
Railroad Retirement Board
Selective Service System
Social Security Administration*
Commodity Futures Trading Commission
Consumer Product Safety Commission*
Farm Credit Administration
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Trade Commission*
National Credit Union Administration
National Indian Gaming Commission*
National Labor Relations Board
Postal Regulatory Commission
Surface Transportation Board

The Regulatory Information Service Center (the Center) compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866 does not require agencies to include regulations concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Unified Agenda does not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

## II. Why Is the Unified Agenda Published?

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

### *Regulatory Flexibility Act*

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272 entitled ''Proper Consideration of Small Entities in Agency Rulemaking,'' signed August 13, 2002 (67 FR 53461), provides additional guidance on compliance with the Act.

### *Executive Order 12866*

*Executive Order 12866* entitled ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735), requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

### *Executive Order 13132*

*Executive Order 13132* entitled ''Federalism,'' signed August 4, 1999 (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications'' as defined in the Order. Under the Order, an agency that is proposing a regulation with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

### *Executive Order 13563*

Executive Order 13563 entitled ''Improving Regulation and Regulatory Review,'' signed January 18, 2011, supplements and reaffirms the

principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866, which includes the general principles of regulation and public participation, and orders integration and innovation in coordination across agencies; flexible approaches where relevant, feasible, and consistent with regulatory approaches; scientific integrity in any scientific or technological information and processes used to support the agencies' regulatory actions; and retrospective analysis of existing regulations.

*Unfunded Mandates Reform Act of 1995*

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104–4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any 1 year * * *.'' The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

*Executive Order 13211*

*Executive Order 13211* entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for ''those matters identified as significant energy actions.'' As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

*Small Business Regulatory Enforcement Fairness Act*

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104–121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq.*), which defers, unless exempted, the effective date of a ''major'' rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is ''major'' if it has resulted, or is likely to result, in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

## III. How Is the Unified Agenda Organized?

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. Unlike the printed edition, the online Agenda has no fixed ordering. In the online Agenda, users can select the particular agencies whose agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. *Prerule Stage*—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage*—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage*—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. *Long-Term Actions*—items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions*—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

Long-Term Actions are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on *reginfo.gov* to search for Completed and Long-Term Actions apart from each other and active RINs.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique Regulation Identifier Number (RIN) is able to provide this cross-reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions

that may have federalism implications as defined in Executive Order 13132 or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified Agenda have the flexibility to search for entries with any combination of desired characteristics. The online edition retains the Unified Agenda's subject index based on the **Federal Register Thesaurus of Indexing Terms.** In addition, online users have the option of searching Agenda text fields for words or phrases.

## IV. What Information Appears for Each Entry?

All entries in the online Unified Agenda contain uniform data elements including, at a minimum, the following information:

*Title of the Regulation*—a brief description of the subject of the regulation. In the printed edition, the notation ''Section 610 Review'' following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear in a separate field.

*Priority*—an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

*(1) Economically Significant*

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will 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. The definition of an ''economically significant'' rule is similar but not identical to the definition of a ''major'' rule under 5 U.S.C. 801 (Pub. L. 104–121). (See below.)

*(2) Other Significant*

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

*(3) Substantive, Nonsignificant*

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

*(4) Routine and Frequent*

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

*(5) Informational/Administrative/Other*

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

*Major*—whether the rule is ''major'' under 5 U.S.C. 801 (Pub. L. 104–121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

*Unfunded Mandates*—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

*Legal Authority*—the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

*CFR Citation*—the section(s) of the Code of Federal Regulations that will be affected by the action.

*Legal Deadline*—whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

*Abstract*—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

*Timetable*—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 12/00/11 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is ''To Be Determined.'' ''Next Action Undetermined'' indicates the agency does not know what action it will take next.

*Regulatory Flexibility Analysis Required*—whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

*Small Entities Affected*—the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

*Government Levels Affected*—whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

*International Impacts*—whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners.

*Federalism*—whether the action has ''federalism implications'' as defined in Executive Order 13132. This term refers to actions ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Independent regulatory agencies are not required to supply this information.

*Included in the Regulatory Plan*—whether the rulemaking was included in the agency's current regulatory plan published in fall 2010.

*Agency Contact*—the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, email address, and TDD for each agency contact.

Some agencies have provided the following optional information:

*RIN Information URL*—the Internet address of a site that provides more information about the entry.

*Public Comment URL*—the Internet address of a site that will accept public comments on the entry. Alternatively, timely public comments may be submitted at the Governmentwide e-rulemaking site, *http://www.regulations.gov.*

*Additional Information*—any information an agency wishes to include that does not have a specific corresponding data element.

*Compliance Cost to the Public*—the estimated gross compliance cost of the action.

*Affected Sectors*—the industrial sectors that the action may most affect, either directly or indirectly. Affected sectors are identified by North American Industry Classification System (NAICS) codes.

*Energy Effects*—an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355).

*Related RINs*—one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Some agencies that participated in the fall 2010 edition of The Regulatory Plan have chosen to include the following information for those entries that appeared in the Plan:

*Statement of Need*—a description of the need for the regulatory action.

*Summary of the Legal Basis*—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

*Alternatives*—a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of Executive Order 12866.

*Anticipated Costs and Benefits*—a description of preliminary estimates of the anticipated costs and benefits of the action.

*Risks*—a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

## V. Abbreviations

The following abbreviations appear throughout this publication:

*ANPRM*—An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register,** announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

*CFR*—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register.**

*EO*—An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

*FR*—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

*FY*—The Federal fiscal year runs from October 1 to September 30.

*NPRM*—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- A statement of the time, place, and nature of the public rulemaking proceeding;
- A reference to the legal authority under which the rule is proposed; and
- Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

*PL (or Pub. L.)*—A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, Pub. L. 112–4 is the fourth public law of the 112th Congress.

*RFA*—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

*RIN*—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register,** to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

*Seq. No.*—The sequence number identifies the location of an entry in the printed edition of the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

*U.S.C.*—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, each title covering a broad area of Federal law.

## VI. How Can Users Get Copies of the Agenda?

Copies of the **Federal Register** issue containing the printed edition of the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone: 202 512–1800 or 1 866 512–1800 (toll-free).

Copies of individual agency materials may be available directly from the agency or may be found on the agency's Web site. Please contact the particular agency for further information.

All editions of *The Regulatory Plan* and the *Unified Agenda of Federal*

*Regulatory and Deregulatory Actions* since fall 1995 are available in electronic form at *http://reginfo.gov,* along with flexible search tools.

In accordance with regulations for the **Federal Register,** the Government Printing Office's GPO FDsys Web site contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register.** These documents are available at *http://www.fdsys.gov.*

Dated: December 19, 2011.

**John C. Thomas,**

*Director.*

## Introduction to the Fall 2011 Regulatory Plan

Executive Order 12866, issued in 1993, requires the annual production of a Unified Regulatory Agenda and Regulatory Plan. It does so to promote transparency—or in the words of the Executive Order itself, ''to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order.''

The requirements of Executive Order 12866 were reaffirmed in Executive Order 13563, issued in 2011. Consistent with Executive Orders 13563 and 12866, we are now providing the Unified Regulatory Agenda and the Regulatory Plan for public scrutiny and review. Such scrutiny and review are closely connected with the general goal, central to Executive Order 13563, of promoting public participation in the rulemaking process.

It is important to understand that the Agenda and Plan are intended merely to serve as a preliminary statement, for public understanding and assessment, of regulatory and deregulatory policies and priorities that are now under contemplation. This preliminary statement often includes a number of rules that are not issued in the following year and that may well not be issued at all. This year, we have taken several new steps to clarify the purposes and uses of the Agenda and Plan and to improve its presentation. Among other things, we have narrowed the list of ''active rulemakings'' to rules that are not merely under some form of contemplation but that also have at least some possibility of issuance over the next year. We have also made it easier to understand which rules are active rulemakings rather than long-term actions or completed actions. But it remains true that rules on this list, designed among other things ''to involve the public and its State, local, and tribal officials in regulatory planning,'' must undergo serious internal and external scrutiny before they are issued—and that there are rules on the list that may never be issued.

In this light, it should be clear that this preliminary statement of policies and priorities has extremely important limitations. No regulatory action can be made effective until it has gone through legally required processes, including those that involve public scrutiny and review. For this reason, the inclusion of a regulatory action here does not necessarily mean that it will be finalized or even proposed. Any proposed or final action must satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda. Those requirements, public comments, and new information may or may not lead an agency to go forward with an action that is currently under contemplation and that is included here. For example, the directives of Executive Order 13563, emphasizing the importance of careful consideration of costs and benefits, may lead an agency to decline to proceed with a regulatory action that is presented here.

It is also important to note that under Executive Order 12866, whether a regulation counts as ''economically significant'' is not an adequate measure of whether it imposes high costs on the private sector. Economically significant actions may impose small costs or even no costs. For example, regulations may count as economically significant not because they impose significant costs, but because they confer large benefits. Moreover, many regulations count as economically significant not because they impose significant regulatory costs on the private sector, but because they involve transfer payments as required or authorized by law.

It should be observed that the number of economically significant actions listed as under active consideration here—138—is lower than the corresponding figure for Spring 2011 (149) and for Fall 2010 (140). It is notable that the number of such rules has not grown even taking account of rules implementing the Affordable Care Act and the Wall Street Reform and Consumer Protection Act. We also note that the net benefits of regulation were unusually high in Fiscal Year 2011 (well over $50 billion for the year alone). In addition, the aggregate costs for that year (under $8 billion) were lower than in Fiscal Year 2010 and were not out of line with those in recent years, including during the Bush Administration.

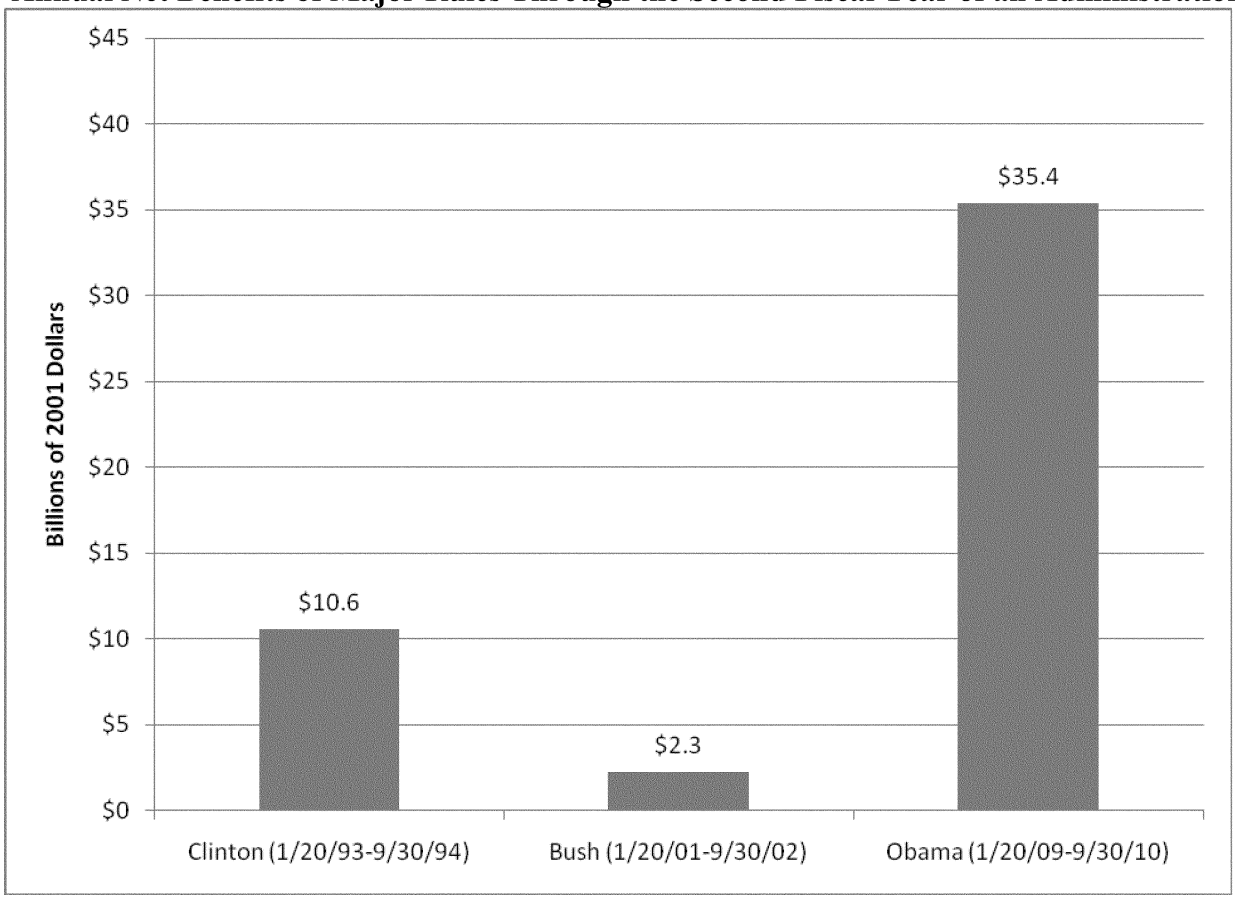
With these notes and qualifications, the Regulatory Plan provides a list of important regulatory actions that are now under contemplation for issuance in proposed or final form during the upcoming fiscal year. In contrast, the Unified Agenda is a more inclusive list, including numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year.

We hope that public scrutiny of the Regulatory Plan and the Unified Agenda might help ensure, in the words of Executive Order 13563, a regulatory system that protects ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.''

As discussed below, a large number of significant recent steps have been taken, consistent with Executive Order 13563, to reduce regulatory costs and ensure that our regulatory system is consistent with promoting growth and job creation. At the same time, a number of steps have been taken to promote public health, welfare, safety, and our environment. It is important to emphasize that the net benefits of recent rules, including the monetized benefits, are high—over the first two fiscal years of this Administration, in excess of $35 billion. Rules have been issued and initiatives have been undertaken that are saving lives on the highways and in workplaces; reducing air and water pollution, preventing thousands of deaths in the process; increasing fuel economy, thus saving money while reducing pollution; making both trains and planes safer; increasing energy efficiency, saving billions of dollars while increasing energy security; combating childhood obesity; and creating a ''race to the top'' in education. Consider, as merely one example, the fact that in 2010, the rates of roadway fatalities and injuries fell to their lowest recorded levels and to their lowest numbers since 1949. The decrease is attributable, in part, to a range of regulatory actions and to private-public partnerships that have increased safety.

Since President Reagan's Executive Order 12291, issued in 1981, a principal focus of the Office of Information and Regulatory Affairs, and of regulatory policy in general, has been on maximizing net benefits. In this Administration, agencies and OMB have worked together to issue a number of rules for which the benefits exceed the costs, and by a large margin. Consider the following figure:

**Annual Net Benefits of Major Rules Through the Second Fiscal Year of an Administration**




These figures reflect the numbers for 2009 and 2010. As noted, the net benefits for 2011 are expected to be unusually high (in excess of $50 billion); they will be discussed in detail in the 2012 Report to Congress on the Benefits and Costs of Federal Regulations.

The recent steps build on a great deal of new learning about regulation. As a result of conceptual and empirical advances, we know far more than during the New Deal and the Great Society. We have also learned much since the 1980s and 1990s. These lessons have informed the Administration's efforts to protect public health and safety while also promoting economic growth and job creation. Eight points are particularly important:

1. We are now equipped with state-of-the-art techniques for anticipating, cataloguing, and monetizing the consequences of regulation, including both benefits and costs.

2. We know that risks are part of systems, and that efforts to reduce a certain risk may increase other risks, perhaps even deadly ones, thus producing ancillary harms—and that efforts to reduce a certain risk may reduce other risks, perhaps even deadly ones, thus producing ancillary benefits.

3. We know that flexible, innovative approaches, maintaining freedom of choice and respecting heterogeneity and the fact that one size may not fit all, are often desirable, both because they preserve liberty and because they frequently cost less.

4. We know that large benefits can come from seemingly modest and small steps, including simplification of regulatory requirements, provision of information, and sensible default rules, such as automatic enrollment for retirement savings.

5. We know, more clearly than ever before, that it is important to allow public participation in the design of rules, because members of the public have valuable information about likely effects, existing problems, creative solutions, and possible unintended consequences.

6. We know that if carefully designed, disclosure policies can promote informed choices and save both money and lives.

7. We know that intuitions and anecdotes are unreliable, and that advance testing of the effects of rules, as through pilot programs or randomized controlled experiments, can be highly illuminating.

8. We know that it is important to explore the effects of regulation in the real world, to learn whether they are having beneficial consequences or producing unintended harm. We need to consult, and to learn from, those who are affected by rules.

Executive Order 13563 draws on these understandings and emphasizes the importance of protecting ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' Executive Order 13563 explicitly points to the need for predictability and for certainty, and for use of the least burdensome tools for achieving regulatory ends. It indicates that agencies ''must take into account benefits and costs, both quantitative and qualitative.'' It explicitly draws attention to the need to measure and to improve ''the actual results of regulatory requirements''—a clear reference to the importance of retrospective evaluation.

Executive Order 13563 reaffirms the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. In addition, it endorses, and quotes, a number of

provisions of that Executive Order that specifically emphasize the importance of considering costs—including the requirement that to the extent permitted by law, agencies should not proceed in the absence of a reasoned determination that the benefits justify the costs. Importantly, Executive Order 13563 directs agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' This direction reflects a strong emphasis on quantitative analysis as a means of improving regulatory choices and increasing transparency.

Among other things, Executive Order 13563 sets out five sets of requirements to guide regulatory decision making:

• *Public participation.* Agencies are directed to promote public participation, in part by making supporting documents available on Regulations.gov in order to promote transparency and public comment. Executive Order 13563 also directs agencies, where feasible and appropriate, to engage the public, including affected stakeholders, before rulemaking is initiated.

• *Integration and innovation.* Agencies are directed to attempt to reduce ''redundant, inconsistent, or overlapping'' requirements, in part by working with one another to simplify and harmonize rules. This important provision is designed to reduce confusion, redundancy, and excessive cost. An important goal of simplification and harmonization is to promote rather than to hamper innovation, which is a foundation of both growth and job creation. Different offices within the same agency might work together to harmonize their rules; different agencies might work together to achieve the same objective. Such steps can also promote predictability and certainty.

• *Flexible approaches.* Agencies are directed to identify and consider flexible approaches to regulatory problems, including warnings, appropriate default rules, and disclosure requirements. Such approaches may ''reduce burdens and maintain flexibility and freedom of choice for the public.'' In certain settings, they may be far preferable to mandates and bans, precisely because they maintain freedom of choice and reduce costs. The reference to ''appropriate default rules'' signals the possibility that important social goals can be obtained through simplification—as, for example, in the form of automatic enrollment, direct certification, or reduced paperwork burdens.

• *Science.* Agencies are directed to promote scientific integrity, and in a way that ensures a clear separation between judgments of science and judgments of policy.

• *Retrospective analysis of existing rules.* Agencies are directed to produce preliminary plans to engage in retrospective analysis of existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed.

Executive Order 13563 addresses both the ''flow'' of new regulations that are under development and the ''stock'' of existing regulations that are already in place. Executive Order 13563 emphasizes the importance of promoting predictability, of carefully considering costs, of choosing the least burdensome approach, and of selecting the most flexible, least costly tools. In addition, Executive Order 13563 calls for careful reassessment, based on empirical analysis. It is understood that the prospective analysis required by Executive Order 13563 may depend on a degree of speculation and that the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed. It is also understood that circumstances may change in a way that requires reconsideration of regulatory requirements. After retrospective analysis has been undertaken, agencies will be in a position to reevaluate existing rules and to streamline, modify, or eliminate those that do not make sense in their current form.

In August 2011, over two dozen agencies released final plans to remove what the President has called unjustified rules and ''absurd and unnecessary paperwork requirements that waste time and money.'' Over the next five years, billions of dollars in savings are anticipated from just a few initiatives from the Department of Transportation, the Department of Labor, the Department of Health and Human Services, and the Environmental Protection Agency. And all in all, the plans' initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments.

The plans span over 800 pages and offer more than 500 proposals. Some plans list well over 50 reforms. Many of the proposals focus on small business. Indeed, a number of the initiatives are specifically designed to reduce burdens on small business and to enable them to do what they do best, which is to create jobs. Some of the proposed initiatives represent a fundamental rethinking of how things have long been done—as, for example, with numerous efforts to move from paper to electronic reporting. For both private and public sectors, those efforts can save a great deal of money. Over the next five years, the Department of Treasury's paperless initiative will be saving $400 million and 12 million pounds of paper.

Many of the reforms will have a significant economic impact:

• The Occupational Safety and Health Administration has announced a final rule that will remove over 1.9 million annual hours of redundant reporting burdens on employers and save more than $40 million in annual costs. Businesses will no longer be saddled with the obligation to fill out unnecessary government forms, meaning that their employees will have more time to be productive and do their real work.

• To eliminate unjustified economic burdens on railroads, the Department of Transportation is reconsidering parts of a rule that requires railroads to install equipment on trains. DOT has proposed to refine the requirements so that the equipment is installed only where it is really needed on grounds of safety. DOT expects initial savings of up to $325 million, with total 20-year savings of up to $755 million.

• EPA has proposed to eliminate the obligation for many states to require air pollution vapor recovery systems at local gas stations, on the ground that modern vehicles already have effective air pollution control technologies. The anticipated annual savings are $87 million.

• The Departments of Commerce and State are undertaking a series of steps to eliminate unnecessary barriers to exports, including duplicative and unnecessary regulatory requirements, thus reducing the cumulative burden and uncertainty faced by American companies and their trading partners. These steps will make it a lot easier for American companies to reach new markets, increasing our exports while creating jobs here at home.

• To promote flexibility, the Department of Health and Human Services has proposed two rules, and finalized another, to reduce burdensome regulatory requirements now placed on hospitals and doctors. These reforms are expected to save more than $1 billion annually.

The regulatory lookback is not merely a one-time exercise. Regular reporting, about recent progress and coming initiatives, is required. The goal is to change the regulatory culture to ensure that rules on the books are reevaluated and are effective, cost-justified, and based on the best available science. By creating regulatory review teams at agencies, we will continue to examine what is working and what is not and to

eliminate unjustified and outdated regulations.

In addition to looking back at existing regulations, we are looking forward to ensure that future regulations are well-justified. Executive Order 13563 provides critical guidance with its emphasis on careful consideration of costs and benefits, public participation, integration and innovation, flexible approaches, and science. These requirements are meant to produce a regulatory system that draws on recent learning, that is driven by evidence, and that is suited to the distinctive circumstances of the twenty-first century.

## DEPARTMENT OF AGRICULTURE

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 1 | Wholesale Pork Reporting Program | 0581–AD07 | Proposed Rule Stage. |
| 2 | National Organic Program: Sunset Review for Nutrient Vitamins and Minerals (NOP–10–0083). | 0581–AD17 | Proposed 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 | Final Rule Stage. |
| 6 | Animal Disease Traceability | 0579–AD24 | Final Rule Stage. |
| 7 | Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions | 0584–AD88 | Proposed Rule Stage. |
| 8 | National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010. | 0584–AE09 | Proposed Rule Stage. |
| 9 | WIC: Electronic Benefit Transfer (EBT) Implementation | 0584–AE21 | Proposed Rule Stage. |
| 10 | Nutrition Standards in the National School Lunch and School Breakfast Programs | 0584–AD59 | Final Rule Stage. |
| 11 | Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals. | 0584–AD60 | Final Rule Stage. |
| 12 | Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008. | 0584–AD87 | Final Rule Stage. |
| 13 | Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant. | 0584–AE07 | Final Rule Stage. |
| 14 | Prior Labeling Approval System: Generic Label Approval | 0583–AC59 | Proposed Rule Stage. |
| 15 | Product Labeling: Use of the Voluntary Claim ''Natural'' on the Labeling of Meat and Poultry Products. | 0583–AD30 | Proposed Rule Stage. |
| 16 | New Poultry Slaughter Inspection | 0583–AD32 | Proposed Rule Stage. |
| 17 | Electronic Imported Product Inspection Application and Certification of Imported Product and Foreign Establishments; Amendments to Facilitate the Public Health Information System (PHIS). | 0583–AD39 | Proposed Rule Stage. |
| 18 | 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. |
| 19 | 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. |
| 20 | Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments. | 0583–AD34 | Final Rule Stage. |

## DEPARTMENT OF COMMERCE

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 21 | Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines do not Warrant Control on the United States Munitions List. | 0694–AF17 | Final Rule Stage. |
| 22 | Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico. | 0648–AS65 | Proposed Rule Stage. |
| 23 | Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions | 0648–AU02 | Proposed Rule Stage. |
| 24 | Designation of Critical Habitat for the North Atlantic Right Whale | 0648–AY54 | Proposed Rule Stage. |
| 25 | Regulatory Amendments To Implement the Shark Conservation Act and Revise the Definition of Illegal, Unreported, and Unregulated Fishing. | 0648–BA89 | Proposed Rule Stage. |

## DEPARTMENT OF EDUCATION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 26 | Title IV of the Higher Education Act of 1965, as Amended | 1840–AD05 | Proposed Rule Stage. |

## DEPARTMENT OF ENERGY

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 27 | Energy Efficiency Standards for Battery Chargers and External Power Supplies | 1904–AB57 | Proposed Rule Stage. |
| 28 | Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers | 1904–AB86 | Proposed Rule Stage. |
| 29 | Energy Efficiency Standards for Manufactured Housing | 1904–AC11 | Proposed Rule Stage. |
| 30 | Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps. | 1904–AC15 | Proposed Rule Stage. |
| 31 | Energy Efficiency Standards for Fluorescent Lamp Ballasts | 1904–AB50 | Final Rule Stage. |

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 32 | Health Information Technology: New and Revised Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology. | 0991–AB82 | Proposed Rule Stage. |
| 33 | Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics. | 0910–AC52 | Proposed Rule Stage. |
| 34 | Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals. | 0910–AG10 | Proposed Rule Stage. |
| 35 | Unique Device Identification | 0910–AG31 | Proposed Rule Stage. |
| 36 | Produce Safety Regulation | 0910–AG35 | Proposed Rule Stage. |
| 37 | Hazard Analysis and Risk-Based Preventive Controls | 0910–AG36 | Proposed Rule Stage. |
| 38 | Foreign Supplier Verification Program | 0910–AG64 | Proposed Rule Stage. |
| 39 | Accreditation of Third Parties to Conduct Food Safety Audits and for Other Related Purposes. | 0910–AG66 | Proposed Rule Stage. |
| 40 | Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors. | 0910–AF27 | Final Rule Stage. |
| 41 | Medical Device Reporting; Electronic Submission Requirements | 0910–AF86 | Final Rule Stage. |
| 42 | Electronic Registration and Listing for Devices | 0910–AF88 | Final Rule Stage. |
| 43 | Food Labeling: Nutrition Labeling for Food Sold in Vending Machines | 0910–AG56 | Final Rule Stage. |
| 44 | Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments. | 0910–AG57 | Final Rule Stage. |
| 45 | Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation (CMS–3244–P). | 0938–AQ89 | Proposed Rule Stage. |
| 46 | Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction (CMS–9070–P). | 0938–AQ96 | Proposed Rule Stage. |
| 47 | Proposed Changes to Hospital OPPS and CY 2013 Payment Rates; ASC Payment System and CY 2013 Payment Rates (CMS–1589–P). | 0938–AR10 | Proposed Rule Stage. |
| 48 | Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2013 (CMS–1590–P). | 0938–AR11 | Proposed Rule Stage. |
| 49 | Changes to the Hospital Inpatient an Long-Term Care Prospective Payment System for FY 2013 (CMS–1588–P). | 0938–AR12 | Proposed Rule Stage. |
| 50 | Medicaid Eligibility Expansion Under the Affordable Care Act of 2010 (CMS–2349–F). | 0938–AQ62 | Final Rule Stage. |
| 51 | Establishment of Exchanges and Qualified Health Plans Part I (CMS–9989–F) | 0938–AQ67 | Final Rule Stage. |
| 52 | State Requirements for Exchange—Reinsurance and Risk Adjustments (CMS–9975–F). | 0938–AR07 | Final Rule Stage. |

## DEPARTMENT OF HOMELAND SECURITY

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 53 | Secure Handling of Ammonium Nitrate Program | 1601–AA52 | Proposed Rule Stage. |
| 54 | Asylum and Withholding Definitions | 1615–AA41 | Proposed Rule Stage. |
| 55 | New Classification for Victims of Criminal Activity; Eligibility for the U Nonimmigrant Status. | 1615–AA67 | Proposed Rule Stage. |
| 56 | Exception to the Persecution Bar for Asylum, Refugee, and Temporary Protected Status, and Withholding of Removal. | 1615–AB89 | Proposed Rule Stage. |
| 57 | Electronic Filing of Requests for Immigration Benefits; Requiring an Application To Change or Extend Nonimmigrant Status To Be Filed Electronically. | 1615–AB94 | Proposed Rule Stage. |
| 58 | Immigration Benefits Business Transformation: Nonimmigrants; Student and Exchange Visitor Program. | 1615–AB95 | Proposed Rule Stage. |
| 59 | Application of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to Unaccompanied Alien Children Seeking Asylum. | 1615–AB96 | Proposed Rule Stage. |
| 60 | Administrative Appeals Office: Procedural Reforms To Improve Efficiency | 1615–AB98 | Proposed Rule Stage. |
| 61 | New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for T Nonimmigrant Status. | 1615–AA59 | Final Rule Stage. |

## DEPARTMENT OF HOMELAND SECURITY—Continued

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 62 | Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status. | 1615–AA60 | Final Rule Stage. |
| 63 | Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands. | 1615–AB77 | Final Rule Stage. |
| 64 | Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978. | 1625–AA16 | Final Rule Stage. |
| 65 | Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System. | 1625–AA99 | Final Rule Stage. |
| 66 | Nontank Vessel Response Plans and Other Vessel Response Plan Requirements. | 1625–AB27 | Final Rule Stage. |
| 67 | Offshore Supply Vessels of At Least 6000 GT ITC | 1625–AB62 | Final Rule Stage. |
| 68 | Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners. | 1625–AB80 | Final Rule Stage. |
| 69 | Importer Security Filing and Additional Carrier Requirements | 1651–AA70 | Final Rule Stage. |
| 70 | Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program. | 1651–AA72 | Final Rule Stage. |
| 71 | Establishment of Global Entry Program | 1651–AA73 | Final Rule Stage. |
| 72 | Implementation of the Guam-CNMI Visa Waiver Program | 1651–AA77 | Final Rule Stage. |
| 73 | General Aviation Security and Other Aircraft Operator Security | 1652–AA53 | Proposed Rule Stage. |
| 74 | Freight Railroads, Public Transportation and Passenger Railroads, and Over-the-Road Buses—Security Training of Employees. | 1652–AA55 | Proposed Rule Stage. |
| 75 | Freight Railroads and Passenger Railroads—Vulnerability Assessment and Security Plan. | 1652–AA56 | Proposed Rule Stage. |
| 76 | Standardized Vetting, Adjudication, and Redress Services | 1652–AA61 | Proposed Rule Stage. |
| 77 | Aircraft Repair Station Security | 1652–AA38 | Final Rule Stage. |
| 78 | Continued Detention of Aliens Subject to Final Orders of Removal | 1653–AA60 | Proposed Rule Stage. |
| 79 | Continued Detention of Aliens Subject to Final Orders of Removal | 1653–AA13 | Final Rule Stage. |
| 80 | 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. |
| 81 | Update of FEMA's Public Assistance Regulations | 1660–AA51 | Proposed Rule Stage. |

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 82 | Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgages (HECM) Program to Promote Sustained Homeownership (FR–5353). | 2502–AI79 | Proposed Rule Stage. |
| 83 | Supportive Housing for Persons With Disabilities Implementing New Project Rental Assistance Authority (FR–5576). | 2502–AJ10 | Proposed Rule Stage. |
| 84 | Tenant-Based Rental Assistance; Improving Performance Through a Strengthened Section 8 Management Assessment Program (FR–5201). | 2577–AC76 | Proposed Rule Stage. |

## DEPARTMENT OF JUSTICE

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 85 | National Standards to Prevent, Detect, and Respond to Prison Rape | 1105–AB34 | Final Rule Stage. |

## DEPARTMENT OF LABOR

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 86 | Construction Contractors' Affirmative Action Requirements | 1250–AA01 | Proposed Rule Stage. |
| 87 | Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA. | 1245–AA03 | Final Rule Stage. |
| 88 | Equal Employment Opportunity in Apprenticeship Amendment of Regulations | 1205–AB59 | Proposed Rule Stage. |
| 89 | 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 | Final Rule Stage. |
| 90 | Definition of "Fiduciary" | 1210–AB32 | Proposed Rule Stage. |
| 91 | Respirable Crystalline Silica | 1219–AB36 | Proposed Rule Stage. |
| 92 | Criteria and Procedures for Proposed Assessment of Civil Penalties | 1219–AB72 | Proposed Rule Stage. |
| 93 | Proximity Detection Systems for Mobile Machines in Underground Mines | 1219–AB78 | Proposed Rule Stage. |

## DEPARTMENT OF LABOR—Continued

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 94 | Lowering Miners' Exposure to Coal Mine Dust, Including Continuous Personal Dust Monitors. | 1219–AB64 | Final Rule Stage. |
| 95 | Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines. | 1219–AB65 | Final Rule Stage. |
| 96 | Pattern of Violations | 1219–AB73 | Final Rule Stage. |
| 97 | Examination of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards. | 1219–AB75 | Final Rule Stage. |
| 98 | Infectious Diseases | 1218–AC46 | Prerule Stage. |
| 99 | Injury and Illness Prevention Program | 1218–AC48 | Prerule Stage. |
| 100 | Occupational Exposure to Crystalline Silica | 1218–AB70 | Proposed Rule Stage. |
| 101 | Improve Tracking of Workplace Injuries and Illnesses | 1218–AC49 | Proposed Rule Stage. |
| 102 | Hazard Communication | 1218–AC20 | Final Rule Stage. |

## DEPARTMENT OF TRANSPORTATION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 103 | Accessibility of Carrier Websites and Ticket Kiosks | 2105–AD96 | Proposed Rule Stage. |
| 104 | Enhancing Airline Passenger Protections III | 2105–AE11 | Proposed Rule Stage. |
| 105 | Carrier-Supplied Medical Oxygen, Accessible In-Flight Entertainment Systems, Service Animals, and Accessible Lavatories on Single-Aisle Aircraft. | 2105–AE12 | Proposed Rule Stage. |
| 106 | Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers | 2120–AJ00 | Proposed Rule Stage. |
| 107 | New York Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport. | 2120–AJ89 | Proposed Rule Stage. |
| 108 | Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments. | 2120–AJ53 | Final Rule Stage. |
| 109 | Safety Management Systems for Certificate Holders | 2120–AJ86 | Final Rule Stage. |
| 110 | Carrier Safety Fitness Determination | 2126–AB11 | Proposed Rule Stage. |
| 111 | National Registry of Certified Medical Examiners | 2126–AA97 | Final Rule Stage. |
| 112 | Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2017 and Beyond. | 2127–AK79 | Proposed Rule Stage. |
| 113 | Sound for Hybrid and Electric Vehicles | 2127–AK93 | Proposed Rule Stage. |
| 114 | Motorcoach Rollover Structural Integrity | 2127–AK96 | Proposed Rule Stage. |
| 115 | Electronic Stability Control Systems for Heavy Vehicles | 2127–AK97 | Proposed Rule Stage. |
| 116 | Require Installation of Seat Belts on Motorcoaches, FMVSS No. 208 | 2127–AK56 | Final Rule Stage. |
| 117 | Major Capital Investment Projects (RRR) | 2132–AB02 | Proposed Rule Stage. |
| 118 | Regulations To Be Followed by All Departments, Agencies, and Shippers Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels. | 2133–AB74 | Proposed Rule Stage. |

## DEPARTMENT OF VETERANS AFFAIRS

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 119 | VA Compensation and Pension Regulation Rewrite Project | 2900–AO13 | Proposed Rule Stage. |
| 120 | Caregivers Program | 2900–AN94 | Final Rule Stage. |

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 121 | Accessibility Standards for Medical Diagnostic Equipment | 3014–AA40 | Proposed Rule Stage. |

## ENVIRONMENTAL PROTECTION AGENCY

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 122 | Risk and Technology Review for National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry. | 2060–AQ41 | Proposed Rule Stage. |
| 123 | Joint Rulemaking To Establish 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards. | 2060–AQ54 | Proposed Rule Stage. |
| 124 | Petroleum Refinery Sector Risk and Technology Review and NSPS | 2060–AQ75 | Proposed Rule Stage. |
| 125 | Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards. | 2060–AQ86 | Proposed Rule Stage. |

ENVIRONMENTAL PROTECTION AGENCY—Continued

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 126 | Greenhouse Gas New Source Performance Standard for Electric Generating Units for New Sources. | 2060–AQ91 | Proposed Rule Stage. |
| 127 | National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production Risk and Technology Review. | 2060–AR02 | Proposed Rule Stage. |
| 128 | National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration. | 2060–AR13 | Proposed Rule Stage. |
| 129 | National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Reconsideration and Proposed Rule Amendments. | 2060–AR14 | Proposed Rule Stage. |
| 130 | Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Reconsideration and Proposed Amendments. | 2060–AR15 | Proposed Rule Stage. |
| 131 | NPDES Electronic Reporting Rule | 2020–AA47 | Proposed Rule Stage. |
| 132 | Pesticides; Certification of Pesticide Applicators | 2070–AJ20 | Proposed Rule Stage. |
| 133 | Pesticides; Agricultural Worker Protection Standard Revisions | 2070–AJ22 | Proposed Rule Stage. |
| 134 | Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products. | 2070–AJ44 | Proposed Rule Stage |
| 135 | Mercury; Regulation of Use in Certain Products | 2070–AJ46 | Proposed Rule Stage. |
| 136 | Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings. | 2070–AJ56 | Proposed Rule Stage. |
| 137 | Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements. | 2050–AE87 | Proposed Rule Stage. |
| 138 | Stormwater Regulations Revision To Address Discharges From Developed Sites | 2040–AF13 | Proposed Rule Stage. |
| 139 | Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category. | 2040–AF14 | Proposed Rule Stage. |
| 140 | National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule. | 2040–AF22 | Proposed Rule Stage. |
| 141 | National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule. | 2040–AF25 | Proposed Rule Stage. |
| 142 | Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur. | 2060–AO72 | Final Rule Stage. |
| 143 | National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units. | 2060–AP52 | Final Rule Stage. |
| 144 | Oil and Natural Gas Sector—New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. | 2060–AP76 | Final Rule Stage. |
| 145 | Criteria and Standards for Cooling Water Intake Structures | 2040–AE95 | Final Rule Stage. |

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 146 | Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act. | 3046–AA76 | Final Rule Stage. |

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 147 | Federal Records Management; Electronic Records Archives (ERA) | 3095–AB74 | Proposed Rule Stage. |

SMALL BUSINESS ADMINISTRATION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 148 | Small Business Technology Transfer (STTR) Policy Directive | 3245–AF45 | Proposed Rule Stage. |
| 149 | Small Business Innovation Research (SBIR) Program Policy Directive | 3245–AF84 | Proposed Rule Stage. |
| 150 | Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation | 3245–AG20 | Proposed Rule Stage. |
| 151 | Small Business Jobs Act: Small Business Mentor-Protégé Programs | 3245–AG24 | Proposed Rule Stage. |

SOCIAL SECURITY ADMINISTRATION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 152 | Revised Medical Criteria for Evaluating Respiratory System Disorders (859P) | 0960–AF58 | Proposed Rule Stage. |
| 153 | Revised Medical Criteria for Evaluating Hematological Disorders (974P) | 0960–AF88 | Proposed Rule Stage. |
| 154 | Revised Medical Criteria for Evaluating Mental Disorders (886F) | 0960–AF69 | Final Rule Stage. |
| 155 | How We Collect and Consider Evidence of Disability (3487P) | 0960–AG89 | Final Rule Stage. |
| 156 | Amendments to Regulations Regarding Withdrawals of Applications and Voluntary Suspension of Benefits (3573F). | 0960–AH07 | Final Rule Stage. |
| 157 | Expedited Vocational Assessment Under the Sequential Evaluation Process (3684P). | 0960–AH26 | Final Rule Stage. |

NUCLEAR REGULATORY COMMISSION

| Sequence No. | Title | Regulation Identifier No. | Rulemaking Stage |
|---|---|---|---|
| 158 | Medical Use of Byproduct Material—Amendments/Medical Event Definition [NRC–2008–0071]. | 3150–AI26 | Proposed Rule Stage. |
| 159 | Fitness-For-Duty Programs [NRC–2009–0090] | 3150–AI58 | Proposed Rule Stage. |
| 160 | U.S. Evolutionary Power Reactor (EPR) Design Certification Amendment [NRC–2010–0132]. | 3150–AI82 | Proposed Rule Stage. |
| 161 | Disposal of Unique Waste Streams [NRC–2011–0012] | 3150–AI92 | Proposed Rule Stage. |
| 162 | Revision of Fee Schedules: Fee Recovery for FY 2012 [NRC–2011–0207] | 3150–AJ03 | Proposed Rule Stage. |
| 163 | Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements [NRC–2004–0006]. | 3150–AH29 | Final Rule Stage. |
| 164 | Physical Protection of Byproduct Material [NRC–2008–0120] | 3150–AI12 | Final Rule Stage. |
| 165 | Environmental Effect of Renewing the Operating License of a Nuclear Power Plant [NRC–2008–0608]. | 3150–AI42 | Final Rule Stage. |
| 166 | AP1000 Design Certification Amendment [NRC–2010–0131] | 3150–AI81 | Final Rule Stage. |
| 167 | U.S. Advanced Boiling Water Reactor (ABWR) Aircraft Impact Design Certification Amendment [NRC–2010–0134]. | 3150–AI84 | Final Rule Stage. |
| 168 | Economic Simplified Boiling-Water Reactor (ESBWR) Design Certification [NRC–2010–0135]. | 3150–AI85 | Final Rule Stage. |
| 169 | List of Approved Spent Fuel Storage Casks—MAGNASTOR, Revision 2 [NRC–2011–0008]. | 3150–AI91 | Final Rule Stage. |

BILLING CODE 6820–27–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Statement of Regulatory Priorities*

USDA's focus in 2012 will be on programs that create/save jobs, particularly in rural America, while identifying and taking action on those programs that could be modified, streamlined, and simplified, or reporting burdens reduced, particularly with the public's access to USDA programs. In addition, 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.

• 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 with good jobs 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 2012 will include the following:

• Rural Development and Renewable Energy. USDA priority regulatory actions for the Rural Development mission will be to revise regulations for the Business and Industry Guaranteed Loan Program, Rural Development's flagship job creation and capital expansion business program, and finalize regulations for the bioenergy programs.

• USDA will continue to promote sustainable economic opportunities to create jobs in rural communities through the purchase and use of biobased products through the BioPreferred® program. USDA will continue to designate groups of biobased products to receive procurement preference from Federal agencies and contractors. BioPreferred has made serious efforts to minimize burdens on small business by providing a standard mechanism for product testing, an online application process, and individual assistance for small manufacturers when needed. Both the Federal preferred procurement and the certified label parts of the program are voluntary, and both are designed to assist biobased businesses in securing additional sales.

• Nutrition Assistance. As changes are made to the nutrition assistance programs, USDA will work to foster actions that ensure 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 2012, the Food and Nutrition Service (FNS) plans to publish the final rule regarding 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. 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. In 2012, the Food Safety and Inspection Service (FSIS) plans to propose regulations to establish new systems for poultry slaughter inspection, requirements for federally inspected egg product plants to develop and implement hazard analysis and critical control point systems and sanitation standard operating procedures, and finalize regulations on catfish inspection. To assist small entities to comply with food safety requirements, the FSIS will continue to collaborate with other USDA agencies and State partners in the enhanced small business outreach program.

• Farm Loans, Disaster Designation, and Environmental Compliance. USDA will work to ensure a strong U.S. agricultural system through farm income support and farm loan programs. In addition, USDA will streamline the disaster designation process and update and consolidate the environmental compliance regulations.

• Forestry and Conservation. In the conservation area, USDA plans to finalize regulations that would provide financial assistance grants to local governments, tribal governments, and nonprofit organizations to establish community forests by acquiring and protecting private forestlands.

• 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 plans to finalize acceptable animal disease traceability standards. Regarding plant health, USDA anticipates revising the permitting of movement of plant pests and biological control organisms. For the Animal Welfare Act, USDA will propose specific standards for the humane care of birds and finalize specific standards for the humane care of dogs imported for resale.

*Retrospective Review and Executive Order 13563*

In January 2011, President Obama issued Executive Order (E.O.) 13563 on Improving Regulation and Regulatory Review. As part of this E.O., agencies were asked to review existing rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them accordingly. Reducing the regulatory burden on the American people and our trading partners is a priority for USDA, and we will continually work to improve the effectiveness of our existing regulations. As a result of our regulatory review efforts in 2011, USDA will make regulatory changes in 2012, including the following:

*Labeling—Generic Approval and Regulations Consolidation.* FSIS is developing a rule that will expand the circumstances in which the labels of meat and poultry products will be deemed to be generically approved by FSIS. The rule will reduce duplication and streamline the regulations on this subject by combining them into a single part of the Code of Federal Regulations (CFR);

*Electronic Export Application and Certification Fee.* FSIS is planning a rule to provide for the electronic transmittal of foreign establishment certifications between FSIS and foreign governments. The rule will consolidate four inspection certificates (meat, meat by-products, poultry, and egg products) into one certificate. The rulemaking is intended, in part, to accommodate the Agency's electronic Public Health Information System.

*Environmental Compliance.* The Farm Service Agency (FSA) will consolidate and update the environmental compliance regulations to ensure regulations are consistent and current for all FSA programs and remove obsolete regulations;

*National Environmental Policy Act (NEPA) Streamlining.* The Natural Resources and Environment mission area and the Forest Service (FS), in cooperation with the Council on Environmental Quality (CEQ), is considering a series of initiatives to improve and streamline the NEPA process as it applies to FS projects;

*Rural Energy for America Program.* This new program will modify the existing grant and guaranteed loan program for renewable energy system (RES) and energy efficiency improvement (EEI) projects. In addition, it would add a grant program for RES feasibility studies and a grant program for energy audits and renewable energy development assistance. This rulemaking will streamline the process for smaller grants, lessening the burden to the customer. It will also make the guaranteed portion of the rule consistent with other programs Rural Development (RD) manages and allow applications to be accepted year around;

*Business and Industry Loan Guaranteed Program.* RD plans to rewrite the regulations, which will result in improved efficiency and effectiveness of the program, fewer errors because the guidelines and requirements will be clearer, and items will be more easily found in a better organized volume of regulations; and

*Water and Waste Loans and Grants.* RD will update the operations aspects of

the loan and grant program to reduce the burden on the borrower.

*Reducing the Paperwork Burden on Customers and Executive Order 13563*

USDA has continued to make substantial progress in realizing the goal of the Paperwork Reduction Act. For example, the Farm and Foreign Agricultural Services (FFAS) mission area will reduce the paperwork burden on program participants by consolidating the information collections required to participate in farm programs administered by FSA and the Federal crop insurance program administered by the Risk Management Agency (RMA).

FFAS will evaluate methods to simplify and standardize, to the extent practical, acreage reporting processes, program dates, and data definitions across the various USDA programs and agencies. FFAS expects to allow producers to use information from their farm-management and precision agriculture systems for reporting production, planted and harvested acreage, and other key information needed to participate in USDA programs. FFAS will also streamline the collection of producer information by FSA and RMA with the agricultural production information collected by National Agricultural Statistics Service.

These process changes will allow for program data that is common across agencies to be collected once and utilized or redistributed to Agency programs in which the producer chooses to participate. FFAS plans to implement the Acreage and Crop Reporting Streamlining Initiative (ACRSI) in an incremental approach starting in late 2012 with a pilot in Kansas for growers of winter wheat when OMB approves the information collection. Full implementation is planned for 2013. When specific changes are identified, FSA and RMA will make any required conforming changes in their respective regulations.

Increasingly, USDA is providing electronic alternatives to its traditionally paper-based customer transactions. As a result, customers increasingly have the option to electronically file forms and other documentation online, allowing them to choose when and where to conduct business with USDA.

For example, Rural Development continues to review its regulations to determine which application procedures for Business Programs, Community Facilities Programs, Energy Programs, and Water and Environmental Programs can be streamlined and its requirements synchronized. RD is approaching the exercise from the perspective of the people it serves, by communicating with stakeholders on two common areas of regulation that can provide the basis of reform.

The first area provides support for entrepreneurship and business innovation. This initiative would provide for the streamlining and reformulating of the Business & Industry Loan Guarantee Program and the Intermediary Relending Program—the first such overhauls in over 20 years. The second area would provide for streamlining programs being made available to municipalities, tribes, and non-profit organizations; specifically Water and Waste Disposal, Community Facilities, and Rural Business Enterprise Grants, plus programs such as Electric and Telecommunications loans that provide basic community needs. This regulatory reform initiative has the potential to significantly reduce the burden to respondents (lenders and borrowers).

To the extent practicable, each reform initiative will consist of a common application and uniform documentation requirements making it easier for constituency groups to apply for multiple programs. In addition, there will be associated regulations for each program that will contain program specific information.

Natural Resources Conservation Service will also improve the delivery of technical and financial assistance by simplifying customer access to NRCS' technical and financial assistance programs, streamlining the delivery and timeliness of conservation assistance to clients, and enhancing the technical quality of its conservation planning and services. The streamlining initiatives will allow NRCS field staff to spend more time on conservation planning in the field with customers, reduce the time needed to implement cost-share contracts, and provide more flexibility for customers to work with NRCS in different ways. NRCS estimates that this initiative has the potential to reduce the amount of time required for producers to participate in USDA's conservation programs by almost 800,000 hours annually. This includes efficiencies from reduced paperwork, data entry by the client, and reduced travel time to and from the local office to complete forms and other administrative tasks. Improvements being considered include the following:

- Providing an online portal that will allow customers to apply for programs or services, review their plans and contracts, view and assess natural resource information specifically about their farm, evaluate the costs and benefits for various conservation treatment alternatives, notify NRCS of installed practices, and check on contract payments at their convenience;
- Creating an e-customer profile that will improve customer service by allowing the client to view, finalize, and electronically sign documents using remote electronic signature, on-site rather than at a local office;
- Providing clients with more timely and specific information on alternative conservation treatments, including the environmental benefits of their planned and applied practices;
- Accelerating payments to clients; and
- Simplifying conservation plan documents to more specifically address client needs and goals.

*Major Regulatory Priorities*

This document represents summary information on prospective significant regulations as called for in E.O.s 12866 and 13563. The following USDA agencies are represented in this regulatory plan, along with a summary of their mission and key regulatory priorities in 2012:

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' 2012 regulatory plan supports USDA's Strategic Goal ''Ensure that all of America's children have access to safe, nutritious, and balanced meals,'' and its two related objectives:

Access to Nutritious Food. This objective represents FNS's 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 final rule of the 2008 Farm Bill that ensures access to SNAP benefits and addresses 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 publish the final rule regarding 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: 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. Based on the Administration's top-to-bottom review of food safety activities, the Food Safety and Inspection Service will issue regulations that will prevent thousands of food-borne illnesses by more clearly focusing FSIS inspection activities on improving food safety, streamline poultry inspections, and reduce Government spending.

• 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 rules to promote disclosure of information to the public or that provide flexibility for the adoption of new technologies:

• Product Labeling; Use of the Voluntary Claim ''Natural'' in the Labeling of Meat and Poultry Products. FSIS will propose to amend the meat and poultry products regulations to define the conditions under which the voluntary claim ''natural'' may be used on meat and poultry product labeling.

• Food Ingredients and Sources of Radiation Listed and Approved for Use in the Production of Meat and Poultry Products. FSIS will propose to amend its food ingredient regulations to provide for the use under certain conditions of benzoic acid, sodium propionate, or sodium benzoate.

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 final 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 implementing 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. PHIS also will improve FSIS' ability to systematically verify the effectiveness of foreign food safety systems and enable greater exchange of information between FSIS and other Federal agencies (such as U.S. Customs and Border Protection) involved in tracking cross-border movement of import and export shipments of meat, poultry, and processed egg products. 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. 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 conducts programs to prevent the introduction of exotic pests and diseases into the U.S. 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 continuing work to revise its regulations concerning bovine spongiform encephalopathy (BSE) to provide a more comprehensive and universally applicable framework for the importation of certain animals and products. In the area of plant health, APHIS is in the midst of a revision to its regulations for the importation and interstate movement of plant pests and biological control organisms to 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. APHIS also plans to propose standards for the humane handling, care, treatment, and transportation of birds covered under the Animal Welfare Act.

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

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.

Priorities: AMS' priority items for the next year include rulemaking that impact the organic industry, as well as the wholesale pork industry. Rulemakings the Agency intends to initiate within the next 12 months include:

Sunset Review (2012)—Nutrient Vitamins and Minerals. On March 26, 2010, the National Organic Program (NOP) issued an Advanced Notice of Proposed Rulemaking (ANPRM) announcing the National Organic Standards Board's (NOSB) sunset review of exempted and prohibited substances codified at the National List of Allowed and Prohibited Substances of the NOP regulations. This review included a listing for ''Nutrient vitamins and minerals'' scheduled to sunset on October 21, 2012. AMS intends to publish a proposed rule to address a recommendation submitted by the NOSB for this listing. This proposed rule would continue the exemption (use) for nutrient vitamins and minerals for 5 years after the October 21, 2012, sunset date. This proposed rule would amend the annotation for nutrient vitamins and minerals to correct an inaccurate cross reference to U.S. Food and Drug Administration (FDA) regulations as AMS determined that the current exemption for the use of nutrient vitamins and minerals in organic products in the NOP regulations is inaccurate. In effect, the proposed amendment would clarify what synthetic substances are allowed as nutrient vitamins and minerals in organic products. Further, the NOP regulations do not correctly provide for the fortification of infant formula that would meet FDA requirements. This proposed rule would incorporate the correct FDA citation with respect to the addition of required vitamins and minerals to organic infant formula.

Livestock Mandatory Reporting; Establishing Regulations for Wholesale Pork. As directed by the 2008 Farm Bill, the Secretary conducted a study to determine advantages, drawbacks, and potential implementation issues associated with adopting mandatory wholesale pork reporting. The report from this study concluded that negotiated wholesale pork price reporting is thin and becoming thinner and found some degree of support for moving to mandatory price reporting exists at every segment of the industry interviewed. That study also concluded that the benefits likely would exceed the cost of moving from a voluntary to a mandatory reporting program for wholesale pork.

Subsequently, the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) (Pub. L. 111–239), was signed into law on September 28, 2010, and reauthorized Livestock Mandatory Reporting for 5 years and added a provision for mandatory reporting of wholesale pork cuts. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting.

Further, the 2010 Reauthorization Act directed the Secretary to establish a Committee that represented the spectrum of interests within the pork industry, as well as related stakeholders, to ensure all parties had input into the regulatory framework. Specifically, the statute required that the 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) Department of Agriculture; and (iv) interested parties that participate in swine or pork production.

The Agricultural Marketing Service (AMS) convened the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee) through notice in the **Federal Register** on January 26, 2011. The Committee met three times over the period February through May of 2011 to develop the regulatory framework necessary to implement a mandatory program of wholesale pork reporting.

The regulatory text developed by the Committee will serve as the primary basis for the proposed rule, consistent with both the intent of Congress and the Negotiated Rulemaking Act. It is important to note that the Committee reached consensus on all items included in the proposed rule—where consensus was defined by the Committee bylaws as being unanimous agreement. Therefore, AMS is confident the proposed rule to implement wholesale pork reporting will be met with little or no resistance from the industry members who will be required to report under the mandatory system.

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 USDA'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: FSA's 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: Assist rural communities in creating prosperity so they are self-sustaining, re-

populating, and economically thriving; and 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. FSA 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: 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, FSA will further streamline normal loan servicing activities and reduce burden on borrowers while still protecting the loan security.

Disaster Designation. FSA will revise the disaster designation process to streamline it and reduce the burden on States and tribes requesting disaster designations. One result may be fewer delays in delivering disaster assistance to help farm operations recover from the effects of disaster.

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. FS' regulatory priorities support the accomplishment of USDA's goal to ensure our national forests are conserved, restored, and made more resilient to climate change, while enhancing our water resources.

Priorities: Special Areas; State-Specific Inventoried Roadless Area Management: Colorado. FS planned final rulemaking would establish a State-specific rule to provide management direction for conserving and managing inventoried roadless areas on National Forest System lands in the State of Colorado.

Land Management Planning Rule. FS 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. FS 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 FS' 2008 Planning Rule published at 36 CFR 219 based on violations of NEPA and the Endangered Species Act in the rulemaking process. The District Court vacated the 2008 rule, enjoined USDA from further implementing it, and remanded it to 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. FS is now in the 2000 planning rule transition period. FS published a proposed planning rule on February 14, 2011 (76 FR 8480). The final rule is expected to be published December 2011. In so doing, FS 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.

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 USDA'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' 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 (RUS) 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, non-profit, limited-dividend, or mutual associations. The public-private partnership, which is forged between 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 significantly changed the statutory requirements of the Broadband Loan Program. As such, RUS issued an interim rule to implement the statutory changes and requested comments on the section of the rule that was not part of the proposed rule published in May 2007. Comments were received and the agency will analyze the comments and finalize the rule.

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 to revise the BioPreferred program guidelines to continue adding designated product categories to the preferred procurement program, including intermediates and feedstocks and finished products made of intermediates and feedstocks.

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. Some benefits and costs associated with rules listed in the regulatory plan cannot currently be quantified as the rules are still being formulated. For 2012, USDA'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 U.S.C. 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 1½ 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) 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 there are 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.

*Risks:* Implementing wholesale pork reporting presents few risks to the Agency and the impacted industry. Members of the industry who served on the negotiated rulemaking committee expressed some concern with reporting prices under a different reporting basis than what is used for voluntary pork reporting. However, ultimately the committee reached consensus on having prices reporting on both an FOB Omaha and FOB Plant basis in order to reduce market volatility.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Changes to Livestock Mandatory Reporting. | 11/24/10 | 75 FR 71568 |
| Wholesale Pork Reporting; Notice of Meeting. | 01/26/11 | 76 FR 4554 |
| NPRM | 02/00/12 | |
| Final Action | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Michael P. Lynch, Department of Agriculture, Agricultural Marketing Service, 14th and Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–6231.

*RIN:* 0581–AD07

## USDA—AMS

### 2. • National Organic Program: Sunset Review for Nutrient Vitamins and Minerals (NOP–10–0083)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 7 U.S.C. 6501

*CFR Citation:* 7 CFR 205.

*Legal Deadline:* None.

*Abstract:* This proposed rule would address a recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2011. The recommendation pertains to the 2012 Sunset Review of the listing for nutrient vitamins and minerals on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). As recommended by the NOSB, the proposed rule would continue the exemption (use) for nutrient vitamins and minerals for 5 years after the October 21, 2012, sunset date. In addition, the proposed rule would amend the annotation to correct an inaccurate cross reference to U.S. Food and Drug Administration regulations. The proposed amendment to the annotation would clarify what synthetic substances are allowed as nutrient vitamins and minerals in organic products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

*Statement of Need:* The Agricultural Marketing Service (AMS) has determined that the current exemption for the use of nutrient vitamins and minerals in organic products in the National Organic Program (NOP) regulations (7 CFR part 205) is inaccurate. The proposed rule would amend the annotation for nutrient vitamins and minerals to correct an inaccurate cross reference to U.S. Food and Drug Administration (FDA) regulations. In effect, the proposed amendment would clarify what synthetic substances are allowed as nutrient vitamins and minerals in organic products. Further, the NOP regulations do not correctly provide for the fortification of infant formula that would meet FDA requirements. This proposed rule would incorporate the correct FDA citation with respect to the addition of required vitamins and minerals to organic infant formula.

*Summary of Legal Basis:* This proposed rule would address a recommendation submitted to the Secretary of Agriculture by the National Organic Standards Board (NOSB) on April 29, 2011, to continue the exemption for nutrient vitamins and minerals in organic products as provided by the NOP National List of Allowed and Prohibited Substances (National List). The Organic Foods Production Act of 1990 (OFPA) authorizes the Secretary to amend the National List based on proposed amendments developed by the NOSB. The Sunset Provision, in section 6517(e) of the OFPA, provides that no exemption or prohibition on the National List will remain valid after 5 years unless the exemption or prohibition has been reviewed and the Secretary renews the listing. The exemption for nutrient vitamins and minerals is scheduled to sunset on October 21, 2012.

*Alternatives:* AMS considered two alternatives to this proposed rulemaking: (1) Renew the existing listing for nutrient vitamins and minerals or (2), in lieu of a rule, issue guidance stating NOP's intent to interpret the current listing for nutrient vitamins and minerals as proposed in this action. AMS determined that neither alternative is viable as both would retain a regulatory provision that is inaccurate and remains vulnerable to misinterpretations of what substances are permitted in organic products.

*Anticipated Cost and Benefits:* This proposed rule would establish a finite list of essential and required vitamins and minerals for use in organic food and infant formula. The action addresses the requests of a broad spectrum of public commenters for clarification on the parameters for adding nutrient vitamins and minerals to organic products and is expected to reduce the submission of consumer complaints alleging the unlawful addition of substances to organic products. This proposed rule would also provide more certainty to certifying agents and organic operations in determining whether substances are acceptable for use in organic products. Further, this proposed action also would foster greater transparency by ensuring that exemptions for the use of vitamins, minerals, and other nutrients are subject to National Organic Standards Board (NOSB) evaluation in accordance with the criteria established in OFPA.

This action could directly impact a subset of certified organic operations, which add substances to organic products that are not essential vitamins and minerals for human nutrition (21 CFR 101.9) or required vitamins and minerals for infant formula (21 CFR 107.100 or 107.10), as enumerated by FDA regulation. AMS believes the impacts will be concentrated within five categories of organic products in which nutrient supplementation has been more prevalent: Infant formula, baby food, milk, breakfast cereal, and pet food. The proposed rule could indirectly impact producers who supply organic agricultural commodities to affected product categories. However, AMS expects that there will be opportunities for producers to divert organic agricultural products to other purchasers to buffer the impact of any disruption to the manufacture of certain processed organic products as a result of this proposed action.

There are several impact mitigation factors which are expected to reduce the costs of complying with this proposed action. AMS is proposing a 2-year implementation phase, which is intended to provide time for NOSB to consider petitions for substances that are affected by this action and for AMS to conclude any rulemaking to add substances to the National List. The implementation phase would also provide entities the time to explore reformulation of affected products. Further, if some products are discontinued as a result of this proposed rule, AMS anticipates that some consumers will purchase, as an alternative, an organic product within the same category rather than a nonorganic product.

*Risks:* For the 2-year implementation phase to function as a mitigation measure, the timeframe may be tight to complete the review of petitions received by publication of this proposed rule and for any rulemaking action recommended by NOSB. Therefore, AMS has requested comments on the length of the implementation phase as part of this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/12/12 | 77 FR 1980 |
| NPRM Comment Period End. | 03/12/12 | |
| Final Action ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Local, State.

*Agency Contact:* Melissa R. Bailey, Director, Standards Division, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20250, *Phone:* 202 720–3252, *Fax:* 202 205–7808, *Email:* *melissa.bailey@usda.gov.*

*Related RIN:* Split from 0581–AC96.

*RIN:* 0581–AD17

## 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 U.S.C. 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:* Benefits of the rule would stem from improvements in the humane handling and care of birds by affected dealers, exhibitors, carriers, and intermediate handlers. At a minimum, these entities would be required to satisfy certain reporting provisions and undergo periodic compliance inspections by APHIS—measures that they are not subject to now with respect to birds. Regulated entities, therefore, may incur certain costs because of the proposed rule. Most facilities that use birds in research, such as pharmaceutical companies, universities, and research institutes, would not be affected. Retail pet stores could be affected to the extent that regulatory costs are passed on to them by breeders and other suppliers.

Most entities affected by the proposal are likely to be small in size, based on Small Business Administration standards. We have not been able to conduct a comprehensive analysis of the rule's potential economic impact because of the paucity of available data on the affected industries. APHIS welcomes public comment that would permit a more complete assessment of the proposed rule's impact.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |
| NPRM Comment Period End. | 08/00/12 | |

*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.*

*Agency Contact:* Johanna Briscoe, Veterinary Medical Officer and Avian Specialist, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, *Phone:* 301 734–0658.

*RIN:* 0579–AC02

## USDA—APHIS

### 4. Plant Pest Regulations; Update of General Provisions

*Priority:* Other Significant.

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 2260; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8817; 19 U.S.C. 136; 21 U.S.C. 111; 21 U.S.C. 114a; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332

*CFR Citation:* 7 CFR 318 and 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:* To be determined.

*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 ..... | 05/00/12 | |
| NPRM Comment Period End. | 07/00/12 | |

*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.*

*Agency Contact:* Shirley Wager—Page Chief, Pest Permitting Branch, Plant Health Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 131, Riverdale, MD 20737–1236, *Phone:* 301 734–8453.

*RIN:* 0579–AC98

## USDA—APHIS

*Final Rule Stage*

### 5. Importation of Live Dogs

*Priority:* Other Significant.

*Legal Authority:* 7 U.S.C. 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 would 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 Jun. 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 ..... | 09/01/11 | 76 FR 54392 |
| NPRM Comment Period End. | 10/31/11 | |
| Final Rule ..... | 08/00/12 | |

*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.*

*Agency Contact:* Gerald Rushin, Veterinary Medical Officer, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, *Phone:* 301 734–0954.

*RIN:* 0579–AD23

## USDA—APHIS

### 6. Animal Disease Traceability

*Priority:* Other Significant.

*Legal Authority:* 7 U.S.C. 8305

*CFR Citation:* 9 CFR 90.

*Legal Deadline:* None.

*Abstract:* This rulemaking would establish a new part in the Code of Federal Regulations containing minimum national identification and documentation requirements for livestock moving interstate. The proposed regulations specify approved forms of official identification for each species covered under this rulemaking but would allow such livestock to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or tribes. The purpose of the new regulations is to improve our ability to trace livestock in the event that disease is found.

*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 objective of these proposed regulations is to improve our ability to trace livestock in the event that disease is found in a manner that continues to ensure the smooth flow of livestock in interstate commerce.

*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.

The main economic effect of the rule is expected to be on the beef and cattle industry. For other species such as horses and other equine species, poultry, sheep and goats, swine, and captive cervids, APHIS would largely maintain and build on the identification requirements of existing disease program regulations.

Costs of an animal traceability system would include those for tags and interstate certificates of veterinary inspection (ICVIs) or other movement documentation, for animals moved interstate. Incremental costs incurred are expected to vary depending upon a number of factors, including whether an enterprise does or does not already use eartags to identify individual cattle. For many operators, costs of official animal identification and ICVIs would be similar, respectively, to costs associated with current animal identification practices and the in-shipment documentation currently required by individual States. To the extent that official animal identification and ICVIs would simply replace current requirements, the incremental costs of the rule for private enterprises would be minimal.

*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 infected with disease.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/11/11 | 76 FR 50082 |
| NPRM Comment Period End. | 11/09/11 | |
| Final Rule | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*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.*

*Agency Contact:* Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 46, Riverdale, MD 20737–1231, *Phone:* 301 734–5571.

*RIN:* 0579–AD24

## USDA—FOOD AND NUTRITION SERVICE (FNS)

*Proposed Rule Stage*

### 7. Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 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.

*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 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.

*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 ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Additional Information:* **Note:** This RIN replaces the previously issued RIN 0584–AD78.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AD88

## USDA—FNS

### 8. • National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010

*Priority:* Other Significant.
*Unfunded Mandates:* Undetermined.
*Legal Authority:* Pub. L. 111–296
*CFR Citation:* 7 CFR 210; 7 CFR 220.
*Legal Deadline:* None.

*Abstract:* This proposed rule would codify the following provisions of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) as appropriate, under 7 CFR parts 210 and 220.

Section 203 requires schools participating in the National School Lunch Program to make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

Section 208 requires the Secretary to promulgate proposed regulations to establish science-based nutrition standards for all foods sold in schools not later than December 13, 2011. The nutrition standards would apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day. (11–004)

*Statement of Need:* This proposed rule would codify the following provisions of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) as appropriate, under 7 CFR parts 210 and 220.

Section 203 requires schools participating in the National School Lunch Program to make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

Section 208 requires the Secretary to promulgate proposed regulations to establish science-based nutrition standards for all foods sold in schools not later than December 13, 2011. The nutrition standards would apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day.

*Summary of Legal Basis:* There is no existing regulatory requirement to make water available where meals are served. Regulations at 7 CFR parts 210.11 direct State agencies and school food authorities to establish such rules or regulations necessary to control the sale of foods in competition with lunches served under the NSLP. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

*Alternatives:* None.

*Anticipated Cost and Benefits:* Expected Costs Analysis and Budgetary Effects Statement: The Congressional Budget Office determined these provisions would incur no Federal costs.

*Expected Benefits of the Proposed Action:* The provisions in this proposed rulemaking would result in better nutrition for all school children.

*Risks:* None known.

Timetable:

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AE09

## USDA—FNS

### 9. • WIC: Electronic Benefit Transfer (EBT) Implementation

*Priority:* Other Significant.
*Unfunded Mandates:* Undetermined.
*Legal Authority:* Pub. L. 111–296
*CFR Citation:* 7 CFR 246.
*Legal Deadline:* NPRM, Statutory, October 1, 2020, Require all WIC State agencies to implement EBT Statewide.

*Abstract:* This proposed rule would revise and expand regulations regarding WIC EBT at 7 CFR 246 and implement statutory provisions related to EBT as defined in the Healthy, Hunger-Free Kids Act of 2010, Public Law 11–296. The EBT requirements addressed in the proposed rule would promote improved access to Program benefits, standardize EBT operations, and establish

implementation guidelines and timeframes.

*Statement of Need:* This proposed rule would revise and expand regulations regarding WIC EBT at 7 CFR 246 and implement statutory provisions related to EBT as defined in the Healthy, Hunger-Free Kids Act of 2010, Public Law 11–296. The EBT requirements addressed in the proposed rule would promote improved access to program benefits, standardize EBT operations, and establish implementation guidelines and timeframes.

WIC EBT has been an ongoing effort within the WIC community for several years. The proposed rule would address the following:

- Set forth the definition of EBT.
- Require all WIC State agencies to implement EBT statewide by October 1, 2020.
- Require State agencies to submit status reports demonstrating their progress toward Statewide EBT implementation.
- Revise the current provision regarding the imposition of EBT costs to vendors to include: (1) The formation of cost-sharing criteria associated with any equipment or system not solely dedicated to EBT; (2) the allowance of the payment of fees imposed by a third-party processor for EBT transactions; (3) the disallowance of the payment of interchange fees; (4) clarification of EBT cost impositions after Statewide implementation; (5) elimination of the requirement for State agencies to fund ongoing maintenance costs for vendors using multi-function EBT equipment; and (6) require vendors to demonstrate the capability to accept program benefits electronically prior to authorization after Statewide implementation of EBT.
- Establish minimum lane coverage guidelines for vendor equipment, as set forth in the operating rules, and require State agencies to provide the necessary EBT-only equipment if vendors do not wish to acquire multi-function equipment.
- Require that EBT technical standards and operating rules be established and adhered to by State agencies.
- Require all State agencies to use the universal product code database.

*Summary of Legal Basis:* Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296).

*Alternatives:* None.

*Anticipated Cost and Benefits:* Expected Costs Analysis and Budgetary Effects Statement:

FNS estimates costs of approximately $30 to $60 million per fiscal year (as reflected in the program's budget) for State agencies to comply with the mandate. The costs will vary depending on implementation activity and are expected to decline as more State agencies adopt WIC EBT.

*Expected Benefits of the Proposed Action:* The EBT requirements addressed in the proposed rule would promote improved access to program benefits, standardize EBT operations, and establish implementation guidelines and timeframes.

*Risks:* None known.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AE21

## USDA—FNS

*Final Rule Stage*

### 10. Nutrition Standards in the National School Lunch and School Breakfast Programs

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 108–265, sec 103

*CFR Citation:* 7 CFR 210; 7 CFR 220.

*Legal Deadline:* None.

*Abstract:* Public Law 108–265 requires the Secretary to issue regulations that reflect specific recommendations for increased consumption of foods and food ingredients in school nutrition programs based on the most recent Dietary Guidelines for Americans.

The current regulations require that reimbursable meals offered by schools meet the applicable recommendations of the Dietary Guidelines for Americans. This rule would revise the regulations on meal patterns and nutrition standards to ensure that school meals reflect the 2005 Dietary Guidelines for Americans (04–017).

*Statement of Need:* This final rule will implement the requirement in section 201 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296) (the Act) that USDA promulgate regulations to update the meal patterns and nutrition standards for school lunches and breakfasts based on recommendations made by the Institute of Medicine (IOM). USDA issued a proposed rule on January 13, 2011. The Act requires USDA to issue interim or final regulations not later than 18 months after promulgation of the proposed regulation.

This final rule will implement meal patterns and nutrition standards recommended by IOM in its report ''School Meals: Building Blocks for Healthy Children.'' In addition, the final rule will address the comments submitted by the public in response to USDA's proposed rule.

*Summary of Legal Basis:* The meal patterns and nutrition standards for school lunches and breakfast are established in 7 CFR 210.10 and 7 CFR 220.8, respectively. State agencies monitor compliance with the meal patterns and nutrition standards through program reviews authorized in 7 CFR 210.19.

*Alternatives:* None.

*Anticipated Cost and Benefits:* Expected Costs Analysis and Budgetary Effects Statement:

While there are no increased Federal costs associated with implementation of this final rule, the Act provides schools that comply with the new meal requirements with an increased Federal reimbursement. The Act also provides Federal funding for training, technical assistance, certification, and oversight activities related to compliance with this rule. It is expected that the total costs of compliance with the final rule will exceed $100 million per year.

*Expected Benefits of the Proposed Action:* The final rule is projected to make substantial improvements to the meals served daily in over 101,000 schools nationwide to more than 31 million children. It will align school meals with national nutrition guidelines and help safeguard the health of school children.

*Risks:* None known.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/13/11 | 76 FR 2494 |
| NPRM Comment Period End. | 04/13/11 | |
| Final Action ..... | 02/00/12 | |

*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.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AD59

## USDA—FNS

### 11. Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 108–265, sec 104

*CFR Citation:* 7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 225; 7 CFR 226; 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, is 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 benefits from the Supplemental Nutrition Assistance Program 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.

*Alternatives:* None; statutory requirements.

*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 and assistance agencies.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/25/11 | 76 FR 22785 |
| Interim Final Rule Effective. | 06/24/11 | |
| Interim Final Rule Comment Period End. | 10/24/11 | |
| Final Rule ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Local, State.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*Related RIN:* Merged with 0584–AD62.

*RIN:* 0584–AD60

## USDA—FNS

### 12. Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 110–246; Pub. L. 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 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.

*Summary of Legal Basis:* Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

*Alternatives:* Most aspects of the rule are non-discretionary and tie to explicit, specific requirements for SNAP in the FCEA. However, FNS did consider alternatives in implementing section 4103 of the FCEA, Elimination of Dependent Care Deduction Caps. FNS considered whether to limit deductible expenses to costs paid directly to the care provider or whether to permit households to deduct other expenses associated with dependent care in addition to the direct costs. FNS chose to allow households to deduct the cost of transportation to and from the dependent care provider and the cost of separately identified activity fees that are associated with dependent care. Section 4103 signaled an important shift in congressional recognition that dependent care costs constitute major expenses for working households. In addition, it was noted during the floor discussion in both houses of Congress prior to passage of the FCEA that some States already counted transportation costs as part of dependent care expenditures.

*Anticipated Cost and Benefits:* The estimated total SNAP costs to the Government of the FCEA provisions implemented in the rule are estimated to be $831 million in FY 2010 and

$5.619 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

There are many potential societal benefits of this rule. Some provisions may make some households newly eligible for SNAP benefits. Other provisions may increase SNAP benefits for certain households. Certain provisions in the rule will reduce the administrative burden for households and State agencies.

*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 | 05/04/11 | 76 FR 25414 |
| NPRM Comment Period End. | 07/05/11 | |
| Final Action | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Local, State.

*Agency Contact:* Kevin Kwon, Chief, Planning and Regulatory Affairs Branch, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–0800, *Email: kevin.kwon@fns.usda.gov.*

*RIN:* 0584–AD87

## USDA—FNS

### 13.• Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 111–296

*CFR Citation:* 7 CFR 272.

*Legal Deadline:* Final, Statutory, January 1, 2012, Pub. L. 111–296

*Abstract:* [Pub. L. 111–296, The Healthy, Hunger-Free Kids Act of 2001, title II; Reducing Childhood Obesity and Improving the Diets of Children, subtitle D; Miscellaneous, sec. 241.] The Nutrition Education and Obesity Prevention Grant Program amends the Food and Nutrition Act of 2008 to replace the current nutrition education program under the Act with a program providing grants to States for the implementation of a nutrition education and obesity prevention program that promotes healthy food choices consistent with the most recent Dietary Guidelines for Americans.

*Statement of Need:* The Nutrition Education and Obesity Prevention Grant Program rule amends the Food and Nutrition Act of 2008 to replace the current nutrition education program under the Act with a program providing grants to States for the implementation of a nutrition education and obesity prevention program that promotes healthy food choices consistent with the most recent Dietary Guidelines for Americans. This rule will implement all requirements of the law. It makes eligible for program participation: (1) Supplemental Nutrition Assistance Program (SNAP) participants, (2) participants in the school lunch or breakfast programs, and (3) individuals who reside in low-income communities or are low-income individuals. The rule continues commitment to serving low-income populations while focusing on the issue of obesity, a priority of this Administration. It ensures that interventions implemented as part of State nutrition education plans recognize the constrained resources of the eligible population.

The rule requires activities be science-based and outcome-driven and provides for accountability and transparency through State plans. It will require coordination and collaboration among Federal agencies and stakeholders, including the Centers for Disease Control and Prevention, the public health community, the academic and research communities, nutrition education practitioners, representatives of State and local governments, and community organizations that serve the low-income populations. The rule allows for 100 percent Federal funding, and States will not have to provide matching funds. The grant funding will be based on 2009 expenditures. For 3 years after enactment, States will receive grant funds based on their level of funds expended for the 2009 base year with funds indexed for inflation thereafter. The new funding structure is phased in over a 7-year period. From fiscal year 2014 forward, funds will be allocated based on a formula that considers participation.

*Summary of Legal Basis:* Section 241, Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296).

*Alternatives:* None.

*Anticipated Cost and Benefits:* Expected Costs Analysis and Budgetary Effects Statement:

The action allows for 100 percent Federal funding which gives States more flexibility to target services where they can be most effective without the constraints of a State match. For 3 years after enactment, States will receive grant funds based on their level of funds expended for the 2009 base year with funds indexed for inflation thereafter. The new funding structure is phased in over a 7-year period. From fiscal year 2014 forward, funds will be allocated based on a formula that considers participation.

*Expected Benefits of the Proposed Action:* This regulatory action seeks to improve the effectiveness of the program and make it easier for the States to administer, while still allowing funding to grow. It allows for 100 percent Federal funding, which gives States more flexibility to target services where they can be most effective without the constraints of a State match. It allows grantees to adopt individual and group-based nutrition education, as well as community and public health approaches. It allows coordinated services to be provided to participants in all the Federal food assistance programs and to other low-income persons.

*Risks:* None known.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* State.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AE07

## USDA—FOOD SAFETY AND INSPECTION SERVICE (FSIS)

*Proposed Rule Stage*

### 14. Prior Labeling Approval System: Generic Label Approval

*Priority:* Other Significant.

*Legal Authority:* 21 U.S.C. 451 to 470; 21 U.S.C. 601 to 695

*CFR Citation:* 9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412.

*Legal Deadline:* None.

*Abstract:* This rulemaking will continue an effort initiated several years ago by amending FSIS' regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating the nutrition labeling rules that currently are stated separately

for meat and poultry products (in part 317, subpart B, and part 381, subpart Y, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

*Statement of Need:* Expanding the types of labeling that are generically approved would permit Agency personnel to focus their resources on evaluating only those claims or special statements that have health and safety or economic implications. This would essentially eliminate the time needed for FSIS personnel to evaluate labeling features and allocate more time for staff to work on other duties and responsibilities. A major advantage of this proposal is that it is consistent with FSIS' current regulatory approach, which separates industry and Agency responsibilities.

*Summary of Legal Basis:* 21 U.S.C. 457 and 607.

*Alternatives:* FSIS considered several options. The first was to expand the types of labeling that would be generically approved and consolidate into one part all of the labeling regulations applicable to products regulated under the FMIA and PPIA and the policies currently contained in FSIS Directive 7220.1, Revision 3. The second option FSIS considered was to consolidate only the meat and poultry regulations that are similar and to expand the types of generically approved labeling that can be applied by Federal and certified foreign establishments. The third option, and the one favored by FSIS, was to amend the prior labeling approval system in an incremental three-phase approach.

*Anticipated Cost and Benefits:* The proposed rule would permit the Agency to realize an estimated discounted cost savings of $2.9 million over 10 years. The proposed rule would be beneficial because it would streamline the generic labeling process, while imposing no additional cost burden on establishments. Consumers would benefit because industry would have the ability to introduce products into the marketplace more quickly.

*Risks:* None

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/05/11 | 76 FR 75809 |
| NPRM Comment Period End. | 02/03/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Jeff Canavan, Labeling and Program Delivery Division, Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 8th Floor, 8–146, Stop 5273, 1400 Independence Avenue SW., Washington, DC 20250–5273, *Phone:* 301 504–0878, *Fax:* 301 504–0872, *Email: jeff.canavan@fsis.usda.gov.*

*RIN:* 0583–AC59

## USDA—FSIS

### 15. Product Labeling: Use of the Voluntary Claim ''Natural'' on the Labeling of Meat and Poultry Products

*Priority:* Other Significant.

*Legal Authority:* 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

*CFR Citation:* 9 CFR 317; 9 CFR 381.

*Legal Deadline:* None.

*Abstract:* The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to define the conditions under which it will permit the voluntary claim ''natural'' to be used in the labeling of meat and poultry products. FSIS is also proposing that label approval requests for labels that contain ''natural'' claims include documentation to demonstrate that the products meet the criteria to bear a ''natural'' claim. FSIS is proposing to require that meat or poultry products meet these conditions to qualify for a ''natural'' claim to make the claim more meaningful to consumers.

*Statement of Need:* A codified ''natural'' claim definition will reduce uncertainty about which products qualify to be labeled as ''natural'' and will increase consumer confidence in the claim. A codified ''natural'' definition that clearly articulates the criteria that meat and poultry products must meet to qualify to be labeled as ''natural'' will make the Agency's approval of ''natural'' claims more transparent and will allow the Agency to review labels that contain ''natural'' claims in a more efficient and consistent manner. A codified ''natural'' definition will also make the claim more meaningful to consumers.

*Summary of Legal Basis:* 21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.*

*Alternatives:* The Agency has considered not proceeding with rulemaking and maintaining the existing policy guidance on ''natural'' claims and using that policy guidance to evaluate ''natural'' claims on a case-by-case basis. The Agency has also considered alternative definitions of ''natural'' and establishing separate codified definitions of ''natural,'' ''natural * * * minimally processed,'' and ''natural * * * minimally processed/all natural ingredients.''

*Anticipated Cost and Benefits:* FSIS anticipates that a clear and simple definition of ''natural'' will minimize cognitive costs to consumers. FSIS also anticipates benefits from a consistent USDA policy on ''natural'' claims. FSIS anticipates costs to establishments to change their labels or change their production practices.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 09/14/09 | 74 FR 46951 |
| ANPRM Comment Period End. | 11/13/09 | |
| NPRM ..... | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 8th Floor, Room 8–148, Stop 5273, 1400 Independence Avenue SW, Washington, DC 20250–5273, *Phone:* 301 504–0878, *Fax:* 301 504–0872, *Email: rosalyn.murphy-jenkins@fsis.usda.gov.*

*RIN:* 0583–AD30

## USDA—FSIS

### 16. New Poultry Slaughter Inspection

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 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 and turkey 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, and to revoke the New Turkey Inspection System (NTIS). 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:* 21 U.S.C. 451 to 470.

*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.

*Anticipated Cost and Benefits:* Not publicly available at this time.

*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 better address the prevalence of salmonella and other pathogens in young chickens.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Dr. Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 205–0495, *Fax:* 202 401–1760, *Email: daniel.engeljohn@fsis.usda.gov.*

*RIN:* 0583–AD32

## USDA—FSIS

### 17. Electronic Imported Product Inspection Application and Certification of Imported Product and Foreign Establishments; Amendments To Facilitate the Public Health Information System (PHIS)

*Priority:* Other Significant.

*Legal Authority:* 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)

*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 import inspection application, and electronic imported product foreign inspection 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. FSIS is also announcing that it is discontinuing its practice of conducting imported product reinspection based on a foreign government's guarantee.

*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 into 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 imported product foreign inspection 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:* 21 U.S.C. 601 to 695; 21 U.S.C. 451 to 470; 21 U.S.C. 1031 to 1056.

*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 imported product foreign inspection 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 imported foreign inspection 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 ..... | 03/00/12 | |

*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.

*Agency Contact:* Mary Stanley, Director, International Policy Division Office of Policy and Program, Department of Agriculture, Food Safety and Inspection Service, Room 2125, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–0287.

*RIN:* 0583–AD39

## USDA—FSIS

### 18. 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 U.S.C. 601 to 695); Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 to 470); Egg Products Inspection Act (EPIA) (21 U.S.C. 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 system. The electronic export application and certification system will be a component of the Agency's Public Health Information System (PHIS). The export component of PHIS will be available as an alternative to the paper-based application and certification process. FSIS is proposing to charge users for the use of the proposed system. FSIS is proposing to establish a formula for calculating the fee. 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:* 21 U.S.C. 601 to 695; 21 U.S.C. 451 to 470; 21 U.S.C. 1031 to 1056; 7 U.S.C. 1622(h).

*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 an application fee for the electronic system. 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 cost to an exporter would depend on the number of electronic applications submitted. An exporter that submits 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. The total annual paperwork burden to egg processing industry to fill out the paper-based export application is approximately $32,340 per year for a total of 924 hours a year. The average establishment burden would be 11 hours, and $385.00 per establishment.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*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.

*Agency Contact:* Dr. Ron Jones, Assistant Administrator, Office of International Affairs, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3473.

*RIN:* 0583–AD41

## USDA—FSIS

*Final Rule Stage*

### 19. 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 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 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:* 21 U.S.C. 601 to 695; 21 U.S.C. 451 to 470.

*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 Extended 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 Reopened End. | 05/09/05 | |
| Affirmation of Interim Final Rule. | 01/00/12 | |
| Final Action | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Dr. Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development,Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 205–0495, *Fax:* 202 401–1760, *Email:* *daniel.engeljohn@fsis.usda.gov.*

*RIN:* 0583–AC46

## USDA—FSIS

### 20. Notification, Documentation, and Recordkeeping Requirements for Inspected Establishments

*Priority:* Other Significant.

*Legal Authority:* 21 U.S.C. 612 to 613; 21 U.S.C. 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, section 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 1/10 of 1 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 ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Victoria Levine, Program Analyst, Policy Issuances Division, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–5627, *Fax:* 202 690–0486, *Email: victoria.levine@fsis.usda.gov.*

*RIN:* 0583–AD34

**BILLING CODE 3410–90–P**

## DEPARTMENT OF COMMERCE (DOC)

*Statement of Regulatory and Deregulatory Priorities*

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 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 2012. During the next year, NOAA plans to publish four rulemaking actions that are designated as regulatory plan actions. The Bureau of Industry and Security (BIS) will also publish rulemaking actions 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 Service (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 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 FY 2012, 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 MMPA 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 MMPA. 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 third 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, and Unregulated Fishing or Bycatch of Protected Living Marine Resources. A description of the four regulatory plan actions is provided below.

1. Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (0648–AS65): In January 2009, the Gulf of Mexico Fishery Management Council approved the Aquaculture Fishery Management Plan, which authorizes NMFS to issue permits to culture species managed by the Council (except shrimp and corals). This was the first time a regional Fishery Management Council approved a comprehensive regulatory program for offshore aquaculture in U.S. Federal waters. On September 3, 2009, the Aquaculture Fishery Management Plan entered into effect by operation of law and Dr. Lubchenco announced that NOAA would develop a new National Aquaculture Policy, which would provide context for the Aquaculture Fishery Management Plan. On June 9, 2011, NOAA released the final National Aquaculture Policy and announced that the Agency will move forward with the rulemaking to implement the Aquaculture Fishery Management Plan. The Aquaculture Plan has received regional and national media attention and was challenged in two lawsuits. Although the lawsuits were dismissed, additional legal challenges are anticipated when the final rule is issued. A vocal coalition of environmental, non-governmental organizations and fishermen's groups opposed to marine aquaculture has been actively following the process. Others, including some fishing and seafood groups, support the Aquaculture Fishery Management Plan.

2. Amend the Definition of Illegal, Unreported, and Unregulated Fishing Under the High Seas Driftnet Fishing Moratorium Protection Act to Include International Provisions of the Shark Conservation Act (0648–BA89): As required under the international provisions of the Shark Conservation Act, the rule would amend the identification and certification procedures under the High Seas Driftnet Fishing Moratorium Protection to include the identification of a foreign nation whose fishing vessels engaged during the preceding calendar year in fishing activities in areas beyond any national jurisdiction that target or incidentally catch sharks if that nation has not adopted a regulatory program to provide for the conservation of sharks that is comparable to that of the United States, taking into account different conditions. NMFS also intends to amend the regulatory definition of ''illegal, unreported, and unregulated (IUU) fishing'' for purposes of the identification and certification procedures under the Moratorium Protection Act.

3. Critical Habitat for North Atlantic Right Whale (0648–AY54): In 1994, NMFS designated critical habitat for the northern right whale in the North Atlantic Ocean. This critical habitat designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel, and waters adjacent to the coasts of Georgia and Florida. In 2008, NMFS published final determinations listing right whales in the North Atlantic and North Pacific as separate endangered species under the ESA and initiated work on new critical habitat designations triggered by these 2008 listings. On October 1, 2009, NMFS received a petition from the Center for Biological Diversity, Defenders of Wildlife, Humane Society of the United States, Ocean Conservancy, and the Whale and Dolphin Conservation Society to revise the designated critical habitat of the North Atlantic right whale. The petition seeks an expansion of the areas designated as critical feeding and calving habitats and also seeks to include a migratory corridor as part of the critical habitat designation. On October 6, 2010, NMFS published a 90-day finding and 12-month determination stating the intent to proceed with publishing a proposed rule to revise critical habitat.

4. Reduce Disturbance to Hawaiian Spinner Dolphins from Human Interactions (0648–AU02): Spinner dolphins are being disturbed in their natural resting habitats by human activities, which may be altering the dolphins' normal behavioral patterns. NMFS is proposing time-area closures to protect the essential resting habitat of spinner dolphins and to reduce the human activities that cause unauthorized taking of these dolphins under the Marine Mammal Protection Act and its implementing regulations. The proposed rule lists time-area closures including four bays on the island of Hawaii, and one on the island of Maui. Adaptive management strategies will be used to monitor the effectiveness of the proposed rule and allow for necessary improvements. This proposed action will set a precedent for NMFS' management of wildlife viewing activities. This proposed action represents the first proposal by NMFS to use regulated area closures to reduce harassment of non-ESA listed marine mammals resulting from activities aimed at viewing and interacting with these animals.

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 adaptable, efficient, and effective export control and treaty compliance systems, as well as by administering 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 customers, and will allow the Government to erect higher walls around the most sensitive export 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 regulates 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 the 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 also 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 the administration and enforcement of the U.S. dual-use export control system, BIS plays 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 FY 2011, BIS took several steps to implement the President's Export Control Reform Initiative. BIS published a final rule (76 FR 35276, June 16, 2011) implementing a license exception that authorizes exports, reexports, and transfers to destinations that do not pose a national security concern, provided certain safeguards against diversion to other destinations are taken. BIS also proposed a rule that provides a framework for controlling militarily less significant defense articles, largely generic parts and components, on the Commerce Control List (CCL) rather than the United States Munitions List. In the immediate future, BIS will work with other agencies to implement transfers of such items to the CCL and to make the CCL a more positive list. Looking further ahead BIS will work with other agencies to place items on the CCL into one of three tiers, corresponding to different levels of sensitivity.

Tier 1 will include the most sensitive items. These are items that provide a critical military or intelligence advantage to the United States and are available almost exclusively from the United States, or are items that are a weapon of mass destruction.

Tier 2 will include items that are sensitive but not as sensitive, as those in Tier 1. These are items that provide a substantial military or intelligence advantage to the United States and are available almost exclusively from either the United States or our partners and allies.

Tier 3 will include items that are less sensitive than those in Tier 2. These items will be those that provide a significant military or intelligence advantage but are available more broadly. BIS will also be developing other rules to implement additional aspects of the export control reform as those aspects are identified and decided.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Accordingly, the Agency is reviewing these rules to determine whether action under E.O. 13563 is appropriate. Some of these entries on this list may be completed actions, which do not appear in *The Regulatory Plan.* However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for the Agency. These rulemakings can also be found on Regulations.gov. The final Agency retrospective analysis plan can be found at: *http://open.commerce.gov/sites/default/files/Commerce%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Rules%20-%202011-08-22%20Final.pdf.*

| RIN | Title | Expected To Significantly Reduce Burdens on Small Businesses? |
|---|---|---|
| 0610–AA66 | Revisions to EDA's Regulations | Yes. |
| 0625–AA81 | Foreign Trade Zones | Yes. |
| 0648–AN55 | Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act. | |
| 0648–AL92 | Western Alaska Community Development Quota Program. | |

| RIN | Title | Expected To Significantly Reduce Burdens on Small Businesses? |
|---|---|---|
| 0648–AP12 | Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2 | Yes. |
| 0648–AO62 | Reef Fish Fishery of the Gulf of Mexico: Charter Vessel and Headboat Permit Moratorium | Yes. |
| 0648–AL41 | Nearshore Area Closures Around American Samoa by Vessels More Than 50 Feet in Length. | |
| 0648–AP78 | Fisheries of the Northeastern United States: Northeast Multispecies Fishery. | |
| 0648–AN75 | Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Mitigation Measures. | |
| 0648–AP37 | Atlantic Herring Fishery; 2002 Specifications. | |
| 0648–AO35 | Measures To Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery. | |
| 0648–AP76 | Atlantic Deep-Sea Red Crab Fishery Management Plan. | |
| 0648–AP39 | Pacific Coast Groundfish Fishery: Experimental Setnet Sablefish Landings To Qualify Limited Entry Sablefish-Endorsed permits for Tier Assignment. | |
| 0648–AO20 | Fisheries of the Exclusive Economic Zone off Alaska: Revisions to Recordkeeping and Reporting Requirements. | Yes. |
| 0648–AQ05 | Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program. | |
| 0648–AN88 | Taking of Marine Mammals Incidental to Commercial Fishing Operations: Atlantic Large Whale Take Reduction Plan Regulations. | |
| 0648–AK23 | Fisheries Off West Coast States and in the Western Pacific: Precious Corals Fisheries; Harvest Quotas, Definitions, Size Limits, Gear Restrictions, and Bed Classification. | |
| 0648–AP21 | Implementation of the Shark Finning Prohibition Act. | |
| 0648–AP49 | Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery: Sea Turtle and Whale Protection Measures. | |
| 0648–AM40 | License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area. | |
| 0648–AP79 | Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska. | |
| 0648–AO69 | Fisheries Off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery: Annual Specifications and Management Measures. | |
| 0648–AK70 | Fisheries of the Exclusive Economic Zone Off Alaska: Individual Fishing Quota Program. | |
| 0648–AP81 | Sea Turtle Conservation Measures of the Pound Net Fishery in Virginia Waters. | |
| 0648–AP17 | Take of Four Threatened Evolutionarily Significant Units of West Coast Salmon. | |
| 0648–AP68 | Atlantic Large Whale Seasonal Area Management Program. | |
| 0648–AN29 | Regulations Governing the Approach to Humpback Whales in Alaska. | |
| 0648–AK50 | Fisheries of the Exclusive Economic Zone Off Alaska: Improved Individual Fishing Quota Program. | |
| 0648–AM72 | Western Alaska Community Development Quota Program. | |
| 0648–AN23 | Fisheries of the Exclusive Economic Zone Off Alaska: Revisions to Definition of Length Overall of a Vessel. | |
| 0648–AL95 | Fisheries of the Exclusive Economic Zone Off Alaska: License Limitation Program. | |
| 0648–AO02 | Atlantic Coastal Fisheries Cooperative Management Act Provisions: Horseshoe Crab Fishery—Closed Area. | |
| 0648–AF87 | Fisheries of the Northeastern United States: Fishery Management Plan for Tilefish. | |
| 0648–AN27 | Pacific Coast Groundfish Fishery: Groundfish Observer Program. | |
| 0648–AL51 | West Coast Salmon Fisheries: Amendment 14. | |
| 0648–AO41 | Pacific Coast Groundfish Fishery: Amendment 13. | |
| 0648–AO97 | Pacific Coast Groundfish Fishery: Amendment 14. | |
| 0648–AO42 | International Fisheries Regulations: Pacific Tuna Fisheries. | |
| 0648–BA42 | Fisheries of the Northeastern United States; Tilefish Cost Recovery Regulatory Amendment. | |
| 0648–BA06 | Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Emergency Rule To Authorize Re-Opening the Recreational Red Snapper Season. | Yes. |
| 0694–AF03 | Export Control Reform Initiative: Strategic Trade Authorization License Exception. | |
| 0694–AF17 | Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML). | Yes. |

## DOC—BUREAU OF INDUSTRY AND SECURITY (BIS)

*Final Rule Stage*

### 21. Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines Do Not Warrant Control on the United States Munitions List

*Priority:* Other Significant.

*Legal Authority:* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 15 U.S.C. 1824a; 22 U.S.C. 287c; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; 30 U.S.C. 185(s); 42 U.S.C. 2139a; 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 50 U.S.C. 1701 *et seq.;* 50 U.S.C. 2401 *et seq.;* 50 U.S.C. 5; EO 12058; EO 12851; EO 12938; EO 12947; EO 13026; EO 13099; EO 13222; EO 13224; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* EO 11912; EO 12002; EO 12214; EO 12854; EO 12918; EO 12918; EO 12981; EO 13020; EO 13338; 30 U.S.C. 185(u)

*CFR Citation:* 15 CFR 740; 15 CFR 743; 15 CFR 744; 15 CFR 748; 15 CFR 774; 15 CFR 730; 15 CFR 732; 15 CFR 738; 15 CFR 742; 15 CFR 746; 15 CFR 756; 15 CFR 762; 15 CFR 770; 15 CFR 772.

*Legal Deadline:* None.

*Abstract:* In August 2009, President Obama directed a fundamental review of the U.S. Export control system be conducted. This review included a fundamental review of the two primary control lists of the U.S. Export control system; *i.e.,* the Commerce Control List (CCL) and the United States Munitions List (USML). In December 2010, the Departments of Commerce and State each published an Advanced Notice of Proposed Rulemaking (ANPRM)

requesting public comments on creating more ''positive'' and clear control lists and recommendations for how items listed on the two control lists could be tiered based on criteria developed during the Export Control Reform (ECR) initiative.

An integral part of creating a ''positive'' USML requires a proper control structure be put into place under the EAR to appropriately control the less significant items moved from the USML to the CCL, which is the subject of this proposed rule. This rule outlines the control structure developed under the ECR initiative to ensure appropriate controls are in place for these less significant items moved from the USML to the CCL.

*Statement of Need:* This rule is needed to describe how items that no longer warrant ITAR control—but, because they are specially designed for military applications, warrant some degree of control—will be made subject to the EAR and listed on the CCL. In particular, this rule establishes the framework within which items that are transferred from the ITAR to the EAR will be identified in and controlled by the EAR. Such ready identification is needed to allow for public understanding of the changes and to facilitate executive branch compliance with the requirements to notify Congress when items are removed from the ITAR. Such controls are needed to accomplish the national security and foreign policy objectives of controlling transfers of military items, which includes complying with statutory and international obligations to prevent the transfer of such items to certain countries, end uses, and end users.

*Summary of Legal Basis:* The Export Administration Act of 1979, as amended, authorizes the President to prohibit or curtail exports for national security or foreign policy reasons. Section 3(1) of that Act provides that ''It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.'' Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by Notice of August 12, 2010, 75 FR 50681 (Aug. 16, 2010) continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA). The EAA and the IEEPA provide the President with the discretion to tailor controls, such as through the use of license exceptions and the creation of country groups in the implementing regulations, over different types of items based on their significance or other factors relevant to the national interest.

The Arms Export Control Act (22 U.S.C. 2778) gives the President the authority to identify any item as a ''defense article.'' The list of ''defense articles'' is identified on the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR chapter I, subchapter M). Section 38(f) of the AECA requires the President to periodically review the list of defense articles and determine which, if any, should be removed from the list. Section 38(f) authorizes the President to remove defense articles from the USML and control them under other statutory and regulatory authorities, such as the export control regulations administered by the Commerce Department, after completing a 30-day congressional notification.

*Alternatives:* BIS considered several alternative regulatory structures for the items that would be moved from the ITAR to the EAR, including creating a separate Commerce Munitions List in the EAR and attempting to insert all items transferred into the existing ECCN structure. BIS selected the ''600 series'' structure because it provided the best balance between ease of use and the need to readily identify items moved or to be moved from the ITAR to the EAR for congressional notification purposes. A separate Commerce Munitions List would have readily identified items moved from the ITAR, but would have required the public to consult two lists to assess whether license requirements applied to a particular item. Attempting to place all transferred items within the existing ECCN structure would have minimized the number of ECCNs to be consulted but would have unduly obscured the ITAR origin of the transferred items.

*Anticipated Cost and Benefits:* The underlying policy motivation for the reform effort is not a traditional economic cost/benefit analysis. Rather, it is a national security effort. When the Administration first began to consider how the export control system should be reformed to enhance national security, it did not take into account whether there would be particular economic benefits or costs. After conducting the review, the Administration ultimately determined that our national security will be strengthened if (i) our export control system allows for more interoperability with our NATO and other close allies; (ii) our industrial base is enhanced by, for example, reducing the current incentives created by the export control rules for foreign companies to design out or avoid U.S.-origin content; and (iii) our resources are more focused on controlling or prohibiting, as needed, the items that provide at least a significant military or intelligence advantage to the United States. Items made subject to the EAR as a result of this rule generally would require a license to all destinations except Canada and exporters, reexporters and transferors would incur the costs associated with applying for such licenses. BIS would need additional resources to review the additional licenses and to handle the related compliance activities that will accompany the planned change in jurisdictional status of items. The net burden on the government and that the government imposes on industry, however, would be substantially reduced because this rule would apply to items that currently are subject to strict, generally inflexible ITAR license requirements that impose many collateral compliance burdens and costs on exporters and the U.S. Government. BIS believes that replacing such ITAR license requirements with the more flexible EAR license requirements is not likely to result in any net increase in costs. However, the benefits of the move would be substantial, although not readily quantifiable.

*Risks:* Not all items currently subject to the ITAR are appropriate for movement to the EAR. Care must be taken to ensure that large sophisticated weapons and other inherently military items (as opposed to items unique to defense articles merely because of a change in form or fit) are not moved to the EAR. BIS believes that the ongoing interagency review process is adequate to guard against any transfers contrary to national security and foreign policy interests. At the same time, one must consider the risks of not transferring to the EAR defense articles that no longer warrant ITAR controls. These risks include continued excessive costs to exporters in complying with unnecessarily restrictive rules, continued disincentives for defense manufacturers to use U.S. origin parts and components, and continued excessive costs associated with supplying allied armed forces with U.S. origin parts and components. BIS believes that this rule sets up a structure for controls that will allow for the appropriate balance between the risks of

continuing the status quo and the risks of unwarranted relaxation of controls.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/15/11 | 76 FR 41958 |
| NPRM Comment Period End. | 09/13/11 | |
| Final Rule ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Timothy Mooney, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, *Phone:* 202 482–3371, *Fax:* 202 482–3355, *Email: timothy.mooney@bis.doc.gov.*

*Related RIN:* Merged with 0694–AF09.

*RIN:* 0694–AF17

## DOC—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

*Proposed Rule Stage*

### 22. Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*CFR Citation:* 50 CFR 622.

*Legal Deadline:* None.

*Abstract:* The purpose of this fishery management plan (FMP) is to develop a regional permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in the Gulf of Mexico (Gulf) exclusive economic zone. This FMP consists of ten actions, each with an associated range of management alternatives, which would facilitate the permitting of an estimated 5 to 20 offshore aquaculture operations in the Gulf over the next 10 years, with an estimated annual production of up to 64 million pounds. By establishing a regional permitting process for aquaculture, the Gulf of Mexico Fishery Management Council will be positioned to achieve their primary goal of increasing maximum sustainable yield and optimum yield of federal fisheries in the Gulf by supplementing harvest of wild caught species with cultured product.

*Statement of Need:* Demand for protein is increasing in the United States and commercial wild-capture fisheries will not likely be adequate to meet this growing demand. Aquaculture is one method to meet current and future demands for seafood. Supplementing the harvest of domestic fisheries with cultured product will help the U.S. meet consumers' growing demand for seafood and may reduce the Nation's dependence on seafood imports.

Currently, the U.S. imports over 80 percent of the seafood consumed in the country, and the annual U.S. seafood trade deficit is at an all time high of over $9 billion.

*Summary of Legal Basis:* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

*Alternatives:* The Council's Aquaculture FMP includes 10 actions, each with an associated range of alternatives. These actions and alternatives are collectively intended to establish a regional permitting process for offshore aquaculture. Management actions in the FMP include: (1) Aquaculture permit requirements, eligibility, and transferability; (2) duration aquaculture permits are effective; (3) aquaculture application requirements, operational requirements, and restrictions; (4) species allowed for aquaculture; (5) allowable aquaculture systems; (6) marine aquaculture siting requirements and conditions; (7) restricted access zones for aquaculture facilities; (8) recordkeeping and reporting requirements; (9) biological reference points and status determination criteria; and (10) framework procedures for modifying biological reference points and regulatory measures.

*Anticipated Cost and Benefits:* Environmental and social/economic costs and benefits are described in detail in the Council's Aquaculture FMP. Potential benefits include: establishing a rigorous review process for reviewing and approving/denying aquaculture permits; increasing optimum yield by supplementing the harvest of wild domestic fisheries with cultured products; and reducing the nation's dependence on imported seafood. Anticipated costs include increased administration and oversight of an aquaculture permitting process, and potential negative environmental impacts to wild marine resources. Approval of an aquaculture permitting system may also benefit fishing communities by creating new jobs or impact fishing communities if cultured products economically displace domestic seafood.

*Risks:* National offshore aquaculture legislation has also been previously proposed by the Administration. This action may reduce the need for uniform national legislation and allow aquaculture regulations to vary by region.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability (NOA). | 06/04/09 | 74 FR 26829 |
| NOA Comment Period End. | 08/03/09 | |
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AS65

## DOC—NOAA

### 23. Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*CFR Citation:* 50 CFR 216.

*Legal Deadline:* None.

*Abstract:* The National Marine Fisheries Service proposes regulations to protect the essential resting habitat of wild spinner dolphins (Stenella longirostris) in the main Hawaiian Islands, and to reduce the human activities that may cause ''take,'' as defined in the Marine Mammal Protection Act (MMPA) and its implementing regulations, or from other actions that otherwise adversely affect the dolphins, by proposing time-area closures in four bays on the island of Hawaii, and one on the island of Maui.

*Statement of Need:* NMFS is concerned about the cumulative impacts on Hawaiian spinner dolphin populations from human interactions. Human interactions with dolphins in their resting habitats has increased over the past decade, with spinner dolphins now being the target of viewing or swim-with-wild-dolphins tours on a daily basis. Because spinner dolphins routinely use the same habitats, and stay in the bays for most of the day to rest, these same animals may be disturbed multiple times per day from the multiple tours that seek these animals daily. The unauthorized taking of spinner dolphins is occurring at these

bays, with many adverse impacts as a result including: behavioral changes, shorter resting periods, and displacement from primary resting habitats. By protecting the essential resting habitat of the spinner dolphins, NMFS proposes to prevent the taking of these animals.

*Summary of Legal Basis:* All marine mammals are protected under the Marine Mammal Protection Act (MMPA). NMFS is proposing these regulations pursuant to its rulemaking authority under MMPA 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1372 *et seq.,* which generally prohibits the take of any marine mammals; and 16 U.S.C. 1382 *et seq.*

*Alternatives:*

1. No Action.
2. Regulate human behaviors and activities.
3. Implement time-area closures in specified spinner dolphin resting habitats.
4. Combine limits on specified human behaviors with time-area closures.
5. Full closure of all identified spinner dolphin resting habitats.
6. Codify the West Hawaii Voluntary Standards for Marine Tourism.

*Anticipated Cost and Benefits:* The primary benefit of this action would be to reduce the unauthorized taking of spinner dolphins in their primary resting habitat. These animals are being disturbed in an area that is significant to their health, reproduction and survival. Managing the amount of interactions humans can have with spinner dolphins will help protect the animals in their natural environment. Costs with this proposed rule would affect humans as their use of these particular bays would be limited. Commercial tour operators, kayak companies, and spiritual retreat operators may be negatively economically impacted. The public at large would not be allowed to engage in activities in the closure areas, and they may therefore associate a cost with this proposed action.

*Risks:* No risks to public health, safety or the environment were identified with implementation of this rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 12/12/05 | 70 FR 73426 |
| ANPRM Comment Period End. | 01/11/06 | |
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Melissa Andersen. Fishery Biologist, Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 713–2521, *Email: melissa.andersen@noaa.gov.*

*RIN:* 0648–AU02

## DOC—NOAA

### 24. Designation of Critical Habitat for the North Atlantic Right Whale

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 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, Dec. 27, 2006; 73 FR 12024, Mar. 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; Apr. 8, 2008). At this time, NMFS is preparing a proposal to designate critical habitat for the North Atlantic right whale.

*Statement of Need:* Under section 4 of the Endangered Species Act, NOAA Fisheries is required to designate critical habitat for newly listed species.

*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 ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–1401, *Fax:* 301 427–2523, *Email: marta.nammack@noaa.gov.*

*RIN:* 0648–AY54

## DOC—NOAA

### 25. Regulatory Amendments To Implement the Shark Conservation Act and Revise the Definition of Illegal, Unreported, and Unregulated Fishing

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1826d to 1826k

*CFR Citation:* 50 CFR 300.

*Legal Deadline:* Final, Statutory, January 4, 2012, The rule needs to be published by December 4, 2011, due to the 30-day delay in effectiveness.

*Abstract:* NMFS is amending identification and certification procedures under the High Seas Driftnet Fishing Moratorium Protection Act to help achieve shark conservation in international fisheries. NMFS must identify nations whose fishing vessels

have engaged in high seas fisheries targeting or incidentally catching sharks not subject to a regulatory program for the conservation of sharks comparable to that of the United States, taking into account different conditions, as required under the Shark Conservation Act (Pub. L. 111–348). NMFS would subsequently certify whether identified nations have adopted regulatory programs governing the conservation of sharks that are comparable to U.S. programs, taking into account different conditions, and established management plans for sharks. The absence of sufficient steps may lead to prohibitions on the importation of certain fisheries products into the United States and other measures.

NMFS is also amending the regulatory definition of ''illegal, unreported, and unregulated fishing'' under the High Seas Driftnet Fishing Moratorium Protection Act.

The procedures for identification and certification would entail a multilateral approach of consultations and negotiations with other nations to achieve shark conservation.

This action is not expected to have adverse economic impacts, and any such impacts would be well below the economic threshold of impact pursuant to E.O. 12866. In addition, there are no novel legal or policy issues associated with this action since identification and certification procedures have already been established in regulations (50 CFR part 300). However, this action is significant under the meaning of E.O. 12866 because it could lead to trade restrictive measures applied against foreign nations.

*Statement of Need:* These regulatory amendments are required to implement the international provisions of the Shark Conservation Act to identify and certify nations whose vessels are engaged in shark finning and/or fishing for sharks in a manner that is not consistent with international management efforts. Additionally, this rule would revise the definition of Illegal, Unreported, and Unregulated (IUU) Fishing in response to comments on a prior rulemaking (0648–AV51) that set out the regulatory definition of IUU fishing.

*Summary of Legal Basis:* Shark Conservation Act (Pub. L. 111–348) and 16 U.S.C. 1826d to 1826k.

*Alternatives:* This action is categorically excluded from analysis under the National Environmental Policy Act because the proposed action is the promulgation of regulations of an administrative, financial, legal, technical, or procedural nature and the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and for which any potential cumulative effects are negligible. Consequently, no alternatives were analyzed.

*Anticipated Cost and Benefits:* This action is not expected to have adverse economic impacts, and any such impacts would be well below the economic threshold of impact pursuant to E.O. 12866. Potential benefits, if any, would be indirect and accrue to internationally managed fisheries by strengthening Regional Fishery Management Organizations and by restricting U.S. market access through prohibiting illegally harvested fishery products.

*Risks:* There are no novel legal or policy issues associated with this action since identification and certification procedures have already been established in regulations (50 CFR part 300). However, this action is significant under the meaning of E.O. 12866 because it could lead to trade restrictive measures applied against foreign nations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 06/00/12 | |

*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.

*Agency Contact:* Christopher Rogers, Division Chief, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–9090, *Fax:* 301 713–9106, *Email:* *christopher.rogers@noaa.gov.*

*RIN:* 0648–BA89

**BILLING CODE 3510–12–P**

## DEPARTMENT OF DEFENSE

*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 1,434,450 military personnel and 782,386 civilians assigned as of March 31, 2011, 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 (E.O.) 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, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in E.O. 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 E.O. 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 (E.O.) 12866.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review (January 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final

retrospective review of regulations plan. All are of particular interest to small businesses. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.regulations.gov/exchange/topic/eo-13563*

• 0750–AH19—Accelerated Payments to Small Business (DFARS Case 2011–D008)

• 0750–AH44—Extension of DoD Mentor-Protégé Pilot Program (DFARS Case 2011–D050)

• 0750–AH45—Deletion of Text Implementing 10 U.S.C. 2323 (DFARS Case 2011–D038)

*Administration Priorities*

1. Rulemakings That Are Expected To Have High Net Benefits Well in Excess of Costs

The Department plans to—

• Finalize the DFARS rule to permit offerors to propose an alternative line item structure to reflect the offeror's business practices for selling and billing commercial items, and initial provisioning of spares for weapon systems. This rule should prevent misalignment of line item structure in receipt documents and invoices, which causes manual intervention and can delay payment;

• Finalize the DFARS rule to conduct discussions prior to contract award for source selections of $100 million or more. A DoD study showed a significant positive correlation between high-dollar source selections that were conducted without discussions and protests sustained. This rule should reduce the number of protests filed and their resultant costs to contractors and the Government; and

• Finalize the DFARS rule to implement section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 establishing a pilot program to acquire military purpose nondevelopmental items. This pilot program is designed to test whether the streamlined procedures, similar to those available for commercial items, can serve as an effective incentive for nontraditional defense contractors to (1) channel investment and innovation into areas that are useful to DoD and (2) provide items developed exclusively at private expense to meet validated military requirements. (2011–D034)

2. Rulemakings That Promote Open Government and Use Disclosure as a Regulatory Tool

The Department plans to—

• Finalize the Federal Acquisition Regulation (FAR) to inform contractors of the statutory requirement of section 3010 of Public Law 111–212, to make Federal Awardee Performance and Integrity Information System information, excluding past performance reviews, available to the public;

• Finalize the FAR rule that implements section 743 of Division C of the Fiscal Year 2010 Consolidated Appropriations Act, which requires agencies to develop inventories of their service contacts, including number and work location of contractor employees;

• Finalize the FAR rule to establish standard evaluation factors and rating scales for documenting contractor performance;

• 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, Web site 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;

• Finalize the FAR rule that implements section 811 of the NDAA for FY 2010, which requires a written justification and approval prior to awarding a sole-source contract in an amount over $20 million under the 8(a) program; and

• Finalize the DFARS rule to implement section 814 of the NDAA for FY 2010, which imposed additional reporting requirements for awards of single task and delivery-order contracts.

3. Rulemakings That Streamline Regulations and Reduce Unjustified Burdens

The Department plans to—

• Finalize the DFARS rule to remove the requirement to use DD Forms 2626 and 2631 to report past performance information for construction and architect-engineer services and to instead provide the performance reports electronically;

• Finalize the DFARS rule to amend the definition of ''qualifying country end product'' to make it comparable to the change in the definition of ''domestic end product'' by waiving the component test for qualifying country end products;

• Finalize the DFARS rule to update appendix F, Material Inspection and Receiving Report, to incorporate procedures for using the electronic Wide Area WorkFlow (WAWF) Receiving Report, which is required for use in most contracts in lieu of the DD Form 250. WAWF is the electronic tool for documenting receipt and acceptance of supplies and services and for electronic invoicing; and

• Finalize the rule for DFARS coverage of patents, data, and copyrights, which significantly reduces the amount of regulatory text and the number of required clauses.

4. Efforts To Minimize Burdens on Small Businesses

Of interest to Small Businesses are regulations to—

• Finalize the DFARS rule to accelerate payments to all DoD small business contractors.

5. Rules To Be Modified, Streamlined, Expanded, or Repealed To Make the Agency's Regulatory Program More Effective or Less Burdensome in Achieving the Regulatory Objectives

• DFARS Case 2011–D028—Removes component test for COTS items that are qualifying country end products. Require only determination of country of origin of the COTS item, not the components of the COTS item.

• DFARS Case 2011–D013—Only One Offer. Motivate effective competition by driving behavior to allow sufficient time for submission of offers.

• DFARS Case 2011–D008—Accelerate Small Business Payments. Accelerate payments to all small businesses, not just small disadvantaged businesses.

• DFARS Case 2010–D018—Responsibility and Liability for Government Property. Includes fixed-price contracts that are awarded on the basis of adequate competition on the list of contract types whereby contractors are not held liable for loss of Government property.

• DFARS Case 2010–D001—Patents, Data, and Copyrights. Rewrite of DFARS part 227, Patents, Data, and Copyrights.

• DFARS Case 2009–D026—Multiyear Contracting. Comprehensive review of DFARS subpart 217.1 to simplify and clarify the coverage of multiyear acquisition.

*Specific DoD Priorities*

For this regulatory plan, there are six 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, energy projects, education, and health affairs.

1. Defense Procurement and Acquisition Policy

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

- Revise the DFARS to specify circumstances under which the U.S. Government needs to obtain data other than certified cost or pricing data from Canadian contractors via the Canadian Commercial Corporation.
- Revise the DFARS to provide detailed guidance and instruction to DoD contracting officers for the use of DoD's performance-based payments analysis tool when contemplating the use of performance-based payments on new fixed-price type contracts.
- Revise the DFARS to implement a DoD Better Buying Power initiative by providing a proposal-adequacy checklist in a provision to ensure offerors take responsibility for providing thorough, accurate, and complete proposals.
- Revise the DFARS to address standards and structures for the safeguarding of unclassified DoD information.
- Revise the DFARS to implement the DoD Better Buying Power initiative to address acquisitions using competitive procedures in which only one offer is received. With some exceptions, the contracting officer must resolicit for an additional period of at least 30 days, if the solicitation allowed fewer than 30 days for receipt of proposals and only one offer is received. If a period of at least 30 days was allowed for receipt of proposals, the contracting officer must determine prices to be fair and reasonable through price or cost analysis or enter negotiations with the offeror.
- Revise the DFARS to implement a DoD Better Buying Power initiative by requiring contractors to submit annual technical descriptions for their independent research and development projects.
- Revise the DFARS to establish means for cleared contractors, who have unclassified U.S. Government information resident on or transiting through contractor information systems, to share cyber threat information.
- Revise the FAR to implement section 841 of the National Defense Authorization Act for FY 2009, which required a review of the FAR coverage on organizational conflicts of interest (OCIs).
- Finalize the DFARS rule to clarify DoD policy regarding the definition and administration of contractor business systems to improve the effectiveness of DCMA/DCAA oversight of contractor business systems;
- Finalize the DFARS rule to implement a DoD Better Buying Power initiative to increase the use of fixed-price incentive (firm target) contracts;

2. 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, Combat Operations or Other Significant Military Operations. In order to meet the mandate of section 862 of the 2008 National Defense Authorization Act (NDAA) (as amended by section 813 (b) of the 2010 NDAA and section 832 of the 2011 NDAA), 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, combat operations, or other significant military 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, prepared a final rule, which included the responses to the public comments, and incorporated changes to the interim final rule, where appropriate. The final rule also incorporated the legislative changes required by section 813 (b) of the 2010 NDAA and section 832 of the 2011 NDAA. The final rule was published August 11, 2011 (76 FR 49650), with an effective date of September 12, 2011.
- *Interim Final Rule:* Operational Contract Support. This rule will incorporate the latest changes and lessons learned into policy and procedures for operational contract support (OCS), including OCS program management, contract support integration, and the integration of DoD contractor personnel into contingency operations outside the United States. DoD anticipates publishing the interim final rule in the first or second quarter of FY 2012.

3. Installations and Environment, Department of Defense

The Department of Defense will publish a rule regarding the process for evaluating the impact of certain types of structures on military operations and readiness:

- *Interim Final Rule:* This rule implements policy, assigns responsibilities, and prescribes procedures for the establishment and operation of a process for evaluation of proposed projects submitted to the Secretary of Transportation under section 44718 of title 49, United States Code. The evaluation process is established for the purpose of identifying any adverse impact of proposed projects on military operations and readiness, minimizing or mitigating such adverse impacts, and determining if any such projects pose an unacceptable risk to the national security of the United States. The rule also includes procedures for the operation of a central DoD siting clearinghouse to facilitate both informal and formal reviews of proposed projects. This rule was required by section 358 of Public Law 111–383. DoD anticipates publishing an interim final rule in fourth quarter of FY 2011.

4. Military Community and Family Policy, Department of Defense

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

- *Final Rule:* Voluntary Education Programs. In this rule, the Department of Defense (DoD) implements policy, assigns responsibilities, and prescribes procedures for the operation of voluntary education programs within DoD. Several of the subject areas in this rule include: 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 (MOU) between DoD and educational institutions receiving tuition assistance payments; and procedures for other education programs for Service members and their adult family members. The new requirement for a signed MOU with DoD from participating educational institutions will be effective January 1, 2012. The Department published a proposed rule on August 6, 2010 (75 FR 47504 to 47514). The comment period ended October 10, 2010, which contained a total of 110 comments. Several comments from the general public were accepted, including suggestions to clarify terms such as ''one single tuition rate'' and a ''needs assessment.'' DoD anticipates publishing the final rule during the first quarter of FY 2012.

5. 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 TRICARE:* Reimbursement of Sole Community Hospitals and Adjustment to Reimbursement of Critical Access Hospitals. The rule implements the statutory provision in 10 United States Code 1079(j)(2) 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 rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by sole community hospitals. It is projected that implementation of this rule will result in a health care savings of $31 million per year with proposed phase-in period and an estimated initial start-up cost of $200,000. Any on-going administrative costs would be minimal and there are no applicable risks to the public. The proposed rule was published July 5, 2011 (76 FR 39043). The comment period ended on September 6, 2011. DoD anticipates publishing a final rule in the second quarter of FY 2012.

• *Final rule on TRICARE:* TRICARE Young Adult. The purpose of this interim final rule is to establish the TRICARE Young Adult program implementing section 702 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383) to provide medical coverage to unmarried children under the age of 26 who no longer meet the age requirements for TRICARE eligibility (age 21, or 23 if enrolled in a full-time course of study at an institution of higher learning approved by the Secretary of Defense) and who are not eligible for medical coverage from an eligible employer-sponsored plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986). If qualified, they can purchase TRICARE Standard/Extra or TRICARE Prime benefits coverage. The particular TRICARE plan available depends on the military sponsor's eligibility and the availability of the TRICARE plan in the dependent's geographic location. It is projected that implementation of this rule will result in an estimated initial start-up cost of $3,000,000. Premiums are designed to cover the anticipated health care costs, as well as ongoing administrative costs. The interim final rule was published April 27, 2011 (76 FR 23479), with an immediate effective date. The comment period ended June 27, 2011. DoD anticipates publishing a final rule in the first quarter of FY 2012.

6. Personnel and Readiness, Department of Defense

The Department of Defense will publish a rule regarding Service Academies:

• *Final Rule:* Service Academies. This rule establishes policy, assigns responsibilities, and prescribes procedures for Department of Defense oversight of the Service Academies. Administrative costs are negligible and benefits are clear, concise rules that enable the Secretary of Defense to insure that the Service Academies are efficiently operated and meet the needs of the armed forces. The proposed rule was published October 18, 2007 (72 FR 59053), and included policy that has since changed. The final rule, particularly the explanation of separation policy, will reflect recent changes in the Don't Ask, Don't Tell policy. DoD anticipates publishing the final rule in the second quarter of FY 2012.

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION (DOE)

*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 pertaining to education at all levels to a wide range of stakeholders and individuals, including State educational agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, postsecondary students, members of the public, families, and many others. These efforts are helping to ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education and that students attending postsecondary institutions are prepared for a profession or career.

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 innovative programs, research and evaluation activities, technical assistance, and the dissemination of research and evaluation findings to improve the quality of education.

Overall, the laws, regulations, and programs we administer will affect nearly every American during his or her life. Indeed, in the 2011 to 2012 school year, about 55 million students will attend an estimated 99,000 elementary and secondary schools in approximately 13,800 public school districts, and about 21 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 monitoring 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 families, students, and educators; State, local, and tribal governments; and neighborhood groups, community-based early learning programs, elementary and secondary schools, colleges, rehabilitation service providers, adult education providers, professional associations, advocacy 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 with the opportunity to submit comments 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, in part, to invest in critical sectors, including education. ARRA laid the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and school system capacity, and increased productivity and effectiveness. ARRA provided funding for several key discretionary grant programs, including the Race to the Top Fund and the Investing in Innovation Fund (i3) programs.

The Race to the Top Fund program, the largest competitive education grant program in U.S. history, is designed to provide incentives to States to implement system-changing reforms that result in improved student achievement, narrowed achievement gaps, and increased high school graduation and college enrollment rates. Congress authorized and provided $4.35 billion for ARRA in 2010, and the Department awarded approximately $4 billion in Race to the Top State grant funds in two phases. The Department awarded $600 million to Delaware and Tennessee under the Race to the Top Phase 1 competition and approximately $3.4 billion to the winners of the Phase 2 competition: The District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island.

In announcing the winners of the Race to the Top Phase 2 competition, the Secretary noted that ''[we] had many more competitive applications than money to fund them in this round'' and expressed the hope that any Race to the Top funding included in the Department's FY 2011 appropriations would be available for Race to the Top Phase 3 awards. In particular, there were nine finalists in the Phase 2 competition that did not receive funding despite submitting bold and ambitious plans for comprehensive reforms and innovations in their systems of elementary and secondary education. These nine finalists were: Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina.

On April 15, 2011, President Obama signed into law Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (FY 2011 Appropriations Act), which made $698.6 million available for the Race to the Top Fund, authorized the Secretary to make awards on ''the basis of previously submitted applications,'' and amended ARRA to permit the Secretary to make grants for improving early childhood care and learning under the program.

Race to the Top—Early Learning Challenge (RTT–ELC). On May 25, 2011, Secretary Duncan and the Secretary of Health and Human Services, Kathleen Sebelius, announced the RTT–ELC, a new $500 million State-level grant competition to be held in 2011 and authorized under ARRA and the FY 2011 Appropriations Act. The Departments of Education and Health and Human Services are administering this competition jointly. At its core is a strong commitment by the Administration to stimulate a national effort to make sure all children enter kindergarten ready to succeed. Through the RTT–ELC, the Administration seeks to help close the achievement gap between children with high needs and their peers by supporting State efforts to build strong systems of early learning and development that provide increased access to high-quality programs for the children who need it most. This competition represents an unprecedented opportunity for States to focus deeply on their early learning and development systems for children from birth through age five. It is an opportunity to build a more unified approach to supporting young children and their families—an approach that increases access to high-quality early learning and development programs and services, and helps ensure that children enter kindergarten with the skills, knowledge, and dispositions toward learning that they need to be successful.

The Departments of Education and Health and Human Services have published requirements for the FY 2011 competition and will complete the competition and make awards by the end of 2011.

Race to the Top Phase 3. On May 25, 2011, the Department also announced that approximately $200 million of the FY 2011 Race to the Top funds would be made available to some or all of the nine unfunded finalists from the 2010 Race to the Top Phase 2 competition. The Department recognizes that $200 million is not sufficient to support full implementation of the plans submitted during the Phase 2 competition, and therefore believes that making these funds available to the remaining nine finalists is the best way to create incentives for these States to carry out the bold reforms proposed in their applications. We have issued final eligibility requirements for the nine unfunded finalists to apply for Race to the Top Phase 3 funds.

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

In 2010, the Administration released the Blueprint for Reform: *The Reauthorization of the Elementary and Secondary Education Act, the President's plan* for revising the Elementary and Secondary Education Act of 1965 (ESEA) and replacing the No Child Left Behind Act of 2001 (NCLB). 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. In the interim, we may propose amendments to our current regulations implementing the ESEA.

Additionally, as we continue to work with Congress on reauthorization of the ESEA, we are currently implementing a plan to provide flexibility on certain provisions of current law for States and school districts that are willing to embrace reform. The mechanisms we are implementing will ensure continued accountability and commitment to quality education for all students while at the same time providing States and school districts with increased flexibility to implement State and local reforms to improve student achievement.

C. Higher Education Act of 1965, as Amended

Changes to the FFEL and Direct Loan Programs. 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 Higher Education Act of 1965, as amended (HEA). One of the most significant changes made by SAFRA is that it ended new loans under the Federal Family Education Loan (FFEL) Program authorized by title IV, part B, of the HEA as of July 1, 2010.

On May 5, 2011, ED announced through a notice in the **Federal Register** that it was beginning a negotiated rulemaking process to streamline the loan program regulations by repealing unnecessary FFEL Program regulations and incorporating and modifying necessary requirements within the Direct Loan Program regulations, as appropriate. ED held four public hearings in May 2011 to obtain public feedback on proposed amendments, as well as on possible amendments to other ED regulations, including those governing income-based and income-contingent loan repayment plans and loan discharges based on the total and permanent disability of the borrower. Based on the feedback received from these hearings, ED will soon form a negotiated rulemaking committee to consider proposed amendments and intends to conduct these negotiations in 2012.

Approval of New Gainful Employment Programs. Over the last 2 years, the Department has conducted two significant rulemakings to enhance its program integrity regulations related to the title IV, student aid programs. As part of this effort, on October 29, 2010, the Department issued regulations that included requirements for an institution to notify the Department before offering a new educational program that provides training leading to gainful employment in a recognized occupation (Gainful Employment—New Programs). The Department established the notification requirement out of concern that some institutions might attempt to circumvent proposed regulations regarding gainful employment standards by adding new programs before those standards could take effect. The Department explained that the notification process requirements were intended to remain in effect until the final regulations that established eligibility measures for gainful employment programs would take effect.

We published the final regulations establishing the gainful employment eligibility measures on June 13, 2011 (Gainful Employment—Debt Measures). In those regulations, the Department established measures for gainful employment programs that are intended to identify the worst performing programs. We believe that when these new regulations go into effect on July 1, 2013, the notification process for all new gainful employment programs established in the Gainful Employment—New Programs final regulations will no longer be needed. Accordingly, the Department has issued a new NPRM, which among other changes, proposes to reduce burden for institutions by amending the Gainful Employment—New Programs final regulations to establish a smaller group of gainful employment programs for which an institution must obtain approval from the Department.

Title II of the HEA. The Secretary intends to develop regulations under title II of the HEA to streamline the program, institutional, and State report cards; prescribe data quality standards to ensure reliability, validity, and accuracy of the data submitted; and establish standards for identifying low-performing teacher preparation programs.

D. Individuals With Disabilities Education Act

We have issued final regulations that revise the regulations implementing the Early Intervention Program for Infants and Toddlers with Disabilities authorized under part C of the Individuals with Disabilities Education Act (IDEA) to make changes needed for the appropriate implementation of the early intervention program. The final part C regulations incorporate provisions from the 2004 amendments to part C of the IDEA. Additionally, the final regulations provide States with flexibility in some areas, while ensuring State accountability to improve results, and needed services for infants and toddlers with disabilities and their families.

The Department has also issued a notice of proposed rulemaking to revise the regulations implementing the Assistance to States for the Education of Children with Disabilities program authorized under part B of the IDEA and intends to issue final regulations in the coming year.

Specifically, over the last 6 months, we engaged in a review of one particular provision of the part B regulations, relating to the use of public benefits or insurance to pay for services provided to children under part B. IDEA and the part B regulations allow public agencies to use public benefits or insurance (*e.g.,* Medicaid) to provide or pay for services required under part B with the consent of the parent of a child who is enrolled in a public benefits or insurance program. Public insurance is an important source of financial support for services required under part B. With respect to the use of public insurance, our current regulations specifically provide that a public agency must obtain parental consent each time access to public benefits or insurance is sought.

We are now proposing to amend the regulations to provide that, instead of having to obtain parental consent each time access to public benefits or insurance is sought, the public agency responsible for providing special education and related services to a child would be required, before accessing a child's or parent's public benefits or insurance, to provide written notification to the child's parents. The notification would inform parents of their rights under the part B regulations regarding the use of public benefits or insurance to pay for part B services, including information about the limitations on a public agency's billing of public benefits or insurance programs, as well as parents' rights under the Family Educational Rights and Privacy Act and IDEA to consent prior to the disclosure of personally identifiable information.

We are proposing these amendments to reduce unnecessary burden on a public agency's ability to access public benefits or insurance in appropriate circumstances but still maintain critical parent protections, and we do this for

several reasons. Specifically, we are mindful of the importance of ensuring that parents have sufficient information to make decisions about a public agency's use of their public benefits or insurance and the disclosure of their child's educational records for that purpose. At the same time, these proposed amendments are designed to address the concern expressed to the Department by many State personnel and other interested parties that, since the publication of the part B regulations in 2006, the inability to obtain parental consent has contributed to public agencies' failure to claim all of the Federal financial assistance available for part B services covered under Medicaid. In addition, public agencies have expressed concern over using limited resources and the significant administrative burden of obtaining parental consent for the use of Medicaid and other public benefits or insurance each time that access to public benefits or insurance is sought. Consequently, many of these parties have requested that the Department remove the parental consent requirement.

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 final regulations in the coming year 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 reauthorize the Adult Education and Family Literacy Act (AEFLA) (title II of the Workforce Investment Act of 1998) and the Rehabilitation Act of 1973 (title IV of the Workforce Investment Act of 1998). 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 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. Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of the entries on this list may be completed actions, which do not appear in *The Regulatory Plan.* However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on *Reginfo.gov* in the Completed Actions section for that agency. These rulemakings can also be found on *Regulations.gov.* The final agency plans can be found at: *http://www2.ed.gov/about/open.html.*

| RIN | Title of Rulemaking | Do we expect this rulemaking to significantly reduce burden on small businesses? |
|---|---|---|
| 1820–AB64 | Assistance to States for the Education of Children With Disabilities | No. |
| 1840–AD01 | High School Equivalency Program and College Assistance Migrant Program, the Federal TRIO Programs, and Gaining Early Awareness, and Readiness for Undergraduate Program. | No. |
| 1848–AD02 | Program Integrity Issues | No. |
| 1840–AD05 | Title IV of the Higher Education Act of 1965, as Amended | No. |
| 1840–AD06 | Program Integrity: Gainful Employment—Measures | No. |
| 1840–AD08 | Titles III and V of the Higher Education Act of 1965, as Amended | No. |
| 1840–AD10 | Application and Approval Process for New Programs | Yes. |
| 1880–AA86 | Family Educational Rights and Privacy | No. |
| 1880–AA84 | The Freedom of Information Act | No. |
| 1890–AA14 | Direct Grant Programs and Definitions That Apply to Department Regulations | No. |
| 1890–AA16 | Department of Education Acquisition Regulations | No. |

IV. 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 similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- 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 regulating.
- To the extent possible, establish performance objectives rather than specify compliance behavior.
- Encourage flexibility, to the extent possible, and as needed to enable institutional forces to achieve desired results.

## ED—OFFICE OF POSTSECONDARY EDUCATION (OPE)

*Proposed Rule Stage*

### 26. Title IV of the Higher Education Act of 1965, as Amended

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 20 U.S.C. 1070a; 20 U.S.C. 1071 to 1087–4; 20 U.S.C. 1087a to 1087j; 20 U.S.C. 1098e; Pub. L. 111–152

*CFR Citation:* 34 CFR chapter VI.

*Legal Deadline:* None.

*Abstract:* The Secretary proposes to amend the title IV, HEA student assistance regulations to (1) reflect that, as of July 1, 2010, under title II of the Health Care and Education Reconciliation Act of 2010 (the SAFRA Act), no new Federal Family Education Loan Program loans will be made and (2) to reflect other changes to improve the effectiveness and efficiency of the student loan programs, particularly with regard to the discharge of loans for persons with total and permanent disabilities.

*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) 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 included in the notice of proposed rulemaking.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* David Bergeron, Department of Education, Office of Postsecondary Education, Room 8022, 1990 K Street NW., Washington, DC 20006, *Phone:* 202 502–7815, *Email:* *david.bergeron@ed.gov.*

*RIN:* 1840–AD05

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY (DOE)

*Fall 2011 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 2011 have an estimated net benefit to the Nation of up to $16.6 billion over 30 years. By 2045, these standards are expected to save enough energy to operate all U.S. homes for more than 7 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 schedule outlines how DOE will address the various appliance standards rulemakings necessary to meet statutory requirements established in EPCA, the Energy Policy Act of 2005 (EPACT 2005), and the Energy Independence and Security Act of 2007 (EISA 2007).

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 2011 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/buildings/appliance_standards/schedule_setting.html.* The August 2011 report identifies all products for which DOE has missed the deadlines established in EPCA (42 U.S.C. section 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 are expected to provide significant benefits to the Nation for product categories including: Fluorescent lamp ballasts, manufactured housing, battery chargers and external power supplies, walk-in coolers and freezers, and incandescent reflector lamps. DOE believes that the benefits to the Nation of the proposed energy standards for fluorescent lamp ballasts (energy savings, consumer average lifecycle cost savings, national net present value increase, and emission reductions) outweigh the costs (loss of industry net present value and life-cycle cost increases for some consumers). DOE estimates that these regulations will produce an energy savings between 3.7 and 6.3 quads over 30 years. The benefit to the Nation will be between $8.1 billion (7% discount rate) and $24.7 billion (3% discount rate). DOE believes that the proposed energy standards for manufactured housing, battery chargers and external power supplies, walk-in coolers and freezers, and incandescent reflector lamps will also be beneficial to the Nation. However, 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.

## DOE—ENERGY EFFICIENCY AND RENEWABLE ENERGY (EE)

*Proposed Rule Stage*

### 27. Energy Efficiency Standards for Battery Chargers and External Power Supplies

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 6295(u)

*CFR Citation:* 10 CFR 430.

*Legal Deadline:* Final, Statutory, July 1, 2011.

*Abstract:* In addition to the existing general definition of ''external power supply,'' the Energy Independence and Security Act of 2007 (EISA) defines a ''Class A external power supply'' and sets efficiency standards for those products. EISA directs DOE to publish a final rule to determine whether the standards set for Class A external power supplies should be amended. EISA also requires DOE to issue a final rule prescribing energy conservation standards for battery chargers, if technologically feasible and economically justified.

*Statement of Need:* The Energy Policy and Conservation Act (EPCA) requires minimum energy 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 directs DOE to conduct a rulemaking to establish energy conservation standards for battery chargers or determine that no energy conservation standard is technically feasible and economically justified (42 U.S.C. 6295 (u)(1)(E)(i) and (ii)).

In addition to the existing general definition of ''external power supply,'' EPCA defines a ''Class A external power supply'' (42 U.S.C. 6291(36)(C)) and sets efficiency standards for those products (42 U.S.C. 6295(u)(3)). EPCA directs DOE to publish a final rule to determine whether amended standards should be set for Class A external power supplies, or new standards set for other classes of external power supplies. If such determination is positive, DOE must include any amended or new standards as part of that final rule.

DOE is bundling the two requirements to establish energy conservation standards for battery chargers and to consider amended or new standards for external power supplies into a single rulemaking.

*Alternatives:* The statute requires the Department 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, the Department 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. | 06/04/09 | 74 FR 26816 |
| Comment Period End. | 07/20/09 | |
| Notice: Public Meeting, Data Availability. | 09/15/10 | 75 FR 56021 |
| Comment Period End. | 10/15/10 | |
| Final Rule (Technical Amendment). | 09/19/11 | 76 FR 57897 |
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*URL for More Information:* *www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

*Agency Contact:* Victor Petrolati, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 586–4549, *Email: victor.petrolati@ee.doe.gov.*

*Related RIN:* Related to 1904–AB75.

*RIN:* 1904–AB57

## DOE—EE

### 28. Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 6313(f)(4)

*CFR Citation:* 10 CFR 431.

*Legal Deadline:* Final, Statutory, January 1, 2012.

*Abstract:* The Energy Independence and Security Act of 2007 amendments to the Energy Policy and Conservation Act require that DOE establish maximum energy consumption levels for walk-in coolers and walk-in freezers.

*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:* Section 312 of the Energy Independence and Security Act of 2007 (EISA) establishes definitions and standards for walk-in coolers and walk-in freezers. EISA directs DOE to establish performance-based standards not later than January 1, 2012 (42 U.S.C. 6313 (f)(4)).

*Alternatives:* The statute requires the Department 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, the Department 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 notice of proposed rulemaking for this equipment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice: Public Meeting, Framework Document Availability. | 01/06/09 | 74 FR 411 |
| Notice: Public Meeting, Data Availability. | 04/05/10 | 75 FR 17080 |
| Comment Period End. | 05/20/10 | |
| NPRM | 12/00/11 | |
| Final Action | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Additional Information:* Comments pertaining to this rule may be submitted electronically to *WICF–2008–STD–0015@ee.doe.gov.*

*URL for More Information: www.eere.energy.gov/buildings/appliance_standards/commercial/wicf.html.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Charles Llenza, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 586–2192, *Email: charles.llenza@ee.doe.gov.*

*Related RIN:* Related to 1904–AB85.

*RIN:* 1904–AB86

## DOE—EE

### 29. Energy Efficiency Standards for Manufactured Housing

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 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 | 02/00/12 | |
| Final Action | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*URL for More Information: www.energycodes.gov/status/mfg_housing.stm.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Ronald B. Majette, Program Manager, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 586–7935, *Email: ajett.majette@hq.doe.gov.*

*RIN:* 1904–AC11

## DOE—EE

### 30. Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 6291(30)(C)(ii) and (F); 42 U.S.C. 6295(i)

*CFR Citation:* 10 CFR 430.

*Legal Deadline:* None.

*Abstract:* Amendments to Energy Policy and Conservation Act (EPCA) in the Energy Independence and Security Act of 2007 (EISA) amended the energy conservation standards to extend coverage to certain classes of IRL that had previously been outside the statutory definition of ''incandescent reflector lamp'' although these lamps were excluded from the statutory standard levels. However, EISA 2007 authorized DOE to amend these standards if such amendments were warranted. Specifically, as amended, EPCA exempted certain small diameter, ellipsoidal reflector (ER) and bulged reflector (BR) lamps from standards. In June 2009, DOE published a final rule amending existing standards for IRL. In earlier stages of the June 2009 rulemaking, DOE had interpreted its authority with regard to IRL as limited to amending congressionally established standard levels only, and not to the exemptions set by Congress for certain explicitly identified small diameter ER and BR lamps, commonly used in track lighting and recessed cans. On further review, DOE has concluded that DOE has authority to establish efficiency standards for these currently exempt small diameter ER and BR lamps. However, as a practical matter, DOE could not consider these lamps as part of the previous rulemaking because it had not conducted the requisite analyses to set appropriate standard levels. Pursuant to EPCA, DOE is now conducting a rulemaking as to energy conservation standards for certain incandescent reflector lamps (IRL) that have ER or BR bulb shapes, and for certain IRL with diameters less than 2.25 inches.

*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:* Section 322 of the Energy Independence and Security Act of 2007 (EISA) establishes definitions and standards for ER, BR, and BPAR incandescent reflector lamps. (42 U.S.C. 6291(54) to 6291(56), 42 U.S.C. 6295 (i)) Furthermore, section 305 of EISA directs DOE to, not later than 6 years after issuance of any final rule establishing or amending a standard, publish either a notice of determination that standards do not need to be amended or a notice of proposed rulemaking including new proposed standards. (42 U.S.C. 6295 (m))

*Alternatives:* The statute requires the Department 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, the Department 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 notice of proposed rulemaking for this equipment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice: Public Meeting, Framework Document Availability. | 05/03/10 | 75 FR 23191 |
| Comment Period End. | 06/17/10 | |
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*URL for More Information: www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Lucy Debutts, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 287–1604, *Email: lucy.debutts@ee.doe.gov.*

*Related RIN:* Related to 1904–AA92.

*RIN:* 1904–AC15

## DOE—EE

*Final Rule Stage*

### 31. Energy Efficiency Standards for Fluorescent Lamp Ballasts

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 42 U.S.C. 6295(g)

*CFR Citation:* 10 CFR 430.

*Legal Deadline:* Final, Judicial, October 28, 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) and (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:* DOE believes that the benefits to the Nation from energy standards for fluorescent lamp ballasts (energy savings, consumer average lifecycle cost (LCC) savings, national net present value (NPV) increase, and emission reductions) outweigh the burdens (loss of NPV and LCC increases of some small electric motor users). DOE estimates that energy savings from electricity will be between 3.7 and 6.3 quads over 30 years and the benefits to the Nation will be between $8.1 and $24.7 billion.

*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 ..... | 04/11/11 | 76 FR 20090 |
| NPRM Comment Period End. | 06/11/11 | |
| Notice of Data Availability (NODA); Request for Comments. | 08/24/11 | 76 FR 52892 |
| NODA Comment Period End. | 09/14/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Local, State.

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

*URL for More Information: www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_lamp_ballasts.html*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Tina Kaarsberg, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 287–1393, *Email: tina.kaarsberg@ee.doe.gov.*

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

*RIN:* 1904–AB50

BILLING CODE 6450–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

*Statement of Regulatory Priorities for FY 2012*

The Department of Health and Human Services is the Federal Government's principal agency charged with protecting the health of all Americans and providing essential human services, especially for those least able to help

themselves. The Department operates more than 300 programs covering a wide spectrum of activities, manages almost a quarter of all Federal outlays, and administers more grant dollars than all other Federal agencies combined. The Department's major program responsibilities include: Medicare and Medicaid; control and prevention of communicable and chronic disease; support for public health preparedness and emergency response; biomedical research; substance abuse and mental health treatment and prevention; assuring safe and effective drugs, devices, and other medical products; protecting the food supply; assistance to low-income families; the Head Start program; and improving access to health care services to the uninsured, isolated, or medically vulnerable. Currently, the Department is the principal agency charged with implementing one of the President's signature achievements—transformative health care reform through the Affordable Care Act of 2010.

To implement this vast program portfolio, the Department develops an active regulatory agenda each year, driven largely by statutory mandates and interactions with stakeholders. The President also called upon Federal agencies to reform the regulatory process in his January 18, 2011, Executive Order 13563 ''Improving Regulation and Regulatory Review.'' A key directive in that Executive order was to require agencies to conduct an inventory of existing regulations to determine whether such regulations should be modified, streamlined, expanded, or repealed to make an agency's regulatory scheme more effective or less burdensome in achieving its programmatic objectives.

With these regulatory drivers in mind, Secretary Kathleen Sebelius has worked with HHS agencies to craft a regulatory agenda that reflects her commitments to implementing meaningful health care reform, access to health care coverage, and high value health care services that are safe and effective for all Americans. The agenda also reflects her other strategic initiatives, which include securing and maintaining health care coverage for all Americans; improving quality and patient safety; more rapidly responding to adverse events; implementing a 21st century food safety system; helping Americans achieve and maintain healthy living habits; advancing scientific research; and streamlining regulations to reduce the regulatory burden on industry and States. Within this agenda, the Secretary has also been mindful of the need to reform the ongoing regulatory process through retrospective review of existing regulations, and this agenda reflects her commitment to that review by incorporating some of the most significant burden reduction reforms across all Federal agencies. In fact, of the $10 billion in savings from retrospective regulatory review across all Federal agencies announced by the Administrator of the Office of Information and Regulatory Affairs, $5 billion was attributable to regulations contained within this Department's current regulatory agenda.

What follows is an overview of the Department's regulatory priorities for FY 2012 and some of the regulations on the agenda that best exemplify these priorities.

## Making Health Insurance Coverage More Secure for Those Who Have Insurance and Extending Coverage to the Uninsured

As a result of the Affordable Care Act, the Department is making affordable health care coverage more stable and secure through insurance market reforms designed to protect consumers against unreasonable insurance premium increases, provide them with more comprehensive and understandable information with which to make decisions, and enable eligible consumers to receive financial support for health insurance easily and seamlessly. In 2014, all people who suffer from chronic conditions will no longer be excluded from insurance coverage or charged higher premiums because of a pre-existing condition or medical history.

Already, insurers are prohibited from putting lifetime dollar limits and restrictive annual caps on what they will pay for health care services needed by the people they insure, ensuring that those people have access to medical care throughout their lives, especially when it is most needed. HHS is working with States to help identify and put a stop to unreasonable health insurance premium rate increases and will require new health plans to implement a comprehensive appeals process for those beneficiaries who have been denied coverage or payment by the insurance plan. New health insurers will also be required to spend the majority of health insurance premiums on medical care and health care quality improvement, not on administration and overhead. As well, the Affordable Care Act is providing reimbursement to employers that offer health benefits to early retirees, providing insurance coverage through the Pre-existing Condition Insurance Plan to people who would otherwise be locked out of the insurance market because of their pre-existing health conditions, and requiring plans that offer dependent coverage to make that coverage available to young adults up to age 26.

Moving forward this year, the Department will continue to implement the Affordable Care Act to promote consumer protections, improve quality and safety, provide incentives for more efficient care delivery, and slow the growth of health care costs. The Centers for Medicare & Medicaid Services (CMS) will finalize three rules that will expand access to health insurance and provide consumers with better options and information about insurance:

- CMS will issue standards for the establishment of the Affordable Insurance Exchanges (Exchanges) to provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price and quality. These Exchanges will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.
- Another rule helps to make coverage more secure by offsetting market uncertainty and risk selection to maintain the viability of Exchanges. Under risk adjustment, HHS, in consultation with the States, will establish criteria and methods to be used by States in determining the actuarial risk of plans within a State to minimize the negative effects of adverse selection. Under reinsurance, all health insurance issuers, and third-party administrators on behalf of self-insured group health plans, will contribute to a nonprofit reinsurance entity to support reinsurance payments to individual market issuers that cover high risk individuals.
- To extend health insurance to greater numbers of low-income people, Medicaid eligibility in 2014 will expand to cover adults under the age of 65 earning up to 133 percent of the Federal poverty level, and those who earn above that level may be eligible for tax credits through the Exchanges to help pay their premiums. New, simplified procedures for determining Medicaid, CHIP, and tax credit eligibility will be forthcoming in 2012. CMS will simplify eligibility rules to make it easier for eligible individuals and families to obtain premium tax credits and Medicaid coverage, including ensuring that Medicaid uses the same eligibility standards as other insurance affordability programs available through the Exchange, as directed by law. The rule further outlines how Medicaid and CHIP will coordinate closely with the Exchange,

including sharing data to ensure that individuals are determined eligible for the appropriate insurance affordability program regardless of where an applicant submits the application.

Improving Health Care Quality and Patient Safety

Across America and for all Americans, the Department is working to improve patient outcomes, ensure patient safety, promote efficiency and accountability, encourage shared responsibility, and reduce health care costs. Through improved administrative processes, reforms, innovations, and additional information to support consumer decisionmaking, HHS is supporting high-value, safe, and effective care across health care settings and in the community.

In 2011, the Department published a key regulation to advance this priority—the final rule for Accountable Care Organizations. This rule establishes a system of shared savings for qualified organizations that deliver primary care services to a given patient population. The objective is to promote accountability and shared responsibility for the delivery of care, especially to those with co-morbidities of chronic health problems in order to prevent unnecessary and costly in-patient hospital care, reduce health care acquired conditions, and improve the quality of life for those individuals. This rule serves as a companion to additional demonstration programs designed to explore alternative services delivery and payment systems that are being sponsored by the new Center for Medicare and Medicaid Innovation. Several more key regulations are on the agenda to move forward in meeting these quality and patient safety goals:

- CMS is implementing value-based purchasing programs throughout its payment structure in order to reward hospitals and other health care providers for delivering high-quality care, rather than just a high volume of services. The payment rules scheduled for publication this year will reflect a mix of standards, processes, outcomes, and patient experience of care measures, including measures of care transition and changes in patient functional status.
- The Department continues to encourage health care providers to become meaningful users of health information technology (IT) by accelerating health IT adoption and promoting electronic health records to help improve the quality of health care, reduce costs, and ultimately, improve health outcomes. Electronic health records and health information exchange can help clinicians provide higher quality and safer care for their patients. By adopting electronic health records in a meaningful way, clinicians will know more about their patients to better coordinate and improve the quality of patient care, and they can make better decisions about treatments and conditions.

Improving Response to Adverse Events

In a related activity, the FDA will be proposing a new rule to establish a unique identification system for medical devices in order to track a device from pre-market application through distribution and use. This system will allow FDA and other public health entities to track individual devices so that when an adverse event occurs, epidemiologists can quickly track down and identify other users of the device to provide guidance and recommendations on what steps to take to prevent additional adverse actions.

Implementing a 21st Century Food Safety System

The Food Safety Modernization Act of 2010, signed into law by the President in January 2011, directs the Food and Drug Administration (FDA), working with a wide range of public and private partners, to build a new system of food safety oversight—one focused on applying the best available science and good common sense to prevent the problems that can make people sick. In implementing that Act, the Department's goal is to shift emphasis from removing unsafe products from the market place to keeping unsafe food from entering commerce in the first place.

FDA will propose several new rules to establish a robust, enhanced food safety program.

- FDA will propose regulations establishing preventive controls in the manufacture and distribution of human foods and of animal feeds. These regulations will constitute the heart of the food safety program by instituting, for the first time, good manufacturing practices for the manufacture and distribution of food products to ensure that those products are safe for consumption and will not cause or spread disease.
- Perhaps most anticipated in light of food borne illnesses occurring in 2011, FDA will introduce a rule addressing produce safety to ensure that produce sold in the marketplace meets rigorous safety standards. The regulation will set enforceable, science-based standards for the safe production and harvesting of fresh produce at the farm and the packing house to minimize the risk of serious adverse health consequences.
- In another proposed rule, FDA will require food importers to have a foreign supplier verification program that will be adequate to provide assurances that each foreign supplier produces food in a manner that provides the same level of protection as required for domestic production under the Food Drug and Cosmetic Act.
- FDA will establish a program to accredit third-party auditors to conduct food safety audits of foreign entities. Such a program will relieve importers of having to establish such programs themselves and, instead, allow them to contract with an accredited auditor to meet the audit requirements.

Empowering Americans To Make Healthy Choices in the Marketplace

Roughly two-thirds of adults and *one-third of children in the United States are overweight or obese,* increasing their risk for chronic diseases, including heart disease, type 2 diabetes, certain cancers, stroke, and arthritis. Almost 10 percent of all medical spending is used to treat obesity-related conditions. In order to reverse the obesity epidemic, HHS is employing a comprehensive approach that includes both clinical and public health strategies and touches people where they live, work, learn, and play.

To help advance this agenda, FDA will finalize two rules aimed at empowering consumers to make healthy eating choices. The rules require nutrition labeling on standard menu items in restaurants and similar retail food establishments, as well as on food sold in vending machines. One rule will require restaurants and similar retail food establishments with 20 or more locations to list calorie content information for standard menu items on restaurant menus and menu boards, including drive-through menu boards. Other nutrient information—total calories, fat, saturated fat, cholesterol, sodium, total carbohydrates, sugars, fiber and total protein—would have to be made available in writing upon request. The other rule will require vending machine operators who own or operate 20 or more vending machines to disclose calorie content for some items. The Department anticipates that such information will ensure that patrons of chain restaurants and vending machines have nutritional information about the food they are consuming.

Two additional rules will also improve dietary information available to consumers. One is a revision to the nutrition and supplement facts labels. Much of the information found on the Nutrition Facts label has not been updated since 1993 when mandatory

nutrition labeling of food was first required. The aim of the proposed revision is to provide updated and easier to read nutrition information on the label to help consumers maintain healthy dietary practices. The other proposed rule will focus on the serving sizes of foods that can reasonably consumed in one serving. This rule would amend the labeling regulations to provide updated reference amounts for certain food categories with new consumption data derived from the current National Health and Nutrition Survey.

Advancing Scientific Research

To effectively address the challenges the Department faces in crafting the best, evidence-based approaches to advance health services delivery, protect the public health, ensure essential human services, promote biomedical research, and ensure the availability of safe medical and food products, the Department must rely on research. The lynchpin of this research is found in the ethical rules governing research on human subjects.

In a major undertaking, the Department is in the process of reviewing and revising those ethical rules, commonly referred to as the Common Rule. The Common Rule serves to guide researchers and investigators in the Department, but also throughout the Federal Government, in the conduct and protocols for doing research on human subjects. The proposed revisions will be designed to better protect human subjects who are involved in research, while facilitating research and reducing burden, delay, and ambiguity for investigators.

Streamlining Regulations To Reduce Regulatory Burdens

Consistent with the President's Executive Order 13563, the Department continues its commitment to reducing the regulatory burden on the health care industry through the use of modern technology. As part of this effort, FDA will advance several rules designed to reduce the reporting and data submission requirements from manufacturers of drugs and medical devices.

In one such rule, FDA will permit manufacturers, importers, and users of medical devices to submit reports of adverse events to the FDA electronically. This proposed change will not only reduce the paper reporting burden on industry, but also allow FDA to more quickly review safety reports and identify emerging public health issues. Under another proposed rule, FDA would revise existing regulations to allow clinical study data and bioequivalence data for new drug applications and biological license applications to be provided electronically. Again, this rule will reduce the reporting burden on industry and also permit FDA to more readily process and review applications.

CMS is also engaged in regulatory reduction and streamlining activities. Of particular note are several rules on conditions of participation for hospitals and other providers. The most comprehensive of these rules is the one reducing regulatory burdens on hospitals, which is expected to save as much as $940 million annually over the next 5 years. This rule will implement changes to hospital conditions of participation to reflect substantial advances in health care delivery and patient safety knowledge and practices.

## HHS—OFFICE OF THE SECRETARY (OS)

*Proposed Rule Stage*

### 32. • Health Information Technology: New and Revised Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 300jj–14

*CFR Citation:* 45 CFR 170.

*Legal Deadline:* None.

*Abstract:* The final rule that established the initial set of standards, implementation specifications, and certification criteria was published in the **Federal Register** on July 28, 2010. The initial set represented the first round of an incremental approach to adopting future sets of standards, implementation specifications, and certification criteria to enhance electronic health record (EHR) interoperability, functionality, and utility. Under the authority provided by section 3004 of the Public Health Service Act (PHSA), this notice of proposed rulemaking would propose that the Secretary adopt revisions to the initial set as well as new standards, implementation specifications and certification criteria. The proposed new and revised standards, implementation specifications, and certification criteria would establish the technical capabilities that certified EHR technology would need to include to support meaningful use under the CMS Medicare and Medicaid EHR Incentive Programs.

*Statement of Need:* The final rule that established the initial set of standards, implementation specifications, and certification criteria was published in the **Federal Register** on July 28, 2010. The initial set represented the first round of an incremental approach to adopting future sets of standards, implementation specifications, and certification criteria for electronic health record (EHR) technology. In a notice of proposed rulemaking, the Secretary would propose new and revised standards, implementation specifications, and certification criteria that would establish the technical capabilities that certified EHR technology would need to include in order to support meaningful use under the CMS Medicare and Medicaid EHR Incentive Programs.

*Summary of Legal Basis:* Under the authority provided by section 3004 of the Public Health Service Act (PHSA), the Secretary would propose to adopt revisions to the initial set of standards, implementation specifications, and certification criteria and propose new standards, implementation specifications and certification criteria.

*Alternatives:* No alternatives are available because eligible professionals, eligible hospitals, and critical access hospitals under the CMS Medicare and Medicaid EHR Incentive Programs are required to demonstrate meaningful use of certified EHR technology. This rule ensures that the certification requirements necessary to support the achievement of meaningful use Stage 2 keep pace with the changes to the requirements in the CMS Medicare and Medicaid EHR Incentive Programs.

*Anticipated Cost and Benefits:* EHR technology developers seeking certification are expected to incur costs related to EHR technology redesign, reprogramming, and new capability development. Benefits include greater standardization and increased EHR technology interoperability and functionality.

*Risks:* Absent a rulemaking, it is unlikely that currently certified EHR technology would include the requisite capacities to support an eligible professional's, eligible hospital's, or critical access hospital's achievement of meaningful use under the CMS Medicare and Medicaid EHR Incentive Programs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Agency Contact:* Steven Posnack, Policy Analyst, Department of Health and Human Services, Office of the Secretary, Office of the National Coordinator for Health Information Technology, 200 Independence Avenue SW., Washington, DC 20201, *Phone:* 202 690–7151.

*RIN:* 0991–AB82

## HHS—FOOD AND DRUG ADMINISTRATION (FDA)

*Proposed Rule Stage*

### 33. Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 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 (21 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 ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Martha Nguyen, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6352, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3471, *Fax:* 301 847–8440, *Email: martha.nguyen@fda.hhs.gov.*

*RIN:* 0910–AC52

## HHS—FDA

### 34. Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 342; 21 U.S.C. 350e; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 264; Pub. L. 110–85, sec 1002(a)(2); Pub. L. 111–353

*CFR Citation:* 21 CFR 228.

*Legal Deadline:* Final, Statutory, September 27, 2009, FDA is directed to issue proposed and final regulations under FDA Amendments Act by the statutory deadline.

The legal deadline for FDA under the Food Safety and Modernization Act to promulgate regulations is July 2012.

*Abstract:* The Food and Drug Administration (FDA) is proposing regulations for preventive controls for animal feed ingredients and mixed animal feed to provide greater assurance that marketed animal feed ingredients and mixed feeds intended for all animals, including pets, are safe. This action is being taken as part of the FDA's Animal Feed Safety System initiative. This action is also being taken to carry out the requirements of the Food and Drug Administration Amendments Act of 2007, under section 1002(a), and the Food Safety Modernization Act of 2010 (FSMA), under section 103.

*Statement of Need:* Regulatory oversight of the animal food industry has traditionally been limited and

focused on a few known safety issues, so there could be potential human and animal health problems that remain unaddressed. The massive pet food recall due to adulteration of pet food with melamine and cyanuric acid in 2007 is a prime example. The actions taken by two protein suppliers in China affected a large number of pet food suppliers in the United States and created a nationwide problem. By the time the cause of the problem was identified, melamine and cyanuric acid contaminated ingredients resulted in the adulteration of millions of individual servings of pet food. Congress passed FSMA which the President signed into law on January 4, 2011 (Pub. L. 111–353). Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding section 418 (21 U.S.C. 350g) Hazard Analysis and Risk Based Preventive Controls. In enacting FSMA, Congress sought to improve the safety of food in the United States by taking a risk-based approach to food safety, emphasizing prevention. Section 418 of the FD&C Act requires owners, operators, or agents in charge of food facilities to develop and implement a written plan that describes and documents how their facility will implement the hazard analysis and preventive controls required by this section.

*Summary of Legal Basis:* FDA's authority for issuing this rule is provided in FSMA (Pub. L. 111–353), which amended the FD&C Act by establishing section 418, which directed FDA to publish implementing regulations. FSMA also amended section 301 of the FD&C Act to add 301(uu) that states the operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418 of the FD&C Act is a prohibited act. Further authority comes from section 1002(a) of title X of the FDAAA of 2007 (21 U.S.C. 2102) requiring the Secretary to update standards for the processing of pet food.

FDA is also issuing this rule under the general requirements of section 402 of the FD&C Act (21 U.S.C. 342) for adulterated food.

In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) authorizes the Agency to issue regulations for the efficient enforcement of the Act.

*Alternatives:* The 2011 FSMA limited the Agency's flexibility to exclude many requirements. It described in detail its requirements for subpart C, concerning the hazard analysis and risk-based preventive controls part of the proposed rule. Alternatives include certain requirements listed in subpart B concerning operations and practices.

*Anticipated Cost and Benefits:* The benefits of the proposed rule would result from fewer cases of contaminated animal food ingredients or finished animal food products. Discovering contaminated food ingredients before they are used in a finished product would reduce the number of recalls of contaminated animal food products. Benefits would include reduced medical treatment costs for animals and humans, reduced loss of market value of live animals, reduced loss of animal companionship, and reduced loss in value of animal food products. More stringent requirements for animal food manufacturing would maintain public confidence in the safety of animal foods and protect animal and human health. FDA lacks sufficient data to quantify the benefits of the proposed rule.

The compliance costs of the proposed rule would result from the additional labor and capital required to perform the hazard analyses, write and implement the preventive controls, monitor and verify the preventive controls, take corrective actions if preventive controls fail to prevent feeds from becoming contaminated, and implement requirements from the operations and practices section.

*Risks:* FDA is proposing this rule to provide greater assurance that food intended for animals is safe and will not cause illness or injury to animals or humans. This rule would implement a risk-based, preventive controls food safety system intended to prevent animal food containing hazards, which may cause illness or injury to animals or humans, from entering into the food supply. The rule would apply to domestic and imported animal food (including raw materials and ingredients). Fewer cases of animal food contamination would (1) reduce the risk of serious illness and death to animals, (2) reduce the risk of adverse health effects to humans handling animal food, and (3) reduce the risk of consuming human food from animals that consumed contaminated food.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*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.

*Agency Contact:* Kim Young, Deputy Director, Division of Compliance, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 106 (MPN–4, HFV–230), 7519 Standish Place, Rockville, MD 20855, *Phone:* 240 276–9207, *Email: kim.young@fda.hhs.gov*.

*RIN:* 0910–AG10

## HHS—FDA

### 35. Unique Device Identification

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Not Yet Determined

*CFR Citation:* 21 CFR 16; 21 CFR 801; 21 CFR 803; 21 CFR 806; 21 CFR 810; 21 CFR 814; 21 CFR 820; 21 CFR 821; 21 CFR 822.

*Legal Deadline:* None.

*Abstract:* The Food and Drug Administration Amendments Act of 2007 (FDAAA), 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:* 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 would 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 and integrate and validate the UDI into existing IT systems. FDA anticipates that implementation of a UDI system would help improve the efficiency and accuracy of medical device recalls 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 consistent identification of medical devices used in the United States. By providing the means to rapidly and accurately 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 ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* John J. Crowley, Senior Advisor for Patient Safety, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 2315, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 980–1936, *Email: jay.crowley@fda.hhs.gov.*

*RIN:* 0910–AG31

## HHS—FDA

### 36. Produce Safety Regulation

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 21 U.S.C. 342; 21 U.S.C. 350h; 21 U.S.C. 371; 42 U.S.C. 264; Pub. L. 111–353 (signed on Jan. 4, 2011)

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* NPRM, Statutory, January 4, 2012, Proposed rule not later than 12 months after the date of enactment of the Food Safety Modernization Act.

*Abstract:* The Food Safety Modernization Act requires the Secretary to establish and publish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death. FDA is proposing to promulgate regulations setting enforceable standards for fresh produce safety at the farm and packing house. The purpose of the proposed rule is to reduce the risk of illness associated with contaminated fresh produce. The proposed rule will be based on prevention-oriented public health principles and incorporate what we have learned in the past decade since the Agency issued general good agricultural practice guidelines entitled ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (GAPs Guide). The proposed rule also will reflect comments received on the Agency's 1998 update of its GAPs guide and its July 2009 draft commodity specific guidances for tomatoes, leafy greens, and melons. Although the proposed rule will be based on recommendations that are included in the GAPs guide, FDA does not intend to make the entire guidance mandatory. FDA's proposed rule would, however, set out clear standards for implementation of modern preventive controls. The proposed rule also would emphasize the importance of environmental assessments to identify hazards and possible pathways of contamination and provide examples of risk reduction practices recognizing that operators must tailor their preventive controls to particular hazards and conditions affecting their operations. The requirements of the proposed rule would be scale appropriate and commensurate with the relative risks and complexity of individual operations. FDA intends to issue guidance to assist industry in complying with the requirements of the new regulation.

*Statement of Need:* FDA is taking this action to meet the requirements of the FSMA and to address the food safety challenges associated with fresh produce and thereby protect the public health. Data indicate that between 1973 and 1997, outbreaks of foodborne illness in the U.S. associated with fresh produce increased in absolute numbers and as a proportion of all reported foodborne illness outbreaks. The Agency issued general good agricultural practice guidelines for fresh fruits and vegetables over a decade ago. Incorporating prevention-oriented public heath principles and incorporating what we have learned in the past decade into a regulation is a critical step in establishing standards for the growing, harvesting, packing, and storing of produce and reducing the foodborne illness attributed to fresh produce.

*Summary of Legal Basis:* FDA is relying on the amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act), provided by section 105 of the Food Safety Modernization Act (codified primarily in sec. 419 of the FD&C Act (21 U.S.C. 350h)). FDA's legal basis also derives in part from sections 402(a)(4) and 701(a) of the FD&C Act (21 U.S.C. 342(a)(4) and 371(a)). FDA also intends to rely on section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), which gives FDA authority to promulgate regulations to control the spread of communicable disease.

*Alternatives:* Section 105 of the Food Safety Modernization Act requires FDA to conduct this rulemaking.

*Anticipated Cost and Benefits:* FDA estimates that the costs to more than 300,000 domestic and foreign producers and packers of fresh produce from the proposal would include one-time costs (*e.g.,* new tools and equipment) and recurring costs (*e.g.,* monitoring, training, recordkeeping). FDA anticipates that the benefits would be a reduction in foodborne illness and deaths associated with fresh produce. Monetized estimates of costs and benefits are not available at this time.

*Risks:* This regulation would directly and materially advance the Federal Government's substantial interest in reducing the risks for illness and death associated with foodborne infections associated with the consumption of fresh produce. Less restrictive and less comprehensive approaches have not been sufficiently effective in reducing the problems addressed by this

regulation. FDA anticipates that the regulation would lead to a significant decrease in foodborne illness associated with fresh produce consumed in the U.S.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

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

*Agency Contact:* Samir Assar, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1636, *Email: samir.assar@fda.hhs.gov.*

*RIN:* 0910–AG35

## HHS—FDA

### 37. Hazard Analysis and Risk-Based Preventive Controls

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 342; 21 U.S.C. 371; 42 U.S.C. 264; Pub. L. 111–353 (signed on Jan. 4, 2011)

*CFR Citation:* 21 CFR 110.

*Legal Deadline:* Final, Statutory, July 4, 2012, Final rule must be published no later than 18 months after the date of enactment of the FDA Food Safety Modernizaton Act.

Not later than 9 months after the date of enactment of the FDA Food Safety Modernization Act.

*Abstract:* The Food and Drug Administration (FDA) Food Safety Modernization Act (the FSMA) requires the Secretary of Health and Human Services to promulgate regulations to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls; and to define the terms ''small business'' and ''very small business.'' The FSMA also requires the Secretary to promulgate regulations with respect to activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on a farm or another farm under the same ownership and activities that constitute on farm manufacturing or processing of food that is not grown, raised, or consumed on a farm or another farm under the same ownership.

FDA is proposing to amend its current good manufacturing practice (CGMP) regulations (21 CFR part 110) for manufacturing, packing, or holding human food to require food facilities to develop and implement a written food safety plan. This proposed rule would require a food facility to have and implement preventive controls to significantly minimize or prevent the occurrence of hazards that could affect food manufactured, processed, packed, or held by the facility and to provide assurances that such food will not be adulterated under section 402 or misbranded under section 403(w).

*Statement of Need:* FDA is taking this action to meet the requirements of the FSMA and to better address changes that have occurred in the food industry and thereby protect public health.

FDA last updated its food CGMP regulations for the manufacturing, packing, or holding of human food in 1986. Modernizing these food CGMP regulations to address risk-based preventive controls and more explicitly address issues such as environmental pathogens, food allergens, mandatory employee training, and sanitation of food contact surfaces, would be a critical step in raising the standards for food production and distribution. By amending 21 CFR 110 to modernize good manufacturing practices, the agency could focus the attention of food processors on measures that have been proven to significantly reduce the risk of food-borne illness. An amended regulation also would allow the agency to better focus its regulatory efforts on ensuring industry compliance with controls that have a significant food safety impact.

*Summary of Legal Basis:* FDA is relying on section 103 of the FSMA. FDA is also relying on sections 402(a)(3), (a)(4) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(3), (a)(4), and 371(a)). Under section 402(a)(3) of the FD&C Act, a food is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Under section 402(a)(4), a food is adulterated if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered injurious to health. Under section 701(a) of the FD&C Act, FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act. FDA's legal basis also derives from section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), which gives FDA authority to promulgate regulations to control the spread of communicable disease.

*Alternatives:* An alternative to this rulemaking is not to update the CGMP regulations, and instead issue separate regulations to implement the FDA Food Safety Modernization Act.

*Anticipated Cost and Benefits:* FDA estimates that the costs from the proposal to domestic and foreign producers and packers of processed foods would include new one-time costs (*e.g.,* adoption of written food safety plans, setting up training programs, implementing allergen controls, and purchasing new tools and equipment) and recurring costs (*e.g.,* auditing and monitoring suppliers of sensitive raw materials and ingredients, training employees, and completing and maintaining records used throughout the facility). FDA anticipates that the benefits would be a reduced risk of food-borne illness and death from processed foods and a reduction in the number of safety related recalls.

*Risks:* This regulation will directly and materially advance the Federal Government's substantial interest in reducing the risks for illness and death associated with food-borne infections. Less restrictive and less comprehensive approaches have not been effective in reducing the problems addressed by this regulation. The regulation will lead to a significant decrease in foodborne illness in the U.S.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

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

*Agency Contact:* John F. Sheehan, Director, Office of Food Safety, Division of Plant and Dairy Food Safety, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–315), 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1488, *Fax:* 301 436–2632, *Email: john.sheehan@fda.hhs.gov.*

*RIN:* 0910–AG36

## HHS—FDA

### 38. Foreign Supplier Verification Program

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* Title III, sec 301 of FDA Food Safety Modernization Act, Pub. L. 111–353, establishing sec 805 of the Federal Food, Drug, and Cosmetic Act (FD&C Act)

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Final, Statutory, January 4, 2012.

*Abstract:* The proposed rule would establish regulations concerning the content of foreign supplier verification programs. The regulations will require that each importer have a foreign supplier verification program that is adequate to provide assurances that each foreign supplier produces food in compliance with: (1) Processes and procedures that provide the same level of public health protection as those required under section 418 (concerning hazard analysis and risk-based preventative controls) or section 419 (concerning produce safety standards) of the FD&C Act; and (2) sections 402 (concerning adulteration) and 403(w) (concerning major food allergens) of the FD&C Act. In promulgating the foreign supplier verification regulations, we will, as appropriate, take into account differences among importers and types of imported foods, including differences related to the level of risk posed by an imported food. Methods of foreign supplier verification may include monitoring records for shipments, lot-by-lot certifications of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plans of foreign suppliers, and periodically testing and sampling shipments.

*Statement of Need:* The proposed rule is needed to help improve the safety of food that is imported into the United States. Imported food products have increased dramatically over the last several decades. Data indicate that about 15% of the U.S. food supply is imported. FSMA provides the Agency with additional tools and authorities to help ensure that imported foods are safe for U.S. consumers. Included among these tools and authorities is a requirement that importers perform risk-based foreign supplier verification activities to verify that the food they import is produced in compliance with U.S. requirements and is not adulterated or misbranded. This proposed rule on the content of foreign supplier verification program (FSVPs) sets forth the proposed steps that food importers would be required to take to fulfill their responsibility to ensure the safety of the food they bring into this country.

*Summary of Legal Basis:* Section 805(c) of the FD&C Act (21 U.S.C. 384a(c)) directs FDA, not later than 1 year after the date of enactment of FSMA, to issue regulations on the content of FSVPs. Section 805(c)(4) states that verification activities under such programs may include monitoring records for shipments, lot-by-lot certification of compliance, annual onsite inspections, checking the hazard analysis and risk-based preventive control plans of foreign suppliers, and periodically testing and sampling shipments of imported products. Section 301(b) of FSMA amends section 301 of the FD&C Act (21 U.S.C. 331) by adding section 301(zz), which designates as a prohibited act the importation or offering for importation of a food if the importer (as defined in section 805) does not have in place an FSVP in compliance with section 805. In addition, section 301(c) of FSMA amends section 801(a) of the FD&C Act (21 U.S.C. 381(a)) by stating that an article of food being imported or offered for import into the United States shall be refused admission if it appears from an examination of a sample of such an article or otherwise that the importer is in violation of section 805.

*Alternatives:* We are considering a range of alternative approaches to the requirements for foreign supplier verification activities. These might include: (1) Establishing a general requirement that importers determine and conduct whatever verification activity that would adequately address the risks associated with the foods they import; (2) allowing importers to choose from a list of possible verification mechanisms, such as the activities listed in section 805(c)(4) of the FD&C Act; (3) requiring importers to conduct particular verification activities for certain types of foods or risks (*e.g.,* for high-risk foods) but allowing flexibility in verification activities for other types of foods or risks; and (4) specifying use of a particular verification activity for each particular kind of food or risk. To the extent possible while still ensuring that verification activities are adequate to ensure that foreign suppliers are producing food in accordance with U.S. requirements, we will seek to give importers the flexibility to choose verification procedures that are appropriate to adequately address the risks associated with the importation of a particular food.

*Anticipated Cost and Benefits:* We have not yet quantified the cost and benefits for this proposed rule. However, the available information suggests that the costs will be significant. Our preliminary analysis of FY10 OASIS data suggests that this rule will cover about 60,000 importers, 240,000 unique combinations of importers and foreign suppliers, and 540,000 unique combinations of importers, products, and foreign suppliers. These numbers imply that provisions that require activity for each importer, each unique combination of importer and foreign supplier, or each unique combination of importer, product, and foreign supplier will generate significant costs. An example of a provision linked to combinations of importers and foreign suppliers would be a requirement to conduct a verification activity, such as an onsite audit, under certain conditions. The cost of onsite audits will depend in part on whether foreign suppliers can provide the same onsite audit results to different importers or whether every importer will need to take some action with respect to each of their foreign suppliers. The benefits of this proposed rule will consist of the reduction of adverse health events linked to imported food that could result from compliance with the FSVP requirements. We have not yet estimated the benefits of the rule.

*Risks:* As stated above, about 15 percent of the U.S. food supply is imported, and many of these imported foods are high-risk commodities. According to recent data from the Centers for Disease Control and Prevention, each year, about 48 million Americans get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases. From July 1, 2007, through June 30, 2008, FDA oversaw 40 recalls of imported foods that were so contaminated that the Agency deemed them to be an imminent threat. We expect that the adoption of FSVPs by food importers will lead to a significant reduction to the threat to public health posed by unsafe imported food, though we are still in the process of trying to quantify the reduction in risk that will occur through importer compliance with the FSVP regulations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*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.

*Agency Contact:* Brian L. Pendleton, Senior Policy Advisor, Department of Health and Human Services, Food and Drug Administration, Office of Policy, WO32, Room 4245, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–4614, *Fax:* 301 847–8616, *Email: brian.pendleton@fda.hhs.gov.*

*RIN:* 0910–AG64.

## HHS—FDA

### 39. Accreditation of Third Parties To Conduct Food Safety Audits and for Other Related Purposes

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 111–353, sec 307, FDA Food Safety Modernization Act; Other sections of FDA Food Safety Modernization Act, as appropriate.

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Final, Statutory, July 2012, Promulgate implementing regulations. Per Public Law 111–353, section 307(c)(5)(C), promulgate, within 18 months of enactment, implementing regulations for accreditation of third-party auditors to conduct food safety audits.

*Abstract:* The Food and Drug Administration (FDA) is proposing regulations relating to the accreditation of third-party auditors to conduct food safety audits of foreign entities, including foreign facilities in the food import supply chain. The proposed regulations will include provisions to protect against conflicts of interest between accredited auditors and audited entities, as described in section 307 of the FDA Food Safety Modernization Act (FSMA), Public Law 111–353. As part of this rulemaking, FDA may propose regulations relating to the accreditation of third parties to perform related activities, such as conducting laboratory analyses of food, authorized by other sections of FSMA.

*Statement of Need:* The use of accredited third-party auditors to certify high-risk food imports to assist in ensuring the safety of food from foreign origin entering U.S. commerce. Accredited third-party auditors auditing foreign process facilities may be viewed as increasing FDA's ''coverage'' of foreign facilities that FDA may not have adequate resources to inspect in a particular year while using identified standards creating overall uniformity to complete the task. Audits that result in issuance of facility certificates will provide FDA information about the compliance status of the facility. Additionally, auditors will be required to submit audit reports that may be reviewed by FDA for purposes of compliance assessment and work planning.

*Summary of Legal Basis:* Not later than 2 years after the date of enactment, establish a system for the recognition of accreditation bodies that accredit third-party auditors, certifying that their eligible entities meet the requirements, directly accredit third-party auditors should none be identified and recognized by the 2-year date of enactment, obtain a list of all accredited third-party auditors and their agents from recognized accreditation bodies, and determine requirements for regulatory audit reports while avoiding unnecessary duplication of efforts and costs.

*Alternatives:* FSMA described in detail the framework for, and requirements of, the accredited third-party auditor program. Alternatives include certain oversight activities required of recognized accreditation bodies that accredit third-party auditors, as distinguished from third-party auditors directly accredited by FDA. Another alternative relates to the nature of the required standards and the degree to which those standards are prescriptive or flexible.

*Anticipated Cost and Benefits:* The benefits of the proposed rule would result from fewer cases of unsafe or misbranded food entering U.S. commerce. Additional benefits include the increased flow of credible information to FDA regarding the compliance status of foreign firms and their foods that are ultimately offered for import Into the United States, which information in turn would inform FDA's work planning for inspection of foreign food facilities and might result in a signal of possible problems with a particular firm or its products, and with sufficient signals, might raise questions about the rigor of the food safety regulatory system of the country of origin.

The compliance costs of the proposed rule would result from the additional labor and capital required of accreditation bodies seeking FDA recognition and of third-party auditors seeking accreditation to the extent that will involve the assembling of information for an application unique to the FDA third-party program. The compliance costs associated with certification will be accounted for separately under the costs associated with participation In the foreign supplier verification program and the costs associated with mandatory certification for high-risk food imports. The third-party program is funded through revenue neutral user fees, which will be developed by FDA through rulemaklng. User fee costs will be accounted for in that rulemaklng.

*Risks:* FDA is proposing this rule to provide greater assurance the food offered for import into the United States is safe and will not cause injury or illness to animals or humans. The rule would implement a program for accrediting third-party auditors to conduct food safety audits of foreign food entities, including registered foreign food facilities, and based on the findings of the regulatory audit, to issue certifications to foreign food entities found to be in compliance with FDA requirements. The certifications would be used by importers seeking to participate in the Voluntary Qualified Importer Program for expedited review and entry of product and would be a means to provide assurance of compliance as required by FDA based on risk-related considerations. The rule would apply to any foreign or domestic accreditation body seeking FDA recognition, any foreign or domestic third-party auditor seeking accreditation, any registered foreign food facility or other foreign food entity subject to a food safety audit (including a regulatory audit conducted for purposes of certification), and any importer seeking to participate in the Voluntary Qualified Importer Program. Fewer cases of unsafe or misbranded food entering U.S. commerce would reduce the risk of serious illness and death to humans and animals.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*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.

*Agency Contact:* Charlotte A. Christin, Senior Policy Advisor, Department of Health and Human Services, Food and Drug Administration, Office of Policy WO32, Room 4234, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–4718, *Fax:* 301

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*RIN:* 0910–AG66

## HHS—FDA

*Final Rule Stage*

### 40. Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors

*Priority:* Other Significant.

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 350a; 21 U.S.C. 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 Re-opened. | 04/28/03 | 68 FR 22341 |
| NPRM Comment Period Ex-tended. | 06/27/03 | 68 FR 38247 |
| NPRM Comment Period End. | 08/26/03 | |
| NPRM Comment Period Re-opened. | 08/01/06 | 71 FR 43392 |
| NPRM Comment Period End. | 09/15/06 | |
| Final Action | 03/00/12 | |

*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.

*Agency Contact:* Benson Silverman, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–850), 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1459, *Email: benson.silverman@fda.hhs.gov.*

*Related RIN:* Split from 0910–AA04.

*RIN:* 0910–AF27

## HHS—FDA

### 41. Medical Device Reporting; Electronic Submission Requirements

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 352, 360, 360i, 360j, 371, 374

*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. This would significantly postpone the benefits of the rule; moreover, it would only delay, rather than reduce or eliminate, the costs of compliance.

*Anticipated Cost and Benefits:* The principal benefit would be to public health, due to the increased speed in the processing and analysis of medical device reports currently submitted annually on paper. In addition, requiring electronic submission would reduce FDA annual operating costs and generate industry savings.

The one-time costs are for modifying standard operating procedures and establishing electronic submission capabilities. Annually recurring costs include 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 42203 |
| NPRM Comment Period End. | 11/19/09 | |
| Final Action | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Nancy Pirt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4438, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: nancy.pirt@fda.hhs.gov.*

*RIN:* 0910–AF86

## HHS—FDA

### 42. Electronic Registration and Listing for Devices

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 110–85; Pub. L. 107–188, sec 321; Pub. L. 107–250, sec 207; 21 U.S.C. 360(a) through 360(j); 21 U.S.C. 360(p)

*CFR Citation:* 21 CFR 807.

*Legal Deadline:* None.

*Abstract:* This rule would codify the requirements for electronic registration and listing. 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 1003 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 |

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End. | 06/24/10 | |
| Final Rule ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Nancy Pirt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4438, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: nancy.pirt@fda.hhs.gov*.

*RIN:* 0910–AF88

## HHS—FDA

### 43. Food Labeling: Nutrition Labeling for Food Sold in Vending Machines

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* The Food and Drug Administration (FDA) published a proposed rule in the **Federal Register** of April 6, 2011 (72 FR 19238) to establish requirements for nutrition labeling of certain food items sold in certain vending machines. FDA also proposed the terms and conditions for vending machine operators registering to voluntarily be subject to the requirements. FDA took this action to carry out 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 rulemaking was mandated by section 4205 of the Patient Protection and Affordable Care Act (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 (FD&C Act) by, among other things, creating new clause (H) to require that vending machine operators, who own or operate 20 or more machines, disclose calories for certain food items. FDA has the authority to issue this rule under sections 403(q)(5)(H) and 701(a) of the FD&C Act (21 U.S.C. 343(q)(5)(H), and 371(a)). Section 701(a) of the FD&C Act vests the Secretary of Health and Human Services, and, by delegation, the Food and Drug Administration (FDA) with the authority to issue regulations for the efficient enforcement of the FD&C Act.

*Alternatives:* Section 4205 of the Affordable Care Act requires the Secretary (and by delegation, the FDA) to establish by regulation requirements for calorie labeling of articles of food sold from covered vending machines. Therefore, there are no alternatives to rulemaking. FDA has analyzed alternatives that may reduce the burden of the rulemaking, including analyzing the benefits and costs of: Restricting the flexibility of the format for calorie disclosure, lengthening the compliance time, and extending the coverage of the rule to bulk vending machines without selection buttons.

*Anticipated Cost and Benefits:* Any vending machine operator operating fewer than 20 machines may voluntarily choose to be covered by the national standard. It is anticipated that vending machine operators that own or operate 20 or more vending machines will bear costs associated with adding calorie information to vending machines. FDA estimates that the total cost of complying with section 4205 of the Affordable Care Act and this rulemaking will be approximately $25.8 million initially, with a recurring cost of approximately $24 million.

Because comprehensive national data for the effects of vending machine labeling do not exist, FDA has not quantified the benefits associated with section 4205 of the Affordable Care Act and this rulemaking. Some studies have shown that some consumers consume fewer calories when calorie content information is displayed at the point of purchase. Consumers will benefit from having this important nutrition information to assist them in making healthier choices when consuming food away from home. Given the very high costs associated with obesity and its associated health risks, FDA estimates that if 0.02 percent of the adult obese population reduces energy intake by at least 100 calories per week, then the benefits of Section 4205 of the Affordable Care Act and this rulemaking will be at least as large as the costs.

*Risks:* Americans now consume an estimated one-third of their total calories from foods prepared outside the home and spend almost half of their food dollars on such foods. This rule will provide consumers with information about the nutritional content of food to enable them to make healthier food choices, and may help mitigate the trend of increasing obesity in America.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/06/11 | 76 FR 19238 |
| NPRM Comment Period End. | 07/05/11 | |
| Final Action ..... | 11/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Federal, Local, State.

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

*Agency Contact:* Daniel Reese, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–820), 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–2126, *Email: daniel.reese@fda.hhs.gov*.

*RIN:* 0910–AG56

## HHS—FDA

### 44. Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* The Food and Drug Administration (FDA) published a proposed rule in the **Federal Register** of April 6, 2011 (72 FR 19192), to establish requirements for nutrition labeling of standard menu items in chain restaurants and similar retail food establishments. FDA also proposed the terms and conditions for restaurants and similar retail food establishments registering to voluntarily be subject to the Federal requirements. FDA took this action to carry out 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 rulemaking was mandated by section 4205 of the Patient Protection and Affordable Care Act (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 of the Affordable Care Act amended 403(q)(5) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) by, among other things, creating new clause

(H) to require that certain chain restaurants and similar retail food establishments with 20 or more locations disclose certain nutrient information for standard menu items. FDA has the authority to issue this rule under sections 403(a)(1), 403(q)(5)(H), and 701(a) of the FD&C Act (21 U.S.C. 343(a)(1), 343(q)(5)(H), and 371(a)). Section 701(a) of the FD&C Act vests the Secretary of Health and Human Services, and, by delegation, the Food and Drug Administration (FDA) with the authority to issue regulations for the efficient enforcement of the FD&C Act.

*Alternatives:* Section 4205 of the Affordable Care Act requires the Secretary, and by delegation the FDA, to establish by regulation requirements for nutrition labeling of standard menu items for covered restaurants and similar retail food establishments. Therefore, there are no alternatives to rulemaking. FDA has analyzed alternatives that may reduce the burden of this rulemaking, including analyzing the benefits and costs of expanding and contracting the set of establishments automatically covered by this rule and shortening or lengthening the compliance time relative to the rulemaking.

*Anticipated Cost and Benefits:* Chain restaurants and similar retail food establishments operating in local jurisdictions that impose different nutrition labeling requirements will benefit from having a uniform national standard. Any restaurant or similar retail food establishment with fewer than 20 locations may voluntarily choose to be covered by the national standard. It is anticipated that chain restaurants with 20 or more locations will bear costs for adding nutrition information to menus and menu boards. FDA estimates that the total cost of section 4205 and this rulemaking will be approximately $80 million, annualized over 10 years, with a low annualized estimate of approximately $33 million and a high annualized estimate of approximately $125 million over 10 years. These costs include an initial cost of approximately $320 million with an annually recurring cost of $45 million.

Because comprehensive national data for the effects of menu labeling do not exist, FDA has not quantified the benefits associated with section 4205 of the Affordable Care Act and this rulemaking. Some studies have shown that some consumers consume fewer calories when menus have information about calorie content displayed. Consumers will benefit from having important nutrition information for the approximately 30 percent of calories consumed away from home. Given the very high costs associated with obesity and its associated health risks, FDA estimates that if 0.6 percent of the adult obese population reduces energy intake by at least 100 calories per week, then the benefits of section 4205 of the Affordable Care Act and this rule will be at least as large as the costs.

*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 that is readily available when ordered. Dietary intake data have shown that obese Americans consume over 100 calories per meal more when eating food away from home rather than food at home. This rule will provide consumers information about the nutritional content of food to enable them to make healthier food choices and may help mitigate the trend of increasing obesity in America.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/06/11 | 76 FR 19192 |
| NPRM Comment Period End. | 07/05/11 | |
| Final Action | 11/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Federal, Local, State.

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

*Agency Contact:* Geraldine A. June, Supervisor, Product Evaluation and Labeling Team, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, (HFS–820), 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1802, *Fax:* 301 436–2636, *Email:* *geraldine.june@fda.hhs.gov*.

*RIN:* 0910–AG57

## HHS—CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

*Proposed Rule Stage*

### 45. Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation (CMS–3244–P)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh and 1395rr

*CFR Citation:* 42 CFR 482; 42 CFR 485.

*Legal Deadline:* None.

*Abstract:* This proposed rule would revise the requirements that hospitals and critical access hospitals (CAHs) must meet to participate in the Medicare and Medicaid programs. These changes are necessary to reflect substantial advances in health care delivery and in patient safety knowledge and practices. They are also an integral part of our efforts to achieve broad-based improvements in the quality of health care furnished through Federal programs and in patient safety, while at the same time reducing procedural burdens on providers.

*Statement of Need:* CMS is revising many of the hospital CoPs to ensure that they meet the needs of hospital and CAH patients in an effective and efficient manner. CMS is proposing changes to reduce unnecessary, obsolete, or burdensome regulations on U.S. hospitals. This retrospective review of existing regulations meets the President's Executive Order that all Federal agencies identify such rules and make proposals to ''modify, streamline, expand, or repeal them.'' CMS is also proposing additional quality and safety requirements to protect patients.

*Summary of Legal Basis:* The provisions that are included in this proposed rule are necessary to implement the requirements of Executive Order 13563 ''Improving Regulations and Regulatory Review.''

*Alternatives:* To date, nearly 90 specific reforms have been identified and scheduled for action. These reforms impact hospitals, physicians, home health agencies, ambulance providers, clinical labs, skilled nursing facilities, intermediate care facilities, managed care plans, Medicare Advantage organizations, and States. Many of these reforms will be included in proposed rules that relate to particular categories of regulations or types of providers. Other reforms are being implemented without the need for regulations.

This proposed rule includes reforms that do not fit directly in other rules scheduled for publication.

*Anticipated Cost and Benefits:* This proposed rule would reduce costs to tens of thousands of physicians, ambulatory surgical centers, End Stage Renal Disease facilities, and other small entities. Achieving the full scope of potential savings will depend on future decisions by hospitals, by State regulators, and others. Many other factors will influence long-term results. We believe, however, that likely savings and benefits will reach many billions of dollars. Our primary estimate of the net savings to hospitals from reductions in regulatory requirements that we can quantify at this time, offset by increases in other regulatory costs, are approximately $940 million a year.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/24/11 | 76 FR 65891 |
| NPRM Comment Period End. | 12/23/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* CDR Scott Cooper, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Clinical Standards Group, Mail Stop S3–05–15, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9465, *Email: scott.cooper@cms.hhs.gov*.

*RIN:* 0938–AQ89

## HHS—CMS

### 46. Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction (CMS–9070–P)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 1302 and 1395hh and 44 U.S.C. 35

*CFR Citation:* 42 CFR 400, 405, 416, 418, 423; 42 CFR 424, 440, 442, 486, 494.

*Legal Deadline:* None.

*Abstract:* This proposed rule identifies and proposes reforms in Medicare and Medicaid regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and beneficiaries. This proposed rule would increase the ability of health care professionals to devote resources to improving patient care, by eliminating or reducing requirements that impede quality patient care or that divert providing high quality patient care.

*Statement of Need:* In January 2011, the President issued an Executive order that requires agencies to identify rules that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' In accordance with the Executive order, we identified obsolete and unnecessarily burdensome rules that could be eliminated or reformed to achieve similar objectives, with a particular focus on freeing up resources that health care providers, health plans, and States could use to improve or enhance patient health and safety. We examined policies and practices not codified in rules that could be changed or streamlined to achieve better outcomes for patients while reducing burden on providers of care. We also sought to increase transparency and become a better business partner.

*Summary of Legal Basis:* The provisions that are included in this proposed rule are necessary to implement the requirements of Executive Order 13563 ''Improving Regulations and Regulatory Review.''

*Alternatives:* To date, nearly 90 specific reforms have been identified and scheduled for action. These reforms impact hospitals, physicians, home health agencies, ambulance providers, clinical labs, skilled nursing facilities, intermediate care facilities, managed care plans, Medicare Advantage organizations, and States. Many of these reforms will be included in proposed rules that relate to particular categories of regulations or types of providers. Other reforms are being implemented without the need for regulations. This proposed rule includes reforms that do not fit directly in other rules scheduled for publication.

*Anticipated Cost and Benefits:* We anticipate that the provider industry and health professionals would welcome the proposed changes and reductions in burden. We also expect that health professionals would experience increased efficiencies and resources to appropriately devote to improving patient care, increasing accessibility to care, and reducing associated health care costs.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/24/11 | 76 FR 65909 |
| NPRM Comment Period End. | 12/23/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses, Governmental Jurisdictions, Organizations.

*Government Levels Affected:* Federal, State.

*Agency Contact:* Michelle Shortt, Director, Regulations Development Group, OSORA, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mailstop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4675, *Email: michelle.shortt@cms.hhs.gov*.

*RIN:* 0938–AQ96

## HHS—CMS

### 47. • Proposed Changes to Hospital OPPS and CY 2013 Payment Rates; ASC Payment System and CY 2013 Payment Rates (CMS–1589–P) (Section 610 Review)

*Priority:* Economically Significant. Major under 5 U.S.C. 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, 2012.

*Abstract:* This final 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 2013 OPPS

and ASC payment system at least 60 days before January 1, 2013.

*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, 2013.

*Alternatives:* None. This is a statutory requirement.

*Anticipated Cost and Benefits:* Total expenditures will be adjusted for CY 2013.

*Risks:* If this regulation is not published timely, outpatient hospital and ASC services will not be paid appropriately beginning January 1, 2013.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Federalism:* Undetermined.

*Agency Contact:* Paula Smith, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C4–05–13, 7500 Security Blvd., Baltimore, MD 21244, *Phone:* 410 786–4709, *Email: paula.smith@cms.hhs.gov*.

*RIN:* 0938–AR10

## HHS—CMS

### 48. • Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2013 (CMS–1590–P) (Section 610 Review)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* Social Security Act, secs 1102, 1871, 1848

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Final, Statutory, November 1, 2012.

*Abstract:* This annual 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.

*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 implement changes affecting Medicare Part B payment to physicians and other Part B suppliers. The final rule has a statutory publication date of November 1, 2012, and an implementation date of January 1, 2013.

*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 rule or final physician fee schedule.

*Alternatives:* None. This implements a statutory requirement.

*Anticipated Cost and Benefits:* Total expenditures will be adjusted for CY 2013.

*Risks:* If this regulation is not published timely, physician services will not be paid appropriately, beginning January 1, 2013.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Christina Ritter, Director, Division of Practitioner Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C4–03–06, 7500 Security Blvd., Baltimore, MD 21244, *Phone:* 410 786–4636, *Email: christina.ritter@cms.hhs.gov*.

*RIN:* 0938–AR11

## HHS—CMS

### 49. • Changes to the Hospital Inpatient an Long–Term Care Prospective Payment System for FY 2013 (CMS–1588–P) (Section 610 Review)

*Priority:* Economically Significant. Major under 5 U.S.C. 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, 2012. Final, Statutory, August 1, 2012.

*Abstract:* This annual major proposed rule would revise the Medicare hospital inpatient and long-term care hospital prospective payment systems 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 2013 IPPS and LTCHs at least 60 days before October 1, 2012.

*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 systems, 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, 2012.

*Alternatives:* None. This implements a statutory requirement.

Anticipated Cost and Benefits: Total expenditures will be adjusted for FY 2013.

*Risks:* If this regulation is not published timely, inpatient hospital and LTCH services will not be paid appropriately beginning October 1, 2012.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Agency Contact:* Ankit Patel, Health Insurance Specialist, Division of Acute

Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Hospital and Ambulatory Policy Group, Mail Stop, C4–25–11, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4537, *Email: ankit.patel@cms.hhs.gov.*

*RIN:* 0938–AR12

## HHS—CMS

*Final Rule Stage*

### 50. Medicaid Eligibility Expansion Under the Affordable Care Act of 2010 (CMS–2349–F)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 111–148, secs 1413, 1414, 2001, 2002, 2101, 2201

*CFR Citation:* 42 CFR 431, 435, 457.

*Legal Deadline:* Final, Statutory, January 1, 2014.

*Abstract:* This rule implements provisions of the Affordable Care Act expanding access to health insurance through improvements in Medicaid, the establishment of American Health Benefit Exchanges (''Exchanges''), and coordination between Medicaid, the Children's Health Insurance Program (CHIP), and Exchanges. This rule also implements sections of the Affordable Care Act related to Medicaid eligibility, enrollment simplification, and coordination.

*Statement of Need:* This rule expands Medicaid eligibility, simplifies Medicaid eligibility procedures, and streamlines Medicaid enrollment processes. It also coordinates eligibility processes and policies with the processes for premium tax credits for Exchange coverage. Millions of uninsured low-income persons who do not have access to, or could not afford, health insurance will obtain coverage.

*Summary of Legal Basis:* The provisions that are included in this rule are necessary to implement the requirements of sections 1413, 1414, 2001, 2002, 2101, and 2201 of the Affordable Care Act.

*Alternatives:* None. This is a statutory requirement.

Anticipated Cost and Benefits: We anticipate that this rule provides significant benefits to low-income individuals by expanding the availability of affordable health coverage. We expect that States may incur short term increases in administrative costs (depending on their current systems and practices) but that these costs will be wholly offset by administrative savings over the longer term.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/17/11 | 76 FR 51148 |
| NPRM Comment Period End. | 10/31/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Agency Contact:* Sarah DeLone, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop S2–01–16, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–0615, *Email: sarah.delone@cms.hhs.gov.*

*RIN:* 0938–AQ62.

## HHS—CMS

### 51. Establishment of Exchanges and Qualified Health Plans Part I (CMS–9989–F)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Affordable Care Act, secs 1301 to 1343, secs 1401 to 1413

*CFR Citation:* 45 CFR 155 to 157.

*Legal Deadline:* Final, Statutory, January 1, 2014.

*Abstract:* This rule implements the new Affordable Insurance Exchanges (''Exchanges''), consistent with title I of the Affordable Care Act of 2010, referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.

*Statement of Need:* A central aim of Title I of the Affordable Care Act is to expand access to health insurance coverage through the establishment of Exchanges. The number of uninsured Americans is rising due to the lack of affordable insurance, barriers to insurance for people with pre-existing conditions, and high prices due to limited competition and market failures. Millions of people without health insurance use health care services for which they do not pay, shifting the uncompensated cost of their care to health care providers. Providers pass much of this cost to insurance companies, resulting in higher premiums that make insurance unaffordable to even more people. The Affordable Care Act includes a number of policies to address these problems, including the creating of Affordable Insurance Exchanges.

*Summary of Legal Basis:* This rule implements the new Affordable Insurance Exchanges consistent with title I of the Affordable Care Act of 2010.

*Alternatives:* None. This is a statutory requirement.

*Anticipated Cost and Benefits:* This rule will help enhance competition in the health insurance market, promote the choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses. States seeking to operate an Exchange will incur administrative expenses as a result of implementing and subsequently maintaining Exchanges. There is no Federal requirement that each State establish an Exchange.

*Risks:* If this regulation is not published, the Exchanges will not become operational by January 1, 2014, thereby violating the statute.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/15/11 | 76 FR 41866 |
| NPRM Comment Period End. | 09/28/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Federal, State, Tribal.

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

*Agency Contact:* Alissa DeBoy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4428, *Email: alissa.deboy@cms.hhs.gov.*

*RIN:* 0938–AQ67

## HHS—CMS

### 52. • State Requirements for Exchange—Reinsurance and Risk Adjustments (CMS–9975–F)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 111–148, secs 1341 and 1342

*CFR Citation:* 45 CFR 155, 156.

*Legal Deadline:* Final, Statutory, January 1, 2014.

*Abstract:* This rule implements requirements for States related to reinsurance, risk corridors, and a permanent risk adjustment. The goals of these programs are to minimize negative impacts of adverse selection inside the Exchanges.

*Statement of Need:* This rule finalizes guidelines for the transitional risk-sharing programs, reinsurance and risk corridors, as well as for the risk adjustment program that will continue beyond the first 3 years of Exchange operation. The purpose of these programs is to protect health insurance issuers from the negative effects of adverse selection and to protect consumers from increases in premiums due to uncertainty for issuers.

*Summary of Legal Basis:* This rule implements the new Affordable Insurance Exchanges consistent with title I of the Affordable Care Act of 2010.

*Alternatives:* None. This is a statutory requirement.

*Anticipated Cost and Benefits:* Payments through reinsurance, risk adjustment, and risk corridors reduce the increased risk of financial loss that health insurance issuers might otherwise expect to incur in 2014 due to market reforms such as guaranteed issue and the elimination of medical underwriting. These payments reduce the risk to the issuer and the issuer can pass on a reduced risk premium to enrollees. Administrative costs will vary across States and health insurance issuers depending on the sophistication of technical infrastructure and prior experience with data collection and risk adjustment. States and issuers that already have systems in place for data collection and reporting will have reduced administrative costs.

*Risks:* If this regulation is not published, the Exchanges will not become operational by January 1, 2014, thereby violating the statute.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/15/11 | 76 FR 41866 |
| NPRM Comment Period End. | 09/28/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* State.

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

*Agency Contact:* Alissa DeBoy, Health Insurance Specialist, Center for Consumer Information & Insurance Oversight, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4428, *Email: alissa.deboy@cms.hhs.gov*.

*RIN:* 0938–AR07

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## DEPARTMENT OF HOMELAND SECURITY (DHS)

*Fall 2011 Statement of Regulatory Priorities*

The Department of Homeland Security (DHS or Department) 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 six main areas of responsibility:

1. Prevent Terrorism and Enhance Security,
2. Secure and Manage Our Borders,
3. Enforce and Administer our Immigration Laws,
4. Safeguard and Secure Cyberspace,
5. Ensure Resilience to Disasters, and
6. Mature and Strengthen DHS.

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 main areas of responsibility, see the DHS Web site at *http://www.dhs.gov/xabout/responsibilities.shtm.*

The regulations we have summarized below in the Department's fall 2011 regulatory plan and in the agenda support the Department's 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 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 agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project to ensure that the project fosters and supports the Department's mission.

The Department 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 Orders 13563 and 12866 (as amended). Both Executive orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Many of the regulations in DHS' regulatory plan support the Department's efforts pursuant to the DHS Final Plan for the Retrospective Review of Existing Regulations. DHS issued its final plan on August 22, 2011.

Finally, 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.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), DHS identified the following regulatory actions in the Department's Final Plan for the Retrospective Review of Existing Regulations (''DHS Final Plan''). DHS has identified these regulatory actions as associated with retrospective review and analysis. You can view the DHS Final Plan on *www.regulations.gov* by searching for docket number DHS–2011–0015. Some of the regulatory actions on the below list may be completed actions, which do not appear in The Regulatory Plan. You can find more information about these completed rulemakings in past publications of the Unified Agenda (search the Completed Actions sections) on *www.reginfo.gov.* Some of the entries on this list, however, are active rulemakings. You can find entries for these rulemakings on *www.regulations.gov.*

| RIN | Rule | Significantly Reduces Burdens on Small Businesses |
|---|---|---|
| 1615–AB71 | Registration Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Aliens Subject to Numerical Limitations. | No. |
| 1615–AB76 | Commonwealth of the Northern Mariana Islands Transitional Worker Classification | No. |
| 1615–AB83 | Immigration Benefits Business Transformation, Increment I | No. |
| 1615–AB95 | Immigration Benefits Business Transformation: Nonimmigrants; Student and Exchange Visitor Program. | No. |
| 1625–AA16 | Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978. | No. |
| 1625–AB38 | Updates to Maritime Security | No. |
| TBD | Elimination of TWIC for Certain Mariner Populations (Implementation of Section 809 of the 2010 Coast Guard Authorization Act). | No. |
| 1651–AA73 | Establishment of Global Entry Program | No. |
| 1651–AA93 | Closing of the Port of Whitetail, Montana | No. |
| 1651–AA94 | Internet Publication of Administrative Seizure/Forfeiture Notices | No. |
| 1652–AA01 | Aviation Security Infrastructure Fee (ASIF) | No. |
| 1652–AA35 | Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees. | No. |
| 1653–AA44 | Clarification of Eligibility Criteria for F and M Students and for Schools Certified by the Student and Exchange Visitor Program To Enroll F and/or M Students. | No. |

The fall 2011 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 2011 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) administers immigration benefits and services while protecting and securing our homeland. 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.

*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 rules to facilitate that effort, including rules that will remove references to form numbers, form titles, expired regulatory provisions, and descriptions of internal procedure; will mandate electronic filing in certain circumstances; and will comprehensively reorganize 8 CFR part 214. In addition, to streamline processes and improve efficiency, USCIS plans to revise its regulations governing appeals and motions before the Administrative Appeals Office. USCIS will also finalize a final rule related to the extension of immigration law to the Commonwealth of the Northern Mariana Islands.

*Requirements for Filing Motions and Administrative Appeals.* USCIS will propose to revise the procedural regulations governing appeals and motions to reopen or reconsider before its Administrative Appeals Office, and to require that applicants and petitioners exhaust administrative remedies before seeking judicial review of an unfavorable decision. The changes proposed by the rule will streamline the procedures before the Administrative Appeals Office and improve the efficiency of the adjudication process.

*Regulations Related to the Commonwealth of Northern Mariana Islands.* During 2009, USCIS issued three 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. During fiscal year 2011, USCIS issued two final rules related to the extension of the U.S. immigration law to the CNMI. In fiscal year 2012, USCIS will issue the following CNMI final rule: The joint USCIS/Department of Justice (DOJ) regulation ''Application of Immigration Regulations to the CNMI.''

*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 and refugee status determinations. The amendments are expected to focus on portions of the regulations that deal with determinations of whether suffered or feared persecution is on account of a protected ground, the requirements for establishing that the government is unable or unwilling to protect the applicant, and the definition of membership in a particular social group. This effort should provide greater clarity and consistency in this important area of the law.

*Exception to the Persecutor Bar for Asylum, Refugee, or Temporary Protected Status, and Withholding of Removal.* In a joint rulemaking, DHS and 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 or 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 would clarify the required level 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 consistency for these vulnerable groups, their advocates, and the community. These rulemakings will contain provisions to adjust documentary requirements for this vulnerable population and provide greater clarity to the law enforcement community.

*Application of the William Wilberforce Trafficking Victims Protection Act of 2008.* In a joint rulemaking, DHS and DOJ will propose amendments to implement the William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA). Among other things, this statute specified that USCIS has initial jurisdiction over an asylum application filed by an unaccompanied alien child in removal proceedings before an immigration judge in DOJ. The agencies implemented this legislation with interim procedures that the TVPRA mandated within 90 days after enactment. The proposed rule would amend both agencies' regulations to finalize the procedures to determine when an alien child is unaccompanied and how jurisdiction is transferred to USCIS for initial adjudication of the child's asylum application. In addition, this rule would address adjustment of status for special immigrant juveniles and voluntary departure for unaccompanied alien children in removal proceedings.

*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 modern maritime environment. 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 2011 regulatory plan below, contribute to the fulfillment of those responsibilities and reflect our regulatory policies.

*Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978.* The Coast Guard proposed to amend its regulations to implement changes to an interim rule published on June 26, 1997. These proposed amendments go beyond changes found in the interim rule and seek to more fully incorporate the requirements of the STCW in the requirements for the credentialing of U.S. merchant mariners. The proposed changes are primarily substantive and: (1) Are necessary to continue to give full and complete effect to the STCW Convention; (2) incorporate lessons learned from implementation of the STCW through the interim rule and through policy letters and Navigation and Vessel Inspection Circulars (NVICs); and (3) attempt to clarify regulations that have generated confusion. The Coast Guard published this proposal as a Supplemental Notice of Proposed Rulemaking (SNPRM) on August 1, 2011. The Coast Guard intends to review and analyze comments received on that SNPRM, and publish a subsequent rule complying with the requirements of the newly amended STCW Convention. DHS included this rulemaking in the DHS Final Plan for the Retrospective Review of Existing Regulations, which DHS released on August 22, 2011.

*Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System.* The Coast Guard intends to expand the applicability of notice of arrival and departure (NOAD) and automatic identification system (AIS) requirements to include more commercial vessels. This rule, once final, would expand the applicability of notice of arrival (NOA) requirements to include additional vessels, establish a separate requirement for vessels to submit notices of departure (NOD) when departing for a foreign port or place, set forth a mandatory method for electronic submission of NOA and NOD, and modify related reporting content, timeframes, and procedures. This rule would also extend the applicability of AIS requirements beyond Vessel Traffic Service (VTS) areas to all U.S. navigable waters and require additional commercial vessels install and use AIS. These changes are intended to improve navigation safety, enhance Coast Guard's ability to identify and track vessels, and heighten the Coast Guard's overall maritime domain awareness, thus helping the Coast Guard address

threats to maritime transportation safety and security and mitigate the possible harm from such threats.

*Nontank Vessel Response Plans and Other Vessel Response Plan Requirements.* The Coast Guard intends to promulgate a rule to further protect the Nation from the threat of oil spills in U.S. waters, which supports the strategic goals of protection of natural resources and maritime mobility. The rule, once final, would require owners and operators of nontank vessels to prepare and submit oil spill response plans. The Federal Water Pollution Control Act defines nontank vessels as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank vessels. The rule would specify the content of a response plan and would address, among other issues, the requirement that a plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, the rule would require vessel owners and operators to submit their vessel response plan control number as part of already required notice of arrival information.

*Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners.* The Coast Guard is developing revisions to its merchant mariner credentialing regulations, to implement changes made by section 809 of the Coast Guard Authorization Act of 2010. Section 809 eliminated the requirement for certain mariner populations to obtain TWIC. The Coast Guard is also considering revising its regulations to provide an exemption for certain fees associated with merchant mariner credentialing for those mariners not required to hold a TWIC who may still be required to visit a TWIC enrollment center to provide the information necessary to obtain a Merchant Mariner Credential. DHS highlighted this rulemaking in the DHS Final Plan for the Retrospective Review of Existing Regulations, which DHS released on August 22, 2011.

*Offshore Supply Vessels of 6,000 or more GT ITC.* The Coast Guard Authorization Act of 2010 (the Act) removed the size limit on offshore supply vessels (OSVs) and directed the Coast Guard to issue, as soon as practicable, regulations to implement section 617 of the Act. As required by the Act, this regulation would provide for the safe carriage of oil, hazardous substances, and individuals in addition to crew on OSVs of at least 6,000 gross tonnage as measured under the International Convention on Tonnage Measurement of Ships (6,000 GT ITC). In developing the regulations, the Coast Guard is taking into account the characteristics of offshore supply vessels, their methods of operation, and their service in support of exploration, exploitation, or production of offshore mineral or energy resources.

*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 at and between the ports of entry and at official crossings into the United States. CBP must accomplish its border security and enforcement mission while facilitating 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 import and export of goods into and out of the United States, and enforcing the laws concerning the entry of persons into and out of 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 and exports; 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; conducting inspections of all people, vehicles, and cargo entering the United States; enforcing 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 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. 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 $4.00 operational fee for the use of ESTA set by the Secretary of Homeland Security to at least ensure the recovery of the full costs of providing and administering the ESTA system. During the next fiscal year, CBP intends to issue a final rule on ESTA and the ESTA fee.

*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 109–

347, section 203 (October 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 the next fiscal year.

*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 the next fiscal year.

*Global Entry Program.* In the fall of 2009, 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), 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 has evaluated the public comments received in response to the NPRM and intends to issue a final rule during the next fiscal year.

In the above paragraphs, DHS discusses the CBP regulations that foster DHS's mission. CBP also issues regulations related to the mission of the Department of the Treasury. 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 and 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 2012, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement the 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 2012, 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 work 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. 109–308, Oct. 6, 2006), the Local Community Recovery Act of 2006 (Pub. L. 109–218, Apr. 20, 2006), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 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 2012.

*United States 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. Its 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 2012, 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 changes pursuant to the enactment of the Homeland Security Act of 2002. During fiscal year 2012, ICE will also issue a companion Notice of Proposed Rulemaking (NPRM) 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). 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's 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.

*Ammonium Nitrate Security Program.* The Secure Handling of Ammonium Nitrate Act, section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act, Public Law 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 Ammonium Nitrate Security Program Notice of Proposed Rulemaking proposes requirements that would implement the Secure Handling of Ammonium Nitrate Act. 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 aims to 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.

On October 29, 2008, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) for the Secure Handling of Ammonium Nitrate Program, and received a number of public comments on that ANPRM. DHS reviewed those comments and published a Notice of Proposed Rulemaking (NPRM) on August 3, 2011. NPPD will accept public comment on until December 1, 2011, after which NPPD will review the public comments and develop a Final Rule related to the Security Handling of Ammonium Nitrate Program.

*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 2012, 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.

*General Aviation Security and Other Aircraft Operator Security.* 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 by requiring operators of certain GA aircraft to adopt a security program and 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, and over-the-road bus operators 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 Buses) of the Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act), Public Law 110–53 (Aug. 3, 2007). In compliance with the definitions of frontline employees in the pertinent provisions of the 9/11 Act, the Notice of Proposed Rulemaking (NPRM) would define which employees are required to undergo training. The NPRM would also propose definitions for transportation security-sensitive materials, as required by section 1501 of the 9/11 Act.

*Railroad Carrier Vulnerability Assessment and Security Plans.* TSA will also propose regulations requiring high-risk freight and passenger railroads to conduct vulnerability self-assessments, as well as develop and implement comprehensive security plans. TSA would need to approve both the vulnerability assessment and security plan. This regulation, implementing section 1512 of the 9/11 Act, would include proposed provisions to identify which railroads would be considered high-risk and include proposed provisions about the associated vulnerability assessment and security planning requirements.

*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 an Notice of Proposed Rulemaking (NPRM) on November 18, 2009. The final rule will also codify the scope of TSA's existing inspection program and could require regulated parties to allow DHS officials to enter, inspect, and test property, facilities, and records relevant to repair stations. This rulemaking action will implement 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. DHS is considering a proposal that would include procedures for conducting STAs for transportation workers from almost all modes of transportation, 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.

As part of this proposed rule, TSA will propose revisions to the Alien Flight Student Program (AFSP) regulations. TSA published an interim final rule for ASFP on September 20, 2004. TSA regulations require aliens seeking to train at Federal Aviation Administration-regulated flight schools to complete an application and undergo an STA prior to beginning flight training. There are four categories under which students currently fall; the nature of the STA depends on the student's category. TSA is considering changes to the AFSP that would improve equity among fee payers and enable the implementation of new technologies to support vetting.

*United States Secret Service*

The United States Secret Service does not have any significant regulatory actions planned for fiscal year 2012.

*DHS Regulatory Plan for Fiscal Year 2012*

A more detailed description of the priority regulations that comprise DHS's fall 2011 regulatory plan follows.

## DHS—OFFICE OF THE SECRETARY (OS)

*Proposed Rule Stage*

### 53. Secure Handling of Ammonium Nitrate Program

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 2008 Consolidated Appropriations Act, sec 563, subtitle J—Secure Handling of Ammonium Nitrate, Pub. L. 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, subtitle J—Secure Handling of Ammonium Nitrate, 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 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 could 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 should 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 and injured 853 people.

*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 considered several alternatives when developing the Ammonium Nitrate Security Program proposed rule. The alternatives considered were: (a) Register individuals applying for an AN Registered User Number using a paper application (via facsimile or the U.S. mail) rather than through in person application at a local Cooperative Extension office or only through a web-based portal; (b) verify AN Purchasers through both an Internet based verification portal and call center rather than only a verification portal or call center; (c) communicate with applicants for an AN Registered User Number through U.S. Mail rather than only through email or a secure web-based portal; (d) establish a specific capability within the Department to receive, process, and respond to reports of theft or loss rather than leverage a similar capability which already exists with the ATF; (e) require AN Facilities to maintain records electronically in a central database provided by the Department rather than providing flexibility to the AN Facility to maintain their own records either in paper or electronically; (f) require agents to register with the Department prior to the sale or transfer of ammonium nitrate involving an agent rather than allow oral confirmation of the agent with the AN Purchaser on whose behalf the agent is working; and (g) exempt explosives from this regulation rather than not exempting them. As part of its notice of proposed rulemaking, the Department seeks 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:* The Department estimates the number of entities that purchase ammonium nitrate to range from 64,950 to 106,200. These purchasers include farms, fertilizer mixers, farm supply wholesalers and cooperatives (co-ops), golf courses, landscaping services, explosives distributors, mines, retail garden centers, and lab supply wholesalers. The Department estimates the number of entities that sell ammonium nitrate to be between 2,486 and 6,236, many of which are also purchasers. These sellers include ammonium nitrate fertilizer and explosive manufacturers, fertilizer mixers, farm supply wholesalers and co-ops, retail garden centers, explosives distributors, fertilizer applicator services, and lab supply wholesalers. Individuals or firms that provide transportation services within the distribution chain may be categorized as

sellers, agents, or facilities depending upon their business relationship with the other parties to the transaction. The total number of potentially regulated farms and other businesses ranges from 64,986 to 106,236 (including overlap between the categories).

The cost of this proposed rule ranges from $300 million to $1,041 million over 10 years at a 7 percent discount rate. The primary estimate is the mean which is $670.6 million. For comparison, at a 3 percent discount rate, the cost of the program ranges from $364 million to $1.3 billion with a primary (mean) estimate of $814 million. The average annualized cost for the program ranges from $43 million to $148 million (with a mean of $96 million), also employing a 7 percent discount rate.

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. These elements and related qualitative benefits include point of sale identification requirements and requiring individuals to be screened against the Terrorist Screening Database (TSDB) resulting in known bad actors being denied the ability to purchase ammonium nitrate.

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.

*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.

*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 | 08/03/11 | 76 FR 46908 |
| Notice of Public Meetings. | 10/07/11 | 76 FR 62311 |
| Notice of Public Meetings. | 11/14/11 | 76 FR 70366 |
| NPRM Comment Period End. | 12/01/11 | |

*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.

*URL For More Information: www.regulations.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Jon MacLaren, Ammonium Nitrate Program Manager, Department of Homeland Security, Office of the Secretary, Infrastructure Security Compliance Division (NPPD/ISCD), Mail Stop 0610, 245 Murray Lane SW., Arlington, VA 20598–0610, *Phone:* 703 235–5263, *Email: jon.m.maclaren@hq.dhs.gov.*

*RIN:* 1601–AA52

## DHS—U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

*Proposed Rule Stage*

### 54. Asylum and Withholding Definitions

*Priority:* Other Significant.

*Legal Authority:* 8 U.S.C. 1103; 8 U.S.C. 1158; 8 U.S.C. 1226; 8 U.S.C. 1252; 8 U.S.C. 1282

*CFR Citation:* 8 CFR 2; 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 rule 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 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, DOJ published a proposed rule in the **Federal Register** providing guidance on the definitions of ''persecution'' and ''membership in a particular social group.'' Prior to publishing a new proposed 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 new proposed 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 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 for this rule, we do not believe this rule will cause a 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 ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* CIS No. 2092–00, Transferred from RIN 1115–AF92.

*Agency Contact:* Ted Kim, Deputy Chief, Asylum Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Refugee, Asylum, and International Operations, Suite 3200, 20 Massachusetts Avenue NW., Washington, DC 20259, *Phone:* 202 272–1614, *Fax:* 202 272–1994, *Email: ted.kim@dhs.gov*.

*RIN:* 1615–AA41

## DHS—USCIS

### 55. New Classification for Victims of Criminal Activity; Eligibility for the U Nonimmigrant Status

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1101 note; 8 U.S.C. 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 Nationality Act. The Department will issue a proposed 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 | |
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal, Local, State.

*Additional Information:* Transferred from RIN 1115–AG39.

*Agency Contact:* Laura M. Dawkins, Chief, Family Immigration and Victim Protection Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Suite 1200, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: laura.dawkins@dhs.gov.*

*RIN:* 1615–AA67

## DHS—USCIS

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

*Priority:* Other Significant.

*Legal Authority:* 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1158; 8 U.S.C. 1226; Pub. L. 107–26; Pub. L. 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 believes that this is an appropriate subject for rulemaking and proposes to amend the applicable regulations to set out its 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 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 goals 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 ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Molly Groom, Office of the Chief Counsel Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20259, *Phone:* 202 272–1400, *Fax:* 202 272–1408, *Email: molly.groom@dhs.gov*.

*RIN:* 1615–AB89

## DHS—USCIS

### 57. • Electronic Filing of Requests for Immigration Benefits; Requiring an Application To Change or Extend Nonimmigrant Status To Be Filed Electronically

*Priority:* Other Significant.

*Legal Authority:* 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1151; 8 U.S.C. 1153

*CFR Citation:* 8 CFR 103; 8 CFR 204.

*Legal Deadline:* None.

*Abstract:* The Department of Homeland Security (DHS) is proposing regulations to govern the electronic filing of requests for immigration benefit requests with the U.S. Citizenship and Immigration Services (USCIS). DHS also proposes to mandate electronic applications in the new Integrated Operating Environment that is under development, with limited exceptions, for an Application to Extend/Change Nonimmigrant Status from any individual in the M, J, B–1, and B–2 classifications; change of status requests to the F, M, J, B–1, or B–2 classifications; and reinstatement of status requests in the F or M classification.

*Statement of Need:* USCIS is in the process of transforming its operations to improve service, operational efficiency, and national security. This rule will allow USCIS to modernize its processes, which will provide applicants and petitioners with better and faster services and enhance the ability of USCIS to process cases with greater accuracy, security, and timeliness.

*Summary of Legal Basis:* Authority for this rule falls within the broad authority of the Secretary of Homeland Security to administer DHS, the administration of immigration and nationality laws, and other delegated authority. See Homeland Security Act of 2002, Public Law 107–296 section 102 (Nov. 25, 2002), 6 U.S.C. 112, and the Immigration and Nationality Act of 1952, as amended, section 103, 8 U.S.C. 1103.

The Government Paperwork Elimination Act provides that, when possible, Federal agencies are directed to make available electronic forms and provide for electronic filing and submissions when conducting agency business with the public. See Public Law 105–277, section 1703 (Oct. 21, 1998), 44 U.S.C. 3504. GPEA also establishes the means for the use and acceptance of electronic signatures.

The INA provides a detailed list of classes of nonimmigrant aliens. See, *e.g.,* INA sections 101(a)(15)(B), (C), (F), and (M); 8 U.S.C. 1101(a)(15) (B), (C), (F), and (M). The Secretary of Homeland Security may authorize a change to any other nonimmigrant classification in the case of any alien who is lawfully admitted to the United States as a nonimmigrant, maintains his or her lawful status, does not fall under certain nonimmigrant visa categories that are listed in the statute, and is not inadmissible or whose inadmissibility has been waived under the pertinent sections of the immigration and nationality laws of the United States. See INA section 248(a); 8 U.S.C. 1258(a).

This rule is also proposed in compliance with Executive Order 13571 ''Streamlining Service Delivery and Improving Customer Service.'' See Executive Order No. 13571, 76 FR 24339 (Apr. 27, 2011). Executive Order 13571 tasks each Federal department and agency with establishing an initiative that uses technology to improve the experience of individuals and entities receiving services from that Federal department or agency. See Executive Order No. 13571, section 2(a).

*Alternatives:* DHS has examined the alternative of maintaining paper processing for applications to extend/change status (Form I–539) and has determined that the continuation of legacy data systems and current processes do not meet the need for USCIS to modernize operations.

*Anticipated Cost and Benefits:* DHS is proposing to mandate the electronic filing of stand-alone Applications to Extend/Change Nonimmigrant Status. Only a limited number of nonimmigrants would be impacted by this change. Specifically, those individuals in the following nonimmigrant classifications would be required to file this application electronically: B–1, B–2, F, M, or J. In transforming its immigration benefit processes into a paperless system, DHS anticipates the following benefits:

- Streamlined operations
- More timely submission and adjudication of the benefit requested
- Reduced requests for additional or missing information
- Enhanced security for the applicant
- Enhanced customer service

For those applicants that do not currently possess or have access to the tools needed to submit immigration benefit requests electronically—namely, computer, Internet service, and a scanner—this rule would result in additional costs to these petitioners or applicants. DHS is in the process of examining the potential monetary costs and benefits of the proposed rule.

*Risks:* Populations with no or limited Internet access and individuals with no or limited English proficiency may be affected by this rule. This risk can be mitigated by including a waiver process.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Dan Konnerth, Policy and Coordination Chief, Office of Transformation Coordination, Department of Homeland Security, U.S. Citizenship and Immigration Services, 6th Floor, 633 Third Street NW., Washington, DC 20529, *Phone:* 202 233–2381, *Email: dan.konnerth@dhs.gov*.

*RIN:* 1615–AB94

## DHS—USCIS

### 58. • Immigration Benefits Business Transformation: Nonimmigrants; Student and Exchange Visitor Program

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1103

*CFR Citation:* 8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274a.

*Legal Deadline:* None.

*Abstract:* The Department of Homeland Security (DHS) is amending

its nonimmigrant regulations to enable U.S. Citizenship and Immigration Services (USCIS) to migrate from a paper file-based, non-integrated systems environment to an electronic, customer-focused, centralized case management environment for benefit processing. This rulemaking, the second in a series of business transformation rules, primarily focuses on 8 CFR part 214, reorganizes and streamlines general information relating to nonimmigrant classifications, and relocates other information relating to specific, individual nonimmigrant classifications to a separate subpart for each major nonimmigrant classification. DHS is making these amendments because part 214 contains more than 20 nonimmigrant classifications, and it has become very large and complex to navigate. This regulation will provide the public with simpler, better organized regulatory requirements for each nonimmigrant classification and facilitate future revisions.

*Statement of Need:* USCIS is in the process of transforming its operations to improve service, operational efficiency, and national security. This rule will provide the public with clearly written, better organized regulatory requirements for each nonimmigrant classification.

*Summary of Legal Basis:* The Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135 (Nov. 25, 2002), 6 U.S.C. 112, and the Immigration and Nationality Act of 1952 (INA), charge the Secretary of Homeland Security (Secretary) with administration and enforcement of the immigration and nationality laws. See INA section 103, 8 U.S.C. 1103.

This rule will significantly enhance the ability of USCIS to fully implement the Government Paperwork Elimination Act (GPEA). See Public Law 105–277, tit. XVII, section 1701 to 1710, 112 Stat. 2681 at 2681–749, (Oct. 21, 1998) (codified at 44 U.S.C. 3504 & note). GPEA provides that, when possible, Federal agencies use electronic forms, electronic filing, and electronic submissions to conduct agency business with the public. Id. The USCIS modernization and transformation effort will move its operations away from a paper-based system to an electronic environment wherever possible in an effort to implement the requirements of GPEA.

*Alternatives:* The regulations for the more than 20 nonimmigrant classifications are included in 8 CFR 214. As more nonimmigrant classifications have been added to the Act and as the statutory requirements for existing classifications have become more complex, sections within 8 CFR 214 have become increasingly difficult to read, comprehend and cite. DHS will reorganize 8 CFR 214 to address this lack of clarity.

*Anticipated Cost and Benefits:* DHS will amend its regulations at 8 CFR part 214 to streamline and reorganize the content into a more reader-friendly and logical format. DHS is not making substantive changes to the content or requirements of existing regulations. There are no additional costs anticipated as a result of this rulemaking.

*Risks:* This rule may initially lead to confusion of those who are familiar with the previous organization of 8 CFR 214. USCIS can mitigate this risk by informing the public of these changes.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* CIS# 2505–11. This rule (RIN 1615–AB95) is adopting the following three rules as final rules: 1615–AA35, 1615–AA56, and 1615–AA53.

*Agency Contact:* Dan Konnerth, Policy and Coordination Chief, Office of Transformation Coordination, Department of Homeland Security, U.S. Citizenship and Immigration Services, 6th Floor, 633 Third Street NW., Washington, DC 20529, *Phone:* 202 233–2381, *Email: dan.konnerth@dhs.gov*.

*RIN:* 1615–AB95

## DHS—USCIS

### 59. • Application of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to Unaccompanied Alien Children Seeking Asylum

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* Pub. L. 110–457

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* This rule implements the provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, 122 Stat. 5074 (Dec. 23, 2008) relating to unaccompanied alien children seeking asylum. Specifically, the rule proposes to amend Department of Homeland Security and Department of Justice regulations relating to asylum applications filed by unaccompanied alien children. The rule will amend both Departments' regulations to reflect that U.S. Citizenship and Immigration Services (USCIS) has initial jurisdiction over any asylum application filed by an unaccompanied alien child. The rule will also add new special procedures for all children in interviews before USCIS officers and for unaccompanied alien children in proceedings before immigration judges in the Executive Office for Immigration Review.

*Statement of Need:* The TVPRA mandated promulgation of regulations taking into account the specialized needs of unaccompanied alien children and addressing both procedural and substantive aspects of handling unaccompanied alien children's cases. This rule will codify existing agency guidance on the specialized needs of unaccompanied alien children. The rule will also codify agency guidance implementing the TVPRA. Such guidance has been in effect since March 2009 and, based on experience gained in following the guidance, will be revised in the rule.

*Summary of Legal Basis:* The purpose of this rule is to comply with the TVPRA mandate to promulgate regulations taking into account the specialized needs of unaccompanied alien children and addressing both procedural and substantive aspects of handling unaccompanied alien children's cases.

*Alternatives:* N/A.

*Anticipated Cost and Benefits:* Congress has given USCIS initial jurisdiction over the asylum claims of unaccompanied alien children. New costs can accrue when EOIR immigration judges transfer cases involving unaccompanied alien minors to USCIS for asylum interviews and adjudication if USCIS does not grant the asylum application and the case is returned to EOIR for further adjudication. This additional cost is offset, however, when USCIS grants such an application because the costs of USCIS asylum adjudications are generally much lower than the processing of immigration court applications for that benefit. In addition, USCIS provides a non-adversarial setting for asylum seeker interviews and has recently developed extensive and ongoing training in children's issues. These factors can assist unaccompanied children in expressing their fear of return to their native countries. Unaccompanied alien children also compose a uniquely vulnerable population with often compelling protection issues; therefore, affording unaccompanied alien children every

consideration in the asylum process greatly benefits them. Finally, benefits will also accrue because the regulation will improve upon the process initially implemented upon passage of the TVPRA, incorporating lessons learned and optimizing the procedures for USCIS and EOIR.

*Risks:* N/A.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Federal.

*Agency Contact:* Ted Kim, Deputy Chief, Asylum Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Refugee, Asylum, and International Operations, Suite 3200, 20 Massachusetts Avenue NW., Washington, DC 20259, *Phone:* 202 272–1614, *Fax:* 202 272–1994, *Email: ted.kim@dhs.gov*.

*RIN:* 1615–AB96

## DHS—USCIS

### 60. • Administrative Appeals Office: Procedural Reforms To Improve Efficiency

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1304; 6 U.S.C. 112

*CFR Citation:* 8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 210; 8 CFR 214; 8 CFR 245a; 8 CFR 320; 8 CFR 105 (new); * * *.

*Legal Deadline:* None.

*Abstract:* This proposed rule revises the requirements and procedures for the filing of motions and appeals before the Department's U.S. Citizenship and Immigration Services and its Administrative Appeals Office. The proposed changes are intended to streamline the existing processes for filing motions and appeals and will reduce delays in the review and appellate process. This rule also makes additional changes necessitated by the establishment of the Department of Homeland Security and its components.

*Statement of Need:* This rule proposes to make numerous changes to streamline the current appeal and motion processes which: (1) Will result in cost savings to the Government, applicants, and petitioners; and (2) will provide for a more efficient use of USCIS officer and clerical staff time, as well as more uniformity with Board of Immigration Appeals appeal and motion processes.

*Summary of Legal Basis:* 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101 and note 1102, 1103, 1151, 1153, 1154, 1182, 1184, 1185 note (sec. 7209 of Pub. L. 108–458; title VII of Pub. L. 110–229), 1186a, 1187, 1221,1223, 1225 to 1227, 1255a, and 1255a note, 1281, 1282, 1301 to 1305, 1324a, 1356, 1372, 1379, 1409(c), 1443 to 1444, 1448, 1452, 1455, 1641, 1731 to 1732; 31 U.S.C. 9701; 48 U.S.C. 1901, 1931 note; section 643, Public Law 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau,; title VII of Public Law 110–229; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); Public Law 82–414, 66 Stat. 173, 238, 254, 264; title VII of Public Law 110–229; E.O. 12356.

*Alternatives:* The alternative to this rule would be to continue under the current process without change.

*Anticipated Cost and Benefits:* As a result of streamlining the appeal and motion process, USCIS anticipates quantitative and qualitative benefits to DHS and the public. We also anticipate cost savings to DHS and applicants as a result of the proposed changes.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Additional Information:* Previously 1615–AB29 (CIS 2311–04), which was withdrawn in 2007. DHS has included this rule in its Final Plan for the Retrospective Review of Existing Regulations, which DHS issued on August 22, 2011.

*Agency Contact:* William K Renwick, Supervisory Citizenship and Immigration Appeals Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Appeals Office, Washington, DC 20529–2090, *Phone:* 703 224–4501, *Email: william.k.renwick@dhs.gov.*

*Related RIN:* Duplicate of 1615–AB29.

*RIN:* 1615–AB98

## DHS—USCIS

*Final Rule Stage*

### 61. New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for T Nonimmigrant Status

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101 to 1104; 8 U.S.C. 1182; 8 U.S.C. 1184; 8 U.S.C. 1187; 8 U.S.C. 1201; 8 U.S.C. 1224 to 1227; 8 U.S.C. 1252 to 1252a; 22 U.S.C. 7101; 22 U.S.C. 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 | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*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.

*Agency Contact:* Laura M. Dawkins, Chief, Family Immigration and Victim Protection Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Suite 1200, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: laura.dawkins@dhs.gov.*

*Related RIN:* Related to 1615–AA67.

*RIN:* 1615–AA59

## DHS—USCIS

### 62. Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101 to 1104; 8 U.S.C. 1182; 8 U.S.C. 1184; 8 U.S.C. 1187; 8 U.S.C. 1201; 8 U.S.C. 1224 to 1227; 8 U.S.C. 1252 to 1252a; 8 U.S.C. 1255; 22 U.S.C. 7101; 22 U.S.C. 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 of 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 | 06/00/12 | |

*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.

*Agency Contact:* Laura M. Dawkins, Chief, Family Immigration and Victim Protection Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Suite 1200, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: laura.dawkins@dhs.gov.*

*RIN:* 1615–AA60

## DHS—USCIS

### 63. Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 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:* This final rule amends the Department of Homeland Security (DHS) and the Department of Justice (DOJ) 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 and implements conforming amendments to their respective regulations.

*Statement of Need:* This rule finalizes the interim rule to conform existing regulations with the CNRA. Some of the changes implemented under the CNRA affect existing regulations governing both DHS immigration policy and procedures and proceedings before the immigration judges and the Board. Accordingly, it is necessary to make amendments both to the DHS regulations and to the DOJ regulations. The Secretary and the Attorney General are making conforming amendments to their respective regulations in this single rulemaking document.

*Summary of Legal Basis:* Congress extended the immigration laws of the United States to the CNMI. The stated purpose of the CNRA is to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI (phasing-out the CNMI's nonresident contract worker program while minimizing to the greatest extent practicable the potential adverse economic and fiscal effects of that phase-out), to maximize the CNMI's potential for future economic and business growth, and to assure worker protections from the potential for abuse and exploitation.

*Anticipated Cost and Benefits: Costs:* The interim rule established basic provisions necessary for the application of the INA to the CNMI and updated definitions and existing DHS and DOJ regulations in areas that were confusing or in conflict with how they are to be applied to implement the INA in the CNMI. As such, that rule made no changes that had identifiable direct or indirect economic impacts that could be quantified.

*Benefits:* This final rule makes additional regulatory changes in order to lessen the adverse impacts of the CNRA on employers and employees in the CNMI and assist the CNMI in its transition to the INA.

*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 | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* CIS 2460–08.

*Agency Contact:* Kevin Cummings, Branch Chief, Business and Trade Services, Department of Homeland Security, U.S. Citizenship and Immigration Services, Second Floor, Office of Program and Regulations Development, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: kevin.cummings@dhs.gov.*

*Related RIN:* Related to 1615–AB76, Related to 1615–AB75.

*RIN:* 1615–AB77

## DHS—U.S. COAST GUARD (USCG)

*Final Rule Stage*

### 64. Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978

*Priority:* Other Significant.

*Legal Authority:* 46 U.S.C. 2103; 46 U.S.C. chapters 71 and 73; DHS Delegation No. 0170.1

*CFR Citation:* 46 CFR 10; 46 CFR 11; 46 CFR 12; 46 CFR 15.

*Legal Deadline:* None.

*Abstract:* The International Maritime Organization (IMO) comprehensively amended the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978, in 1995 and 2010. The 1995 amendments came into force on February 1, 1997. This project implements those amendments by revising current rules to ensure that the United States complies with their requirements on: The training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the United States. In addition, the Coast Guard has identified the need for additional changes to the interim rule issued in 1997. This project supports the Coast Guard's broad role and responsibility of maritime safety. It also supports the roles and responsibilities of the Coast Guard of reducing deaths and injuries of crew

members on domestic merchant vessels and eliminating substandard vessels from the navigable waters of the United States. The Coast Guard published an NPRM on November 17, 2009, and Supplemental NPRM (SNPRM) on March 23, 2010.

At a June 2010 diplomatic conference, the IMO adopted additional amendments to the STCW convention, which change the minimum training requirements for seafarers. In response to feedback and to the adoption of those amendments, the Coast Guard developed a second Supplemental NPRM to incorporate the 2010 Amendments into the 1990 interim rule.

*Statement of Need:* The Coast Guard proposed to amend its regulations to implement changes to its interim rule published on June 26, 1997. These proposed amendments go beyond changes found in the interim rule and seek to more fully incorporate the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), in the requirements for the credentialing of United States merchant mariners. The new changes are primarily substantive and: (1) Are necessary to continue to give full and complete effect to the STCW Convention; (2) Incorporate lessons learned from implementation of the STCW through the interim rule and through policy letters and NVICs; and (3) Attempt to clarify regulations that have generated confusion.

*Summary of Legal Basis:* The authority for the Coast Guard to prescribe, change, revise, or amend these regulations is provided under 46 U.S.C. 2103 and 46 U.S.C. chapters 71 and 73; and Department of Homeland Security Delegation No. 0170.1.

*Alternatives:* For each proposed change, the Coast Guard has considered various alternatives. We considered using policy statements, but they are not enforceable. We also considered taking no action, but this does not support the Coast Guard's fundamental safety and security mission. Additionally, we considered comments made during our 1997 rulemaking to formulate our alternatives. When we analyzed issues, such as license progression and tonnage equivalency, the alternatives chosen were those that most closely met the requirements of STCW.

*Anticipated Cost and Benefits:* In the SNPRM, we estimated the annualized cost of this rule over a 10-year period to be $32.8 million per year at a 7 percent discount rate. We estimate the total 10-year cost of this rulemaking to be $230.7 million at a 7 percent discount rate and $274.3 million at a 3 percent discount rate.

The changes in anticipated costs since the publication of 2009 NPRM are due to the 2010 amendments to the STCW Convention: Medical examinations and endorsements, leadership and management skills, engine room management training, tankerman endorsements, safety refresher training and able seafarer deck and engine certification requirements. However, there would be potential savings from the costs of training requirements as the Coast Guard would accept various methods for demonstrating competence, including the on-the-job training and preservation of the ''hawsepipe'' programs.

We anticipate the primary benefit of this rulemaking is to ensure that the U.S. meets its obligations under the STCW Convention. Another benefit is an increase in vessel safety and a resulting decrease in the risk of shipping casualties.

*Risks:* No risks.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Meeting | 08/02/95 | 60 FR 39306 |
| Supplemental NPRM Comment Period End. | 09/29/95 | |
| Notice of Inquiry .. | 11/13/95 | 60 FR 56970 |
| Comment Period End. | 01/12/96 | |
| NPRM ..... | 03/26/96 | 61 FR 13284 |
| Notice of Public Meetings. | 04/08/96 | 61 FR 15438 |
| NPRM Comment Period End. | 07/24/96 | |
| Notice of Intent .... | 02/04/97 | 62 FR 5197 |
| Interim Final Rule | 06/26/97 | 62 FR 34505 |
| Interim Final Rule Effective. | 07/28/97 | |
| NPRM ..... | 11/17/09 | 74 FR 59353 |
| NPRM Comment Period End. | 02/16/10 | |
| Supplemental NPRM. | 03/23/10 | 75 FR 13715 |
| Supplemental NPRM. | 08/01/11 | 76 FR 45908 |
| Public Meeting Notice. | 08/02/11 | 76 FR 46217 |
| Comment Period End. | 09/30/11 | |
| Final Action ..... | 01/00/12 | |

*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 docket number for this rulemaking is USCG–2004–17914. The docket is located at *www.regulations.gov.* The old docket number is CGD 95–062.

Include Retrospective Review under E.O. 13563.

*URL for More Information: www.regulations.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Mark Gould, Project Manager, CG–5221, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1409.

*RIN:* 1625–AA16

## DHS—USCG

### 65. Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C. 1223; 33 U.S.C. 1225; 33 U.S.C. 1231; 46 U.S.C. 3716; 46 U.S.C. 8502 and ch 701; sec 102 of Pub. L. 107–295; EO 1223

*CFR Citation:* 33 CFR 62; 33 CFR 66; 33 CFR 160; 33 CFR 161; 33 CFR 164; 33 CFR 165.

*Legal Deadline:* None.

*Abstract:* This rulemaking would expand the applicability for Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements. These expanded requirements would better enable the Coast Guard to correlate vessel AIS data with NOAD data, enhance our ability to identify and track vessels, detect anomalies, improve navigation safety, and heighten our overall maritime domain awareness.

The NOAD portion of this rulemaking could expand the applicability of the NOAD regulations by changing the minimum size of vessels covered below the current 300 gross tons, require a notice of departure when a vessel is departing for a foreign port or place, and mandate electronic submission of NOAD notices to the National Vessel Movement Center. The AIS portion of this rulemaking would expand current AIS carriage requirements for the population identified in the Safety of Life at Sea (SOLAS) Convention and the Marine Transportation Marine Transportation Security Act (MTSA) of 2002.

*Statement of Need:* There is no central mechanism in place to capture vessel, crew, passenger, or specific cargo information on vessels less than or equal to 300 gross tons (GT) intending to arrive at or depart from U.S. ports unless they are arriving with certain

dangerous cargo (CDC) or at a port in the 7th Coast Guard District; nor is there a requirement for vessels to submit notification of departure information. The lack of NOAD information of this large and diverse population of vessels represents a substantial gap in our maritime domain awareness (MDA). We can minimize this gap and enhance MDA by expanding NOAD applicability to vessels greater than 300 GT, all foreign commercial vessels and all U.S. commercial vessels coming from a foreign port, and further enhance (and corroborate) MDA by tracking those vessels (and others) with AIS. This information is necessary in order to expand our MDA and provide Nation maritime safety and security.

*Summary of Legal Basis:* This rulemaking is based on congressional authority provided in the Ports and Waterways Safety Act and the Maritime Transportation Security Act of 2002.

*Alternatives:* Our goal is to extend our MDA and to identify anomalies by correlating vessel NOAD data with AIS data. NOAD and AIS information from a greater number of vessels, as proposed in this rulemaking, would expand our MDA. We considered expanding NOAD and AIS to even more vessels, but we determined we needed additional legislative authority to expand AIS beyond what we propose in this rulemaking; and that it was best to combine additional NOAD expansion with future AIS expansion. Although not in conjunction with a proposed rule, the Coast Guard sought comment regarding expansion of AIS carriage to other waters and other vessels not subject to the current requirements (68 FR 39369, Jul. 1, 2003; USCG 2003–14878; see also 68 FR 39355). Those comments were reviewed and considered in drafting this rule and are available in this docket. To fulfill our agency obligations, the Coast Guard needs to receive AIS reports and NOADs from vessels identified in this rulemaking that currently are not required to provide this information. Policy or other non-binding statements by the Coast Guard addressed to the owners of these vessels would not produce the information required to sufficiently enhance our MDA to produce the information required to fulfill our Agency obligations.

*Anticipated Cost and Benefits:* This rulemaking will enhance the Coast Guard's regulatory program by making it more effective in achieving the regulatory objectives, which, in this case, is improved MDA. We provide flexibility in the type of AIS system that can be used, allowing for reduced cost burden. This rule is also streamlined to correspond with Customs and Border Protection's APIS requirements, thereby reducing unjustified burdens. We are further developing estimates of cost and benefit that were published in 2008. In the 2008 NPRM, we estimated that both segments of the proposed rule would affect approximately 42,607 vessels. The total number of domestic vessels affected is approximately 17,323 and the total number of foreign vessels affected is approximately 25,284. We estimated that the 10-year total present discounted value or cost of the proposed rule to U.S. vessel owners is between $132.2 and $163.7 million (7 and 3 percent discount rates, respectively, 2006 dollars) over the period of analysis.

The Coast Guard believes that this rule, through a combination of NOAD and AIS, would strengthen and enhance maritime security. The combination of NOAD and AIS would create a synergistic effect between the two requirements. Ancillary or secondary benefits exist in the form of avoided injuries, fatalities, and barrels of oil not spilled into the marine environment. In the 2008 NPRM, we estimated that the total discounted benefit (injuries and fatalities) derived from 68 marine casualty cases analyzed over an 8-year data period from 1996 to 2003 for the AIS portion of the proposed rule is between $24.7 and $30.6 million using $6.3 million for the value of statistical life (VSL) at seven and three percent discount rates, respectively. Just based on barrels of oil not spilled, we expect the AIS portion of the proposed rule to prevent 22 barrels of oil from being spilled annually.

*Risks:* Considering the economic utility of U.S. ports, waterways, and coastal approaches, it is clear that a terrorist incident against our U.S. Maritime Transportation System (MTS) would have a direct impact on U.S. users and consumers and could potentially have a disastrous impact on global shipping, international trade, and the world economy. By improving the ability of the Coast Guard both to identify potential terrorists coming to the United States while the terrorists are far from our shores and to coordinate appropriate responses and intercepts before the vessel reaches a U.S. port, this rulemaking would contribute significantly to the expansion of MDA, and consequently is instrumental in addressing the threat posed by terrorist actions against the MTS.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/16/08 | 73 FR 76295 |
| Notice of Public Meeting. | 01/21/09 | 74 FR 3534 |
| Notice of Second Public Meeting. | 03/02/09 | 74 FR 9071 |
| NPRM Comment Period End. | 04/15/09 | |
| Notice of Second Public Meeting Comment Period End. | 04/15/09 | |
| Final Rule | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* We have indicated in past notices and rulemaking documents, and it remains the case that we have worked to coordinate implementation of AIS MTSA requirements with the development of our ability to take advantage of AIS data (68 FR 39355 and 39370, Jul. 1, 2003).

The docket number for this rulemaking is USCG–2005–21869. The docket can be found at *www.regulations.gov.*

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* LT Sharmine Jones, Program Manager, Office of Vessel Activities, Foreign and Offshore Vessel Activities Div. (CG–5432), Department of Homeland Security, U.S. Coast Guard, 2100 2nd Street SW., STOP 7581, Washington, DC 20593–7581, *Phone:* 202 372–1234, *Email:* *sharmine.n.jones@uscg.mil.*

Jorge Arroyo, Project Manager, Office of Navigation Systems CG–5531, Department of Homeland Security, U.S. Coast Guard, 2100 2nd Street SW., STOP 7683, Washington, DC 20593–7683, *Phone:* 202 372–1563, *Email:* *jorge.arroyo@uscg.mil.*

*Related RIN:* Related to 1625–AA93, Related to 1625–AB28.

*RIN:* 1625–AA99

## DHS—USCG

### 66. Nontank Vessel Response Plans and Other Vessel Response Plan Requirements

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 3 U.S.C. 301 to 303; 33 U.S.C. 1223; 33 U.S.C. 1231; 33 U.S.C. 3121; 33 U.S.C. 1903; 33 U.S.C. 1908; 46 U.S.C. 6101

*CFR Citation:* 33 CFR 151; 33 CFR 155; 33 CFR 160.

*Legal Deadline:* Final, Statutory, April 15, 2012, Coast Guard Authorization Act of 2010.

*Abstract:* This rulemaking would establish regulations requiring owners or operators of nontank vessels to prepare and submit oil spill response plans. The Federal Water Pollution Control Act defines nontank vessels as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank vessels. The NPRM proposed to specify the content of a response plan, and among other issues, address the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, the NPRM proposed to update International Shipboard Oil Pollution Emergency Plan (SOPEP) requirements that apply to certain nontank vessels and tank vessels. Finally, the NPRM proposed to require vessel owners and operators to submit their vessel response plan control number as part of the notice of arrival information. This project supports the Coast Guard's broad roles and responsibilities of maritime stewardship.

*Statement of Need:* This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard. This rule specifies the content of a vessel response plan (VRP), including the requirement to plan for responding to a worst-case discharge (WCD) and a substantial threat of such a discharge as mandated in statute. The rule also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our Nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

*Summary of Legal Basis:* Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)(5)), as amended by section 4202 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat. 484); the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293, 118 Stat. 102); and the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241, 120 Stat. 516) sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States.

*Alternatives:* In the development of these regulations, the Coast Guard considered four alternatives: Three regulatory alternatives and one non-regulatory alternative. The alternatives are—(1) Establish regulations for the submission of NTVRPs to the USCG; (2) amend the tank vessel response plan (TVRP) regulations to incorporate NTVRPs; (3) acceptance of flag-approved SOPEPs; and (4) provide interpretive guidance through a USCG's Navigation and Vessel Inspection Circular (NVIC).

*Anticipated Cost and Benefits:* We are developing the cost and benefit estimates associated with this step of the rulemaking. The cost elements associated with this rule include: (1) Nontank vessel plan development, maintenance, and submission; (2) the service of an Oil Spill Response Organization (OSRO); (3) the contract with a Qualified Individual (QI) along with a Spill Management Team; and (4) training and exercises. We expect this proposed rule to provide quantifiable benefits in the form of barrels of oil not spilled into the water in addition to qualitative benefits, which include improved preparedness and reaction to an incident, including a worst-case discharge and improved effectiveness of onboard and shore-side response activities.

In the 2009 NPRM, we estimated that the rulemaking would affect about 2,951 U.S. flag vessels and 1,228 associated planholders. We estimated the total 10-year present value cost of the proposed rule to U.S. flag nontank vessel owners and operators to be about $111.4 million at a 7 percent discount rate and $134.8 million at a 3 percent discount rate. We found the training and exercise requirements to be the most costly element or over 90 percent of the total discounted cost of the proposed rule for vessel owners. We estimated the total U.S. annualized cost of the proposed rule over the 10-year period of analysis to be about $15.8 million at both 7 and 3 percent discount rates.

*Risks:* Response plans are required by statute. A response plan will not prevent a discharge of oil, but it may help minimize the discharge and resulting damage to the environment. We estimate the proposed rule would prevent between 2,014 and 2,446 barrels of oil from being spilled into the water during the 10-year period of analysis.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/31/09 | 74 FR 44970 |
| Public Meeting | 09/25/09 | 74 FR 48891 |
| NPRM Comment Period End. | 11/30/09 | |
| Final Rule | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* The docket number for this rulemaking is USCG–2008–1070. The docket can be found at *www.regulations.gov.*

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* LCDR Kevin B. Ferrie, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581, *Phone:* 202 372–1000, *Email:* *kevin.b.ferrie@uscg.mil.*

*Related RIN:* Related to 1625–AA19, Related to 1625–AA26.

*RIN:* 1625–AB27

## DHS—USCG

### 67. Offshore Supply Vessels of at Least 6000 GT ITC

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* Pub. L. 111–281, sec 617

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Other, Statutory, January 1, 2012, Coast Guard Authorization Act of 2010.

*Abstract:* The Coast Guard Authorization Act of 2010 removed the size limit on offshore supply vessels (OSVs). The Act also directed the Coast Guard to issue, as soon as is practicable, a regulation to implement section 617 of the Act and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on vessels of at least 6,000 gross tonnage as measured under the International Convention on Tonnage Measurement of Ships (6,000 GT ITC). Accordingly, the Coast Guard's rule will address design, manning, carriage of personnel, and related topics for OSVs of at least 6,000 GT ITC. This rulemaking will meet the requirements of the Act and will support the Coast Guard's mission of marine safety, security, and stewardship.

*Statement of Need:* In section 617 of Public Law 111–281, Congress removed OSV tonnage limits and instructed the Coast Guard to promulgate regulations

to implement the amendments and authorities of section 617. Additionally, Congress directed the Coast Guard to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on OSVs of at least 6,000 GT ITC.

*Summary of Legal Basis:* The statutory authority to promulgate these regulations is found in section 617(f) of Public Law 111–281.

*Alternatives:* The Coast Guard Authorization Act removed OSV tonnage limits and the Coast Guard will examine alternatives during the development of the regulatory analysis.

*Anticipated Cost and Benefits:* The Coast Guard is currently developing a regulatory impact analysis of regulations that ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on OSVs of at least 6,000 GT ITC. A potential benefit of this rulemaking is the ability of industry to expand and take advantage of new commercial opportunities in the building of larger OSVs.

*Risks:* No risks.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Thomas L. Neyhart, Program Manager, Department of Homeland Security, U.S. Coast Guard, 2100 2nd Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1360, *Email:* *thomas.l.neyhart@uscg.mil.*

*RIN:* 1625–AB62

## DHS—USCG

### 68. • Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners

*Priority:* Other Significant.

*Legal Authority:* sec 809 of the Coast Guard Authorization Act of 2010, Pub. L. 111–281, codified at 46 U.S.C. 70105(b)(2); 46 U.S.C. 2110(g)

*CFR Citation:* 46 CFR 10; 46 CFR 11; 46 CFR 12; 46 CFR 15.

*Legal Deadline:* None.

*Abstract:* This Policy Letter describes both short-term and long-term steps that the Coast Guard is taking to implement the requirements of section 809 of Coast Guard Authorization Act of 2010, Public Law 111–281. Section 809 excludes certain mariners from the statutory requirement to obtain and hold a Transportation Worker Identification Credential (TWIC) in order to receive a Merchant Mariner Credential (MMC).

In the short-term, while working to promulgate implementing regulations, the Coast Guard is relaxing its enforcement posture for mariners without a valid TWIC who operate on board vessels that do not have a security plan. The Coast Guard is also altering its policies to allow these mariners to obtain a MMC without holding a valid TWIC. Specifically, mariners already hold or held a TWIC, and who no longer require a TWIC, may skip the TWIC enrollment process and apply for a renewal MMC directly with a Regional Examination Center (REC), in accordance with title 46 CFR, section 10.209. However, mariners that are being issued an initial MMC, or who never held a TWIC, will need to enroll for a TWIC at a TWIC enrollment center. They will also have to pay all applicable fees associated with getting a TWIC. This is required because the TWIC enrollment center is the only place where the Coast Guard can obtain biometric information (fingerprints) from the applicant.

In the long-term, as part of a rulemaking to promulgate implementing regulations, the Coast Guard is considering waiving a portion of the fees for a MMC in order to compensate the mariner for the cost of enrolling for a TWIC. However, it is emphasized that such action is contingent on the promulgation of a regulation to adjust the fee structure.

*Statement of Need:* The Coast Guard is revising its merchant mariner credentialing regulations to implement changes made by section 809 of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 70105(b)(2), which reduces the population of mariners who are required to obtain and hold a valid Transportation Worker Identification Credential (TWIC). Prior to section 809, 46 U.S.C. 70105(b)(2) required each mariner required to hold an MMC issued by the Coast Guard to also obtain and hold a valid TWIC issued by the Transportation Security Administration (TSA). Section 809 removes this requirement, and now a TWIC is statutorily required if the mariner is ''allowed unescorted access to a secure area designated in a vessel security plan approved under section 70103 of title 46 [U.S.C.]''

The Coast Guard is revising the applicability of the TWIC requirements in Coast Guard merchant mariner credentialing regulations as well as revising some of its merchant mariner credentialing processes contained in Coast Guard regulations. Current Coast Guard regulations in 46 CFR parts 10, 11, 12, and 15 contain the processes for issuing an MMC that are intertwined with TSA processes for issuing a TWIC. The Coast Guard utilizes the TWIC enrollment process to capture information necessary to issue an MMC. Although the Coast Guard is changing some of its processes for obtaining an MMC, some mariners no longer required to hold a TWIC may still have to complete the TWIC enrollment process in order to provide information necessary to obtain an MMC. For any such mariner that must still go through the TWIC enrollment process, including paying the full TWIC enrollment fee, the Coast Guard is revising its regulations to exempt these mariners from paying a portion of the MMC fees in order to offset the TWIC fee and to minimize the burden on those mariners of paying for a TWIC when the mariner is no longer statutorily required to hold one.

*Summary of Legal Basis:* The Coast Guard's statutory authority to promulgate regulations addressing TWIC requirements for mariners is found in 46 U.S.C. 70105(a) and (b). The Coast Guard's statutory authority to promulgate regulations addressing fee exemptions is found in 46 U.S.C. 2110(g).

*Alternatives:* This rulemaking implements section 809 of the 2010 Coast Guard Authorization Act. The Coast Guard is currently evaluating the alternatives as we complete the Regulatory Impact Analysis.

*Anticipated Cost and Benefits:* This rulemaking would provide certain mariner populations a fee exemption when applying or renewing an MMC. These mariner populations would also benefit from cost savings associated with reduced travels to TWIC enrollment centers.

*Risks:* No risks.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal.

*Additional Information:* DHS has included this rule in its Final Plan for the Retrospective Review of Existing Regulations, which DHS issued on August 22, 2011.

*Agency Contact:* Davis Breyer, Project Manager, Department of Homeland Security, U.S. Coast Guard, CG–5221,

2100 2nd Street SW., Washington, DC 20593, *Phone:* 202 372–1445, *Email: davis.j.breyer@uscg.mil.*

*RIN:* 1625–AB80

## DHS—U.S. CUSTOMS AND BORDER PROTECTION (USCBP)

*Final Rule Stage*

### 69. Importer Security Filing and Additional Carrier Requirements

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* Pub. L. 109–347, sec 203; 5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433 to 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 note; 46 U.S.C. 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 amended 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. The interim final rule requested comments on those required data elements for which CBP provided certain flexibilities for compliance and on the revised costs and benefits and Regulatory Flexibility Analysis. CBP plans to issue a final rule after CBP completes a structured review of the flexibilities and analyzes the comments.

*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's (NVOCC) 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 estimate resulted 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 | 10/00/12 | |

*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.*

*Agency Contact:* Christopher Kennally, Acting Director, Cargo Control, Office of Field Operations, CBP, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229, *Phone:* 202 344–2476, *Email:* *christopher.j.kennally@cbp.dhs.gov.*

*RIN:* 1651–AA70

## DHS—USCBP

### 70. Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 8 U.S.C. 1103; 8 U.S.C. 1187

*CFR Citation:* 8 CFR 217.5.

*Legal Deadline:* None.

*Abstract:* This interim final 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. CBP requested comments on all aspects of the interim final rule and plans to issue a final rule after completion of the comment analysis.

*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 ..... | 08/00/12 | |

*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.*

*Agency Contact:* Suzanne Shepherd, Director, Electronic System for Travel Authorization, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229, *Phone:* 202 344–2073, *Email: cbp.esta@dhs.gov.*

*Related RIN:* Related to 1651–AA83.

*RIN:* 1651–AA72

## DHS—USCBP

### 71. Establishment of Global Entry Program

*Priority:* Other Significant.

*Legal Authority:* 8 U.S.C. 1365b(k)(1); 8 U.S.C. 1365b(k)(3); 8 U.S.C. 1225; 8 U.S.C. 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 CBP establish the program as a permanent program, and expanded the program to additional airports and to citizens from other countries 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 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. CBP has used 1 hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. CBP used 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.'' (Jul. 3, 2007) This value is the weighted average for U.S. business and leisure travelers. For this evaluation, CBP assumed 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 | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

*URL for More Information:* *www.globalentry.gov*

*Agency Contact:* John P. Wagner, Executive Director, Admissibility and Passenger Programs, Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229, *Phone:* 202 344–2118, *Email:* *john.p.wagner@cbp.dhs.gov*.

*RIN:* 1651–AA73

## DHS—USCBP

### 72. Implementation of the Guam-CNMI Visa Waiver Program

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 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, Pub. L. 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 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. In addition, we estimate Government implementation costs of between $87 and 91 million over the 5-year period of analysis.

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 | 10/00/12 | |

*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.

*Agency Contact:* Erin Martin, Program Manager, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington,

DC 20229, *Phone:* 202 344–2728, *Email: erin.m.martin@dhs.gov*.

*Related RIN:* Related to 1651–AA81.

*RIN:* 1651–AA77

## DHS—TRANSPORTATION SECURITY ADMINISTRATION (TSA)

*Proposed Rule Stage*

### 73. General Aviation Security and Other Aircraft Operator Security

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 6 U.S.C. 469; 18 U.S.C. 842; 18 U.S.C. 845; 46 U.S.C. 70102 to 70106; 46 U.S.C. 70117; 49 U.S.C. 114; 49 U.S.C. 114(f)(3); 49 U.S.C. 5103; 49 U.S.C. 5103a; 49 U.S.C. 40113; 49 U.S.C. 44901 to 44907; 49 U.S.C. 44913 to 44914; 49 U.S.C. 44916 to 44918; 49 U.S.C. 44932; 49 U.S.C. 44935 to 44936; 49 U.S.C. 44942; 49 U.S.C. 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:* TSA has not quantified benefits. Unquantified benefits of this rule include those 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.

TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the SNPRM 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 SNPRM must reduce the overall risk of a terrorist attack in order for the expected benefits of the SNPRM 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 consequences of each scenario by monetizing lives lost, injuries incurred, capital replacement, and clean-up, TSA will use this figure and the annualized cost of the SNPRM to calculate the frequency of attacks averted in order for the SNPRM to break even.

*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. | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*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

### 74. Freight Railroads, Public Transportation and Passenger Railroads, and Over-the-Road Buses—Security Training of Employees

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 49 U.S.C. 114; Pub. L. 110–53, secs 1408, 1517, and 1534

*CFR Citation:* 49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582 (New); 49 CFR 1584 (New).

*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 and over-the-road buses are 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.

*Abstract:* The Transportation Security Administration (TSA) will propose a new regulation to improve the security of freight railroads, public transportation and passenger railroads, and over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. This rulemaking will propose general requirements for the owner/operators of a freight railroad, a public transportation system or passenger railroad, and over-the-road bus operation determined by TSA to be high-risk to develop and implement a security training program to prepare security-sensitive employees, including frontline employees identified in sections 1402 and 1501 of the Act, for potential security threats and conditions. The rulemaking will also propose extending the security coordinator and reporting security incident requirements applicable to rail operators under current 49 CFR part 1580 to the non-rail transportation components of covered public transportation agencies. In addition, the rulemaking will also propose requiring the affected over-the-road bus owner/operators to identify security coordinators and report security incidents, similar to the requirements for rail in current 49 CFR 1580. The regulation will take into consideration any current security training requirements or best practices.

*Statement of Need:* A security training program for freight railroads, public transportation agencies and passenger railroads, and over-the-road bus operations is proposed to prepare freight railroad security-sensitive employees, public transportation and passenger railroad security-sensitive employees, and over-the-road bus security sensitive employees for potential security threats and conditions.

*Summary of Legal Basis:* 49 U.S.C. 114; sections 1408, 1517, and 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 training programs for these owner/operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the alternative 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 railroad systems, public transportation agencies and passenger railroads, and 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) As applicable, providing information on security coordinators and alternates; and (6) As applicable, reporting security concerns. TSA will also estimate the costs TSA itself would expect to incur with the implementation of this rule.

TSA has not quantified benefits. However, 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, 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, and capital replacement and clean-up, TSA will use this figure and the annualized cost of the NPRM for freight rail, public transportation and passenger rail, and

OTRB operators 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 ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Local.

*URL for More Information: www.regulations.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Scott Gorton, Policy and Plans Branch Chief for Freight Rail, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–423N, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–1251, *Fax:* 571 227–2930, *Email: scott.gorton@dhs.gov.*

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*Related RIN:* Related to 1652–AA57, Related to 1652–AA59.

*RIN:* 1652–AA55

## DHS—TSA

### 75. Freight Railroads and Passenger Railroads—Vulnerability Assessment and Security Plan

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 49 U.S.C. 114; Pub. L. 110–53, sec 1512

*CFR Citation:* 49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582 (New).

*Legal Deadline:* Final, Statutory, August 3, 2008, Rule for freight railroads and passenger railroads is due no later than 12 months after date of enactment.

According to section 1512 of Public Law 110–53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), a final regulation for freight railroads and passenger railroads is due no later than 12 months after the date of enactment of the Act.

*Abstract:* The Transportation Security Administration (TSA) will propose a new regulation to improve the security of freight railroads and passenger railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. This rulemaking will propose thresholds for which a risk determination can be made to determine whether a freight railroad and passenger railroad should be considered ''high risk.'' The rulemaking will also propose requirements for vulnerability assessments and security plans for owner/operators of those railroads. The proposed requirements include procedures for TSA's review and approval of these assessments and plans, and recordkeeping requirements. The regulation will take into consideration any current security assessment and planning requirements or best practices.

*Statement of Need:* The rulemaking will propose requirements for owner/operators of high-risk freight railroads and high-risk passenger railroads to conduct vulnerability assessments and carry-out security plans to address the railroad carrier's preparedness and response for potential security threats and conditions.

*Summary of Legal Basis:* 49 U.S.C. 114; section 1512 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 vulnerability assessments and security plans for owner/operators of high-risk freight railroads and high-risk passenger railroads. As part of its notice of proposed rulemaking, TSA will seek public comment on the alternative 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 and passenger railroad carriers covered by this proposed rule would incur following its implementation. These costs will include estimates for the following elements: (1) Completing, modifying, or updating a vulnerability assessment and submitting it to TSA; (2) Developing, modifying, or updating a security plan and submitting it to TSA; (3) Implementing a security plan; (4) Maintaining records, including master copies of the vulnerability assessment and security plan and all plans or documents referenced in the security plan; and (5) Being available for inspection.

The expected primary benefit of the Vulnerability Assessment and Security Plan NPRM will be to enhance U.S. surface transportation security by reducing vulnerability to terrorist attacks in two different ways. First, vulnerability assessments, as required in this proposed rule, would identify assets and infrastructure that are critical to owner/operators and provide an assessment of security risks that need to be mitigated at these locations. Second, in an effort to mitigate security risks, security plans would help target resources and mitigation strategies toward security gaps in an owner/operator's specific freight or passenger railroad operation to address the risks identified by the vulnerability assessments.

TSA has not quantified benefits. For the purposes of this rulemaking, TSA employs a break even analysis to compare the cost of the risk reduction resulting from the proposed rule with the dollar value of the type of terrorist attacks that could potentially be averted due to the requirements in the proposed rule. This provides a framework for evaluating the tradeoff between program costs and benefits. For purposes of this analysis, TSA evaluates three scenarios in the freight rail mode of surface transportation and three scenarios in the passenger railroad mode of surface transportation covered by the proposed rule. For each scenario, TSA calculates a total monetary consequence from an estimated statistical value of the human casualties and capital replacement resulting from the attack. TSA compared an expected value of the monetary cost of an attack to the each rail mode and TSA's annualized cost of conducting vulnerability assessments and implementing security plans, discounted at 7 percent, to estimate how often an attack of that nature would need to be averted for the expected benefits to equal estimated costs. For a given level of pre-existing or baseline risk of an attack, the calculation of the break-even point—the reduction in baseline risk for which the estimated costs and expected benefits are equal—

and a detailed description of each scenario is presented in the regulatory evaluation for this NPRM.

*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 owner/operators of high-risk freight railroads and owner/operators of high-risk passenger railroads to conduct vulnerability assessments and adopt and carry out security plans, TSA intends in this rulemaking to reduce the risk of a terrorist attack on the passenger rail transportation sector.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Local.

*Federalism:* Undetermined.

*URL for More Information: www.regulations.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Scott Gorton, Policy and Plans Branch Chief for Freight Rail, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–423N, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–1251, *Fax:* 571 227–2930, *Email: scott.gorton@dhs.gov.*

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Morvarid Zolghadr, Branch Chief, Policy and Plans, Mass Transit and Passenger Rail Security, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, E10–113S, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–2957, *Fax:* 571 227–0729, *Email: morvarid.zolghadr@dhs.gov.*

*Related RIN:* Related to 1652–AA58, Related to 1652–AA60.

*RIN:* 1652–AA56

## DHS—TSA

### 76. Standardized Vetting, Adjudication, and Redress Services

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 49 U.S.C. 114; Pub. L. 110–53, secs 1411, 1414, 1520, 1522, 1602; 6 U.S.C. 469

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* The Transportation Security Administration (TSA) will propose new regulations to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. In accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), the scope of the rulemaking will include transportation workers from all modes of transportation who are required to undergo an STA in other regulatory programs, including certain aviation workers and frontline employees for public transportation agencies and railroads.

In addition, TSA will propose fees to cover the cost of the STAs, and credentials for some personnel. TSA plans to improve efficiencies in processing STAs and streamline existing regulations by simplifying language and removing redundancies.

As part of this proposed rule, TSA will propose revisions to the Alien Flight Student Program (AFSP) regulations. TSA published an interim final rule for ASFP on September 20, 2004. TSA regulations require aliens seeking to train at Federal Aviation Administration-regulated flight schools to complete an application and undergo an STA prior to beginning flight training. There are four categories under which students currently fall; the nature of the STA depends on the student's category. TSA is considering changes to the AFSP that would improve the equity among fee payers and enable the implementation of new technologies to support vetting.

*Statement of Need:* Through this rulemaking, TSA proposes to carry out statutory mandates to perform security threat assessments (STA) of certain transportation workers pursuant to the 9/11 Act. Also, TSA proposes to fully satisfy 6 U.S.C. 469, which requires TSA to fund security threat assessment and credentialing activities through user fees. The proposed rulemaking would increase transportation security by enhancing identification and immigration verification standards, providing for more thorough vetting, improving the reliability and consistency of the vetting process, and increasing fairness to vetted individuals by providing more robust redress and reducing redundant STA requirements.

*Summary of Legal Basis:* 49 U.S.C. 114(f): Under the Aviation and Transportation Security Act (ATSA) (Pub. L. 170–71, Nov. 19, 2001, 115 Stat. 597), TSA assumed responsibility to oversee the vetting of certain aviation workers. See 49 U.S.C. 44936.

Under the Maritime Transportation Security Act (MTSA), (Pub. L. 107–295, sec. 102, Nov. 25, 2002, 116 Stat. 2064), codified at 46 U.S.C. 70105, TSA vets certain merchant mariners and individuals who require unescorted access to secure areas of vessels and maritime facilities.

Under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) (Pub. L. 107–56, Oct. 25, 2001, 115 Stat. 272), TSA vets individuals seeking hazardous materials endorsements (HME) to commercial driver's licenses (CDL) issued by the States.

In the Implementing Recommendation of the 9/11 Commission Act of 2007 (Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 266), Congress directed TSA to vet additional populations of transportation workers, including certain public transportation and railroad workers.

In 6 U.S.C. 469, Congress directed TSA to fund vetting and credentialing programs through user fees.

*Alternatives:* TSA considered a number of viable alternatives to lessen the impact of the proposed on entities deemed ''small'' by the Small Business Administration (SBA) standards. This included: (1) Extending phone pre-enrollment to populations eligible to enroll via the web; and (2) changing the current delivery and activation process and instituting centralized activation of biometric credentials that allow applicants to receive their credentials through the mail rather than returning to the enrollment center to pick up the credential. These alternatives are discussed in detail in the rule and regulatory evaluation.

*Anticipated Cost and Benefits:* TSA conducted a regulatory evaluation to estimate the costs regulated entities, individuals, and TSA would incur to comply with the requirements of the NPRM. The NPRM would impose new requirements for some individuals, codify existing requirements not included in the Code of Federal Regulations (CFR), and modify current STA requirements for many

transportation workers. The primary benefit of the NPRM would be that it will improve TSA's vetting product, process, and structure by improving STAs, increasing equity, decreasing reliance on appropriated funds, and improving reusability of STAs and mitigating redundant STAs.

TSA has not quantified benefits. TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the NPRM and the costs of implementing the rulemaking. This break-even analysis uses scenarios from the TSA Transportation Sector Security Risk Assessment (TSSRA) to determine the degree to which the 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 consequences of each scenario by monetizing lives lost, injuries incurred, capital replacement, and clean-up, TSA will use this figure and the annualized cost of the NPRM to calculate the frequency of attacks averted in order for the NPRM to break even.

TSA estimates that the total savings to the alien flight students, over a 5-year period, will be $18,107 at a 7 percent discount rate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Hao-y Tran Froemling, Program Manager, Maritime and Surface Credentialing, Department of Homeland Security, Transportation Security Administration, Office of Transportation Threat Assessment and Credentialing, TSA–19, HQ, E3–401N, 601 South 12th Street, Arlington, VA 20598–6019, *Phone:* 571 227–2782, *Email: hao-y.froemling@dhs.gov.*

Thomas Philson, Deputy Director, Regulatory and Economic Analysis, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–411N, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–3236, *Fax:* 571 227–1362, *Email: thomas.philson@dhs.gov.*

John Vergelli, Attorney, Regulations and Security Standards Division, Department of Homeland Security, Transportation Security Administration, DHS, TSA, Office of the Chief Counsel, TSA–2, HQ, E12–309N, 601 South 12th Street, Arlington, VA 20598–6002, *Phone:* 571 227–4416, *Fax:* 571 227–1378, *Email: john.vergelli@dhs.gov.*

*Related RIN:* Related to 1652–AA35.

*RIN:* 1652–AA61

## DHS—TSA

*Final Rule Stage*

### 77. Aircraft Repair Station Security

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 49 U.S.C. 114; 49 U.S.C. 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.

TSA has coordinated its efforts with the FAA throughout the rulemaking process to ensure that the final rule does not interfere with FAA's ability or authority to regulate part 145 repair station safety matters.

*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 NPRM estimated the total 10-year undiscounted cost of the program at $344 million. The cost of the program, annualized and discounted at 7 percent, is $241 million. Security coordinator and training costs represent the largest portions of the program.

TSA has not quantified benefits. However, 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.

TSA uses a break-even analysis to assess the trade-off between the beneficial effects of the final rule and the costs of implementing the rulemaking. This break-even analysis uses three attack scenarios to determine the degree to which the final rule must reduce the overall risk of a terrorist attack in order for the expected benefits of the final rule 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 consequences of each scenario by monetizing lives lost, injuries incurred, and capital replacement, TSA will use this figure and the annualized cost of the final rule to calculate the frequency of attacks averted in order for the final rule to break even.

*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 ..... | 09/00/12 | |

*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.*

*Agency Contact:* Celio Young, Program Manager, Repair Stations, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, General Aviation Division, TSA–28, HQ, E5, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–3580, *Fax:* 571 227–1362, *Email: celio.young@dhs.gov.*

Thomas Philson, Deputy Director, Regulatory and Economic Analysis, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–411N, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–3236, *Fax:* 571 227–1362, *Email: thomas.philson@dhs.gov.*

Linda L. Kent, Assistant Chief Counsel, Regulations and Security Standards Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA–2, HQ, E12–126S, 601 South 12th Street, Arlington, VA 20598–6002, *Phone:* 571 227–2675, *Fax:* 571 227–1381, *Email: linda.kent@dhs.gov.*

*RIN:* 1652–AA38

## DHS—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (USICE)

*Proposed Rule Stage*

### 78. Continued Detention of Aliens Subject to Final Orders of Removal

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 8 U.S.C. 1103; 8 U.S.C. 1223; 8 U.S.C. 1227; 8 U.S.C. 1231; 8 U.S.C. 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 ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Alexander Hartman, Regulatory Coordinator, Department of Homeland Security, U.S. Immigration

and Customs Enforcement, 500 12th Street SW., Washington, DC 20536, *Phone:* 202 732–6202, *Email: alexander.hartman@dhs.gov.*

*Related RIN:* Related to 1653–AA13.

*RIN:* 1653–AA60

## DHS—USICE

*Final Rule Stage*

### 79. Continued Detention of Aliens Subject to Final Orders of Removal

*Priority:* Other Significant.

*Legal Authority:* 8 U.S.C. 1103; 8 U.S.C. 1223; 8 U.S.C. 1227; 8 U.S.C. 1231; 8 U.S.C. 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 ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* INS No. 2156–01. Transferred from RIN 1115–AG29.

*Agency Contact:* Alexander Hartman, Regulatory Coordinator, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536, *Phone:* 202 732–6202, *Email: alexander.hartman@dhs.gov.*

*RIN:* 1653–AA13

## DHS—USICE

### 80. 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 U.S.C. 801 is undetermined.

*Legal Authority:* 8 U.S.C. 1101 to 1103; 8 U.S.C. 1182; 8 U.S.C. 1184 to 1187; 8 U.S.C. 1221; 8 U.S.C. 1281 and 1282; 8 U.S.C. 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 ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*URL for More Information:* *www.dhs.gov/sevis/.*

*Agency Contact:* Sharon Snyder, Acting Branch Chief, SEVP Policy, Student and Exchange Visitor Program, Department of Homeland Security, U.S. Immigration and Customs Enforcement, Potomac Center North, 500 12th Street SW., Washington, DC 20024–6121, *Phone:* 703 603–3415.

*RIN:* 1653–AA56

## DHS—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

*Proposed Rule Stage*

### 81. Update of FEMA's Public Assistance Regulations

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 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, Public Law 109–295, 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. FEMA estimates 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.

*Risks:* This action does not adversely affect public health, safety, or the environment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal, Local, State, Tribal.

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

*Agency Contact:* Tod Wells, Recovery Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, *Phone:* 202 646–3936, *Fax:* 202 646–3363, *Email: tod.wells@dhs.gov.*

*RIN:* 1660–AA51

BILLING CODE 9110–9B–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

*Statement of Regulatory Priorities*

The regulatory plan for the Department of Housing and Urban Development (HUD) for fiscal year (FY) 2012 highlights the most significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the Nation's housing agency, HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD strives to meet the challenges of this mission by focusing on people and places through policies and initiatives that address the unique conditions and needs of communities. For example, HUD recognizes that the ''American Dream'' no longer refers to a singular vision of success, such as owning a home, and, therefore, through programs such as HUD's Housing Counseling program, HUD assists individuals and families to make decisions about owning or renting that are financially appropriate to the

individual or family.[1] HUD also has been placing greater focus on improving locational outcomes for households receiving rental assistance. HUD's Choice Neighborhood initiative provides funding for plans that link housing to schools, jobs, and affordable transportation in order to transform neighborhoods of concentrated poverty into sustainable mixed-income communities with well-functioning services, public assets, and access to opportunity. HUD's Neighborhood Stabilization Program helps communities acquire, rehabilitate, and resell foreclosed and abandoned properties in order to more quickly prevent decline in neighborhoods hard-hit by the foreclosure process.

In addition to meeting the challenges of HUD's mission through revitalized policies and initiatives, President Obama challenged all agencies to identify opportunities to significantly improve near-term performance. These opportunities were incorporated as key outcome measures into HUD's strategic plan, representing challenging, near-term, high-impact outcomes that reflect HUD's commitment to addressing some of the most fundamental housing and community challenges facing America. Building on the directions to improve performance, but on a longer-term basis, President Obama issued Executive Order 13563 entitled ''Improving Regulation and Regulatory Review.'' Executive Order 13563 supplements and reaffirms the rulemaking principles of Executive Order 12866 ''Regulatory Planning and Review,'' which include identifying regulatory approaches that reduce burden, considering the costs and benefits of rules, and encouraging public participation, but also directs agencies to undertake a retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal such regulations as appropriate. The Executive order recognizes the significant role that regulations play in protecting public health, welfare, safety, and the environment, and in promoting economic growth, innovation, competitiveness, and job creation, but also that regulations cannot remain stagnant. Agencies must frequently review regulations to ensure that they are meeting the challenges of today and not addressing conditions, whether housing, health, business, labor, or environmental, that are no longer reflected in today's economy. In this regard, Executive Order 13563 directed agencies to undertake periodic retrospective review of their regulations, and to develop, prepare, and post their plans for retrospective review of rules. HUD's plan and that of all agencies can be found at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.* HUD's semiannual agenda of regulations includes the rules highlighted in HUD's retrospective review of rules plans.

The rules highlighted in HUD's regulatory plan for FY 2011 reflect both HUD's continuing efforts to fulfill its mission and improve performance, including by addressing regulations that necessitate update and modification. HUD's FY 2011 regulatory plan reflects HUD's retrospective review of the regulations governing one of HUD's major mortgage insurance programs. Another rule highlighted in this regulatory plan revises the regulations of another significant program to address the unique conditions and needs of participants in one of HUD's major assistance programs. The third rule related to a significant HUD program is designed to implement flexibility provided by a recently enacted statute.

*Priority: Create Financially Sustainable Homeownership Opportunities*

HUD's HECM program was established by statute to assist in alleviating economic hardship caused by the increasing costs of health, housing, and other needs at a time in life when one's income is reduced. The HECM program, administered through HUD's Federal Housing Administration (FHA), enables older homeowners to withdraw some of the equity in their home in the form of monthly payments for life or a fixed term, or in a lump sum, or through a line of credit. In addition, the HECM mortgage can be used to purchase a primary home when the borrower is 62 years of age or older and is able to use cash in hand, money from the sale of assets, or money from an allowable FHA funding source to pay the difference between the reverse mortgage and the sales price plus closing costs for the property.

To be eligible for a HECM mortgage, current homeowners must be 62 years of age or older, own their home outright, or have a low mortgage balance that can be paid off at closing with proceeds from the reverse mortgage. Homeowners can only have one HECM at any one time and the home must be their principal residence. In addition, the HECM can be used to purchase a primary home if the borrower is able to pay the difference between the HECM and the sales price and closing costs for the property. The borrower remains the owner of the home and may sell it and move at any time, keeping the sales proceeds that exceed the mortgage balance. A borrower cannot be forced to sell the home to pay off the mortgage, even if the mortgage balance grows to exceed the value of the property, unless they fail to perform an obligation of the mortgage.

As the Nation's population has increased in age, the attraction of the HECM has increased as well. In 1990, there were approximately 157 HECMs. By 2008, there were more than 112,000 HECMs. The situation that HUD has confronted recently with increasing frequency is that HECM homeowners are not paying property taxes, insurance, and other property charges. Payment of these items is the responsibility of the homeowner, and failure to pay places the homeowner in default of its obligations under the mortgage and makes the homeowner vulnerable to loss of his or her home. FHA-approved lenders are responsible for keeping all tax and insurance payments current, in compliance with the HECM regulations. If homeowners stop making payments, lenders are allowed to access any remaining home equity to pay taxes and insurance premiums. Once homeowner funds are exhausted, lenders are legally required to advance their own funds for such payments and seek reimbursement from homeowners.

With the same recognition that homeownership may not be the best choice for every individual or family, a HECM may not be the best choice for every senior homeowner. The security that the HECM program was designed to bring to seniors may be lost if the senior homeowner cannot maintain payment of taxes and insurance payments.

Regulatory Action: Strengthening the Home Equity Conversion Mortgage (HECM) Program To Promote Sustained Homeownership

To address this growing issue in the HECM program, HUD proposes to require FHA-approved mortgagees that originate HECM mortgages to perform a financial capacity and credit history assessment of prospective HECM mortgagors prior to loan approval and closing. Mortgagees will be required to evaluate whether the HECM mortgagor's cash flow and credit history support the mortgagor's ability to comply with the obligations of the HECM and are sufficient to meet recurring living expenses. The proposed rule would also

[1] This statement is based on language found on page 4, paragraph 2, of the Introduction to HUD's FY 2010 to 2015 Strategic Plan. (See *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_4436.pdf.)*

cap the amount of insurance benefits paid in connection with a claim involving amounts advanced by the mortgagee on behalf of a HECM mortgagor who fails to pay such property charges when the HECM proceeds have been exhausted, and establish a new property inspection requirement to insure that homes secured with a HECM mortgage are adequately maintained and meet applicable property standards.

These changes to the HECM program are necessary to ensure that senior homeowners do not enter a program seeking security in their later life only to find themselves without a home. Additionally, without such changes, the HECM program will place the FHA Insurance Fund at significant risk, with the possible result being the unavailability of HECMs in the future.

*Priority: Improve the Quality of Affordable Rental Housing*

In an era when more than one-third of all American families rent their homes, the current housing market does not create and sustain a sufficient supply of affordable rental homes, especially for low-income households. In many communities, affordable rental housing does not exist without public support. Despite significant improvements in housing quality in recent decades, much of America's rental housing stock is not energy efficient or even accessible to people with disabilities, and pockets of severely substandard housing remain across the country. Even before the recent recession, the number of households with severe housing cost burdens had increased substantially since 2000, and homelessness among families with children is a growing problem throughout our Nation. When it comes to strong, safe, and healthy communities, lower-cost rental housing is particularly scarce. As the lead Federal housing agency, HUD will work with its Federal, State, local, and private partners to meet affordable and quality rental housing needs for all.[2] In this regard, HUD will strengthen the indicators by which HUD measures the performance of public housing agencies in administering its Section 8 rental assistance program, referred to as the Housing Choice Voucher program.

HUD's Housing Choice Voucher program is the Federal Government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses, and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects. Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive Federal funds from HUD to administer the voucher program. A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. Rental units must meet minimum standards of health and safety, as determined by the PHA.[3]

Through HUD's Section Eight Management Assessment Program (SEMAP), HUD measures the performance of PHAs in their administration of the Housing Choice Voucher program in key areas. The areas of review indicate whether PHAs are helping eligible families to afford decent rental units at a reasonable subsidy cost. SEMAP requires PHAs to undertake an annual Housing Quality Standard (HQS) inspection of units.

Regulatory Action: Tenant-Based Rental Assistance; Improving Performance Through a Strengthened SEMAP

HUD recognizes that SEMAP is more process-oriented than results-oriented. To make SEMAP a more effective assessment tool, HUD is proposing to revise the management indicators used by HUD to measure the performance of PHAs. For example, the proposed rule would revise the indicator that measures Section 8 voucher use to encourage PHAs to maximize the number of Section 8 families served. Under this revised indicator, HUD will not only consider the number of vouchers available to a PHA, but also the funds available to the PHA, including budget authority and a portion of reserves. HUD also proposes to assume responsibility for conducting the inspections used to measure a PHA's compliance with housing quality standards (HQS). Currently, HUD measures HQS compliance through a reporting requirement for PHA self-conducted inspections. The proposed rule would also establish a new deconcentration indicator that will evaluate the ability of Section 8 families with children to access neighborhoods with below-average poverty rates or neighborhoods with above-average schools.

*Priority: Utilize Housing as a Platform for Improving the Quality of Life*

Stable housing, made possible with HUD support, provides an ideal platform for delivering a wide variety of health and social services to improve health, education, and economic outcomes. HUD housing serves at least two broad populations: People who are in a position to markedly increase their self-sufficiency and people who will need long-term support (for example, the frail elderly and people with severe disabilities). For those individuals who are able, increasing self-sufficiency requires access to life-skills training, wealth-creation and asset-building opportunities, job training, and career services. For those who need long-term support, HUD housing will provide access to income support and other benefits that can enhance an individual's quality of life.

HUD's Supportive Housing for Persons with Disabilities Program (Section 811) is a critical HUD program that allows persons with disabilities to live as independently as possible in the community by increasing the supply of rental housing with the availability of supportive services. HUD increases the supply of rental housing for persons with disabilities by providing interest-free capital advances to nonprofit sponsors to help them finance the development of rental housing such as independent living projects, condominium units, and small group homes with the availability of supportive services for persons with disabilities. The capital advance can finance the construction, rehabilitation, or acquisition with or without rehabilitation of supportive housing. The advance does not have to be repaid as long as the housing remains available for very low-income persons with disabilities for at least 40 years. Over the last several years, the Section 811 program has not been as effective as desired because the underlying statutory foundation for the program required substantial reform and improvements to meet the challenges of current market conditions and reflect modern practices with respect to production of housing.

The Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–374) (Melville Act), which was enacted on January 4, 2011, amended section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), which authorizes the supportive housing program for persons

[2] This statement is taken from the first column of page 19 of section 2 of HUD's FY 2010 to 2015 Strategic Plan. (See *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_4436.pdf.)*

[3] The information in this paragraph is taken from HUD's Web page on Housing Choice Vouchers found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet.*)

with disabilities (Section 811 program). The Melville Act made significant changes to the Section 811 program, with one of the most significant changes being the establishment of new project rental assistance authority. This new authority allows HUD to make Section 811 program operating assistance available to State housing agencies and similar organizations for the purposes of granting funds to the development of supportive housing for persons with disabilities, and overseeing compliance with the requirements applicable to such housing.

Regulatory Action: Supportive Housing for Persons With Disabilities: Implementing New Project Rental Assistance Authority

While the Melville Act makes many important changes to the Section 811 program, HUD's first priority is to implement the requirements for the new project rental assistance authority. Project rental assistance has long been part of eligible assistance for the Section 811 program, and the existing Section 811 program regulations provide that project rental assistance is available for operating costs. The new project rental assistance provided by the Melville Act offers another method of financing for supportive housing for persons with disabilities for projects that do not receive capital advances. The new project rental assistance is designed to promote and facilitate the creation of integrated supportive housing units, which is achieved by making funds available to State housing agencies and other appropriate entities. As provided by the Melville Act, projects eligible for the new project rental assistance can be either new or existing multifamily housing projects.

HUD's proposed rule establishes the requirements and procedures that would govern the eligibility and use of the new project rental assistance authority in HUD's Section 811 program.

*Retrospective Review of Agency Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on *Reginfo.gov* in the Completed Actions section for that agency. These rulemakings can also be found on *Regulations.gov.* HUD's retrospective review plan can be found at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/general_counsel/Review_of_Regulations.*

| Regulation Identifier No. (RIN) | Title | Anticipated Reductions in Regulatory Burden |
|---|---|---|
| 2502–AI92 ..... | Federal Housing Administration (FHA): Refinancing an Existing Cooperative Under Section 207 Pursuant to Section 223(f) of the National Housing Act; Final Rule. | • Removes a regulatory restriction on FHA refinancing of existing mortgage debt by owners of multifamily cooperative projects, thus expanding the number of individuals eligible to participate in FHA programs. |
| 2502–AJ03 ..... | *Streamlining Inspection and Warranty Requirements for Federal Housing Administration (FHA) Single Family Mortgage Insurance: Removal of the FHA Inspector Roster and of the 10-Year Protection Plan Requirements for High Loan-to-Value Ratio Mortgages; Proposed Rule.* | • Removes the regulations for the FHA Inspector Roster, making it easier for lenders and borrowers to have inspections performed and streamlining the mortgage insurance application process.<br>• Removes the outdated 10-year protection plan requirement for high Loan-to-Value newly constructed single family homes securing FHA-insured mortgages. This eliminates an unnecessary layer of regulatory burden. |
| 2502–AI91 ..... | Approval of Farm Credit System Lending Institutions in FHA Mortgage Insurance Programs; Proposed Rule. | • Enables direct lending institutions of the Farm Credit System to seek approval as FHA mortgagees and lenders, removing a regulatory barrier to participation in FHA programs. |
| 2502–AJ06 ..... | Expansion of Eligibility of Nonprofit Organizations To Participate in FHA Single Family Mortgage Insurance Programs; Proposed Rule. | • Expands roster eligibility to include nonprofit organizations created by State and local governments that qualify for tax exemption under section 115 of the Internal Revenue Code.<br>• Removes requirement that a nonprofit organization have a voluntary board in order to be eligible for roster placement. |
| 2502–AJ02 ..... | Federal Housing Administration (FHA) Single Family Mortgage Insurance: Removal of Requests for Alternative Mortgage Amounts; Proposed Rule. | • Brings certainty to and streamlines the announced maximum mortgage amounts for each calendar year by removing a regulation that is no longer relevant. |
| 2502–AI99 ..... | Federal Housing Administration (FHA): Suspension of FHA's Regulation Placing Time Restrictions on Resale of FHA-Insured Property; Proposed Rule. | • Removes permanent time restrictions on resale of FHA-insured properties, thus lifting burdensome regulatory impediments to receiving FHA mortgage insurance. |
| *2502*–AJ01 ..... | *Federal Housing Administration (FHA): Suspension of Single Family Mortgage Insurance for Military Impacted Areas; Proposed Rule.* | • Removes regulations for an underutilized program, streamlining the application process for FHA-insured. |
| *2502*–AJ00 ..... | *Federal Housing Administration (FHA): Approval of Lending Institutions and Mortgagees—Alternative Reporting Requirements for Small Supervised Lenders.* | • Removes overly burdensome reporting requirements for small lenders wishing to participate in FHA programs.<br>• Eliminates duplicative reporting requirements for lenders who already report to other Federal agencies, thus reducing paperwork and minimizing the burden of the process of becoming an FHA-approved. |
| 2502–AI98 ..... | Section 8 New Construction and Substantial Rehabilitation Programs: Changes to Limitation on Distributions of Project Funds and Adjustment of Initial Equity; Proposed Rule. | • By reducing regulatory barriers, this change removes a disincentive for nonprofit owners to promote affordable housing. |

| Regulation Identifier No. (RIN) | Title | Anticipated Reductions in Regulatory Burden |
|---|---|---|
| *2502*–AI67 ..... | *Streamlining Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons With Disabilities Programs; Proposed Rule.* | • Removes restrictions on the portions of developments not funded through capital advances.<br>• Removes regulatory barriers on participations by creating new exemptions to the conflict of interest provisions.<br>• Provides flexibility regarding amenities that may be provided in projects.<br>• Streamlines requirements for release of capital advance funds upon completion. |
| 2577–AC68 ..... | Public Housing Assessment System (PHAS); Final Rule ..... | • Consolidates assessment regulations in 24 CFR part 902.<br>• Removes outdated Public Housing Management Assessment Program (PHMAP) regulations at 24 CFR part 901. |
| 2577–AC50 ..... | Public Housing Capital Fund Program; Final Rule ..... | • Streamlines public housing modernization requirements.<br>• Consolidates the modernization requirements for the public housing programs in HUD's Capital Fund Program regulations at 24 CFR part 905.<br>• Removes outdated parts 941, 968, 969, which currently codify the legacy modernization program requirements. |
| 2577–AC88 ..... | Streamlined Application Process in Public/Private Partnerships for Mixed-Finance Development of Public Housing Units; Proposed Rule. | • Reduces document submission burdens on Public Housing Agencies (PHAs). |
| 2577–AC89 ..... | Revisions to the Consortia of Public Housing Agencies; Proposed Rule. | • Enables PHAs to establish cross-jurisdictional consortia that would be treated as a single PHA, with a single jurisdiction and a single set of reporting and audit requirements, for purposes of administering the Housing Choice Voucher program in a more streamlined and less burdensome fashion. |
| 2577–AC87 ..... | Removal of the Indian HOME Investment Partnerships Program Regulations; Final Rule. | • Removes outdated regulations for the legacy Indian HOME program. |
| 2577–AC86 ..... | Public Housing and Section 8 Programs: Housing Choice Voucher—Improving Portability for Voucher Families Proposed Rule. | • Removes the administrative burdens involved with processing portability requests. |
| 2577–AC76 ..... | Revision to the Section 8 Management Assessment Program (SEMAP) Lease-Up Indicator; Proposed Rule. | • Removes complexity and administrative burden caused by use of both the fiscal year and calendar year systems.<br>• Provides a critical synchronization of administration of the voucher program, which will reduce program inefficiencies. |
| 2506–AC26, 2506–AC29, 2506–AC31, 2506–AC32, 2506–AC33. | Implementation of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). | • Provides for consolidated grant application and administration to ease administrative burden and improve coordination among providers and, consequently, increase the effectiveness of responses to the needs of homeless persons.<br>• Provides for increased coordination and planning between programs to better meet the needs of homeless persons.<br>• Modernizes the Continuum of Care program and Emergency Shelter Grants program. |
| 2501–AC94 ..... | HOME Investment Partnerships—Improving Performance and Accountability; Updating Property Standards and Instituting Energy Efficiency Standards. | • This proposed rule would update HUD's program regulations to reflect current legal requirements with respect to HOME projects. |

*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 neither the total economic costs nor the total efficiency gains will exceed $100 million. None of the rules on HUD's regulatory plan is anticipated to have an economically significant impact. The revisions proposed to be made to HUD's HECM program are anticipated to strengthen the program, keep seniors in their homes, and protect the FHA Insurance Fund, but the proposed changes are prospective and are not expected to result in an economic impact of $100 million or more annually. The changes proposed to be made to the SEMAP program are similarly designed to strengthen the program and are intended to have the Housing Choice Voucher program be administered more effectively and efficiently but will also not result in an economic impact of $100 million or more. Implementation of the new project rental assistance authority in the Section 811 program, as authorized by the Melville Act, will open up another source of financing for supportive housing for persons with disabilities but not at a level of $100 million or more.

*The Priority Regulations That Comprise HUD's Regulatory Plan*

A more detailed description of the priority regulations that comprise HUD's regulatory plan follows.

## HUD—OFFICE OF HOUSING (OH)

*Proposed Rule Stage*

### 82. Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgages (HECM) Program To Promote Sustained Homeownership (FR–5353)

*Priority:* Other Significant.

*Legal Authority:* 12 U.S.C. 1715b, 1715z to 1720; 42 U.S.C. 3535(d)

*CFR Citation:* 24 CFR 206.19; 24 CFR 206.32; 24 CFR 206.25; 24 CFR 206.27; 24 CFR 206.29; 24 CFR 206.38.24; 24 CFR 206.51; 24 CFR 206.53; 24 CFR 206.105; 24 CFR 206.107; 24 CFR 206.124; 24 CFR 206.129; 24 CFR 206.140, 206.142; 24 CFR 206.203, 19; 24 CFR 206.58; 24 CFR 206.47.

*Legal Deadline:* None.

*Abstract:* HUD is taking another step to reform and strengthen the mortgage insurance functions and responsibilities of the Federal Housing Administration (FHA), and concomitantly protect the individuals and families that use FHA-mortgage products. This proposed rule would revise the regulations governing FHA's Home Equity Conversion Mortgage (HECM) program, which is FHA's reverse mortgage program that enables senior homeowners who have equity in their homes to withdraw a portion of the accumulated equity. Most significantly, this rule proposes to require FHA-approved mortgagees that originate HECM mortgages (HECM mortgagees) to perform a financial capacity and credit history assessment of prospective HECM mortgagors prior to loan approval and closing. Mortgagees will be required to evaluate whether the HECM mortgagor's cash flow and credit history support the mortgagor's ability to comply with the obligations of the HECM and are sufficient to meet recurring living expenses. A mortgagee may deny the HECM loan application if the prospective mortgagor fails either the financial capacity or credit history assessment. As an alternative to declining the HECM loan application, the mortgagee may require the establishment of a principal limit set-aside for payment of property charges. The proposed rule would also cap the amount of insurance benefits paid in connection with a claim involving amounts advanced by the mortgagee on behalf of a HECM mortgagor who fails to pay such property charges when the HECM proceeds have been exhausted and establish a new property inspection requirement to insure that home secured with a HECM mortgage are adequately maintained and meet applicable property standards. The proposed rule would also make several non-substantive changes to reflect the statutory flexibility provided to HUD in establishing the mortgage insurance premiums for FHA-insured mortgages, conform the regulations to existing HUD interpretations and industry practices regarding HECM program requirements, and reduce administrative paperwork.

*Statement of Need:* HUD does not currently require HECM mortgagees to verify the mortgagor's income, assets, and debt obligations. Neither do the HECM regulations require a mortgagee to assess the mortgagor's credit history and capacity to pay future living expenses and meet all other future financial obligations related to the property under the HECM loan. Such a financial capacity and credit history assessment is a prudent underwriting practice currently required by mortgagees for FHA forward mortgage products. Based on data available to HUD, HECM delinquencies are growing and occurring soon after origination. This data also indicates that these delinquencies are largely the result of the failure of mortgagors to pay recurring property charges. The proposed rule would address these concerns by requiring that mortgagees determine whether the potential mortgagor has the capacity to pay recurring property charges and meet recurring living expenses.

*Summary of Legal Basis:* The HECM program is authorized under section 255 of the National Housing Act (12 U.S.C. 1715z to 1720). This rulemaking is undertaken pursuant to the general rulemaking authority granted to the Secretary under section 7(d) of the Department of HUD Act (42 U.S.C. 35335(d)), which authorizes the Secretary to make ''such rules and regulations as may be necessary to carry out his functions, powers, and duties.'' In addition, the National Housing Act at 12 U.S.C. 1701c(a) uses the exact wording in conferring general rulemaking authority to the Secretary for implementing the insured mortgage programs authorized under the National Housing Act.

*Alternatives:* Rulemaking is required to ensure that the financial capacity and credit history requirements are generally applicable and enforceable by HUD. Where appropriate, HUD will provide mortgagees with flexibility in determining the method for conducting the required assessments and for considering additional factors in determining and verifying the financial capacity and credit history of prospective HECM mortgagors.

*Anticipated Cost and Benefits:* The benefits of this rule would be the reduced transaction costs and externalities associated with foreclosure. The costs of the rule would be the additional administrative and financial costs associated with carrying out the required assessments.

*Risks:* This rule poses no risk to public health, safety, or the environment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Kari B. Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing, 451 7th Street SW., Washington, DC 20410, *Phone:* 202 708–2121.

*RIN:* 2502–AI79

## HUD—OH

### 83. • Supportive Housing for Persons With Disabilities Implementing New Project Rental Assistance Authority (FR–5576)

*Priority:* Other Significant.

*Legal Authority:* 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013

*CFR Citation:* 24 CFR 891.

*Legal Deadline:* None.

*Abstract:* This proposed rule commences the rulemaking process to implement the project rental assistance authority as provided under the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–374) (Melville Act), which was enacted on January 4, 2011. The Melville Act amended section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), which authorizes the supportive housing program for persons with disabilities (Section 811 program). The Melville Act made significant changes to the Section 811 program, with one of the most significant changes being the establishment of new project rental assistance authority. This new authority allows HUD to make Section 811 program operating assistance available to State housing agencies and similar organizations for the purposes of granting funds to the development of supportive housing for persons with disabilities and overseeing compliance with the requirements applicable to such housing. This proposed rule establishes the requirements and procedures that would govern the eligibility and use of project rental assistance in HUD's supportive housing program for persons with disabilities.

*Statement of Need:* The Melville Act makes many important reforms and improvements to the Section 811 program. One of the most significant new features introduced by the Melville Act is the establishment of new project

rental assistance authority (section 811(b)(3) of the Cranston-Gonzalez National Affordable Housing Act, as amended by the Melville Act) that is separate from the existing project rental assistance under the Section 811 program that is available to cover operating costs. Although the Melville Act establishes the prerequisite statutory framework, the full and successful implementation of the new project rental assistance authority requires rulemaking. This proposed rule addresses the need for rulemaking by establishing the necessary policies, procedures, and other requirements that will govern the eligibility and use of project rental assistance. HUD intends to implement other changes made by the Melville Act through separate rulemaking.

*Summary of Legal Basis:* As noted, the Melville Act amended section 811 of the Cranston-Gonzalez National Affordable Housing Act to establish new project rental assistance authority. This rulemaking is undertaken pursuant to the general rulemaking authority granted to the Secretary under section 7(d) of the Department of HUD Act (42 U.S.C. 35335(d)), which authorizes the Secretary to make ''such rules and regulations as may be necessary to carry out his functions, powers, and duties.''

*Alternatives:* Rulemaking is required to ensure that the new requirements and procedures governing the eligibility and use of project rental assistance are generally applicable to participants in HUD's supportive housing program for persons with disabilities and enforceable by HUD.

*Anticipated Cost and Benefits:* The new project rental assistance authority offers another method of financing for supportive housing for persons with disabilities for projects that do not receive capital advances. The new authority is designed to promote and facilitate the creation of integrated supportive housing units, which is achieved by making funds available to State housing agencies and other appropriate entities. While there may be incremental costs associated with compliance with the new requirements, to the extent that program participants incur such costs, it will be as a result of their voluntary participation in the project rental assistance component of the Section 811 program. The benefits are increased affordability of providing housing for persons with disabilities.

*Risks:* This rule poses no risk to public health, safety, or the environment

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Benjamin T. Metcalf, Senior Advisor, Office of Multifamily Houisng Programs, Department of Housing and Urban Development, Office of Housing, 451 7th Street SW., Washington, DC 20410, *Phone:* 202 708–2495.

*RIN:* 2502–AJ10

## HUD—OFFICE OF PUBLIC AND INDIAN HOUSING (PIH)

*Proposed Rule Stage*

### 84. Tenant–Based Rental Assistance; Improving Performance Through a Strengthened Section 8 Management Assessment Program (FR–5201)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 1437a, 1437c, 1437f; 42 U.S.C. 3535(d)

*CFR Citation:* 24 CFR 985.

*Legal Deadline:* None.

*Abstract:* SEMAP establishes the management indicators used by HUD to measure the performance of public housing agencies (PHA) in key areas of the Section 8 rental assistance programs and to assign performance ratings. The proposed rule would revise the indicator that measures Section 8 voucher use to encourage PHAs to maximize the number of Section 8 families served. Specifically, under this revised indicator, HUD will not only consider the number of vouchers available to a PHA, but also the funds available to the PHA, including budget authority and a portion of reserves. HUD also proposes to assume responsibility for conducting the inspections used to measure a PHA's compliance with housing quality standards (HQS). Currently, HUD measures HQS compliance through a reporting requirement for PHA self-conducted inspections. The proposed rule would also establish a new deconcentration indicator that will evaluate the ability of Section 8 families with children to access neighborhoods with below-average poverty rates or neighborhoods with above-average schools.

*Statement of Need:* While the SEMAP is currently an effective oversight tool, HUD's experience indicates that modifications are needed to increase its utility and to better reflect policy priorities. The proposed regulatory amendments address these needs. For example, the change to the voucher utilization indicator will allow HUD to better assess whether PHAs are maximizing their use of available voucher authority and funds to assist families. By assuming responsibility for HQS inspections, HUD will be in a better position to assess their quality and accuracy. The new deconcentration indicator addresses one of HUD's highest priorities; namely, improving the housing and educational opportunities afforded to families receiving HUD assistance.

*Summary of Legal Basis:* The Section 8 rental assistance programs are authorized under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). This rulemaking is undertaken pursuant to the general rulemaking authority granted to the Secretary under section 7(d) of the Department of HUD Act (42 U.S.C. 35335(d)), which authorizes the Secretary to make ''such rules and regulations as may be necessary to carry out his functions, powers, and duties.''

*Alternatives:* Rulemaking is required to ensure that revised SEMAP indicators are generally applicable to all PHAs administering Section 8 programs, and are enforceable by HUD. Moreover, the current SEMAP requirements are codified in regulation and, therefore, notice and comment rulemaking is required for their revision.

*Anticipated Cost and Benefits:* There may be some incremental administrative costs borne by PHAs as a result of revised indicators. The benefits are the cost savings of no longer having to conduct HQS inspections, resulting in a net economic benefit. HUD will assume the costs of conducting these inspections, but these costs will be balanced by the management and operational benefits resulting from the proposed SEMAP enhancements. Moreover, HUD is considering whether HQS inspections should be conducted less frequently than on an annual basis, in order to allow for the best use of departmental resources.

*Risks:* This rule poses no risk to public health, safety, or the environment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes retrospective review under Executive Order 13563.

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*RIN:* 2577–AC76

**BILLING CODE 4210–67–P**

## 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. DOI serves as trustee to Native Americans and Alaska natives and is responsible for relations with the island territories under United States jurisdiction. The Department manages more than 500 million acres of Federal lands, including 397 park units, 555 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 lifeline and economic engine for many communities in the West; manages forests and fights wildfires; manages Federal energy resources; regulates surface coal mining operations; reclaims abandoned coal mines; educates children in Indian schools; and provides recreational opportunities for over 400 million visitors annually in the Nation's national parks, public lands, national wildlife refuges, and recreation areas.

The DOI will continue to review and update its regulations and policies to ensure that they are effective and efficient, and that they promote accountability and sustainability. The DOI 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 (OCS);
- 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*

The DOI bureaus implement congressionally mandated programs through their regulations. Some of these regulatory programs include:

- Developing onshore and offshore energy, including renewable, minerals, oil and gas, and other energy resources;
- Regulating surface coal mining and reclamation operations on public and private lands;
- 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

The 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. The 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 (FWS) 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 NPS is proposing a new winter use rule for Yellowstone National Park. This rule is proposed to replace an interim rule that expired at the end of the 2010 to 2011 winter season and that was recently reauthorized for the current (2011–2012) winter season. It would allow a variety of winter uses for visitors while protecting park resources by establishing maximum numbers of snowmobiles and snowcoaches permitted in the Park on a given day. It would also require most snowmobiles and snowcoaches operating in the Park

to meet air and sound emission requirements and would require a commercial guide. The NPS intends to publish a final rule by mid-November 2012.

The NPS is prepared to publish final rules for Off Road Vehicle use at Cape Hatteras National Seashore and bicycle routes at Mammoth Cave National Park. Proposed rules for bicycle routes are pending for other park areas. These rules would manage use to protect and preserve natural and cultural resources, and natural processes, and provide a variety of safe visitor experiences while minimizing conflicts among various users.

(2) Sustainably Using Energy, Water, and Natural Resources

The BLM has identified 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 approving and building new transmission lines that are crucial to deliver renewable energy to America's homes and businesses.

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 public lands and the OCS. 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.

The Secretary issued his first Secretarial Order on March 11, 2009, making renewable energy on public lands and the OCS top priorities at the Department. These remain top priorities. In implementing these priorities through its regulations, the Department will continue to create jobs and contribute to a healthy economy while protecting our signature landscapes, natural resources, wildlife, and cultural resources.

(3) Empowering People and Communities

The Department strongly encourages public participation in the regulatory process. For example, every year the FWS establishes migratory bird hunting seasons in partnership with flyway councils composed of State fish and wildlife agencies. The 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 BLM uses Resource Advisory Councils made up of affected parties to help prepare land management plans and regulations.

The 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 percent, or 385 wells, are exempt from current regulations. The NPS is revising the regulations to improve protection of NPS resources. The 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 for the content of the rule, which NPS will consider in writing the proposed rule. After developing a proposed rule, NPS will solicit further public comment. The NPS expects to publish a proposed rule in 2012.

In October 2010, NPS published an interim final rule with request for comments revising the former regulations for management of demonstrations and the sale or distribution of printed matter in most areas of the National Park System to allow a small-group exception to permit requirements. In essence, under specific criteria, demonstrations, and the sale or distribution of printed matter involving 25 or fewer persons may be held in designated areas, without first obtaining a permit; *i.e.* making it easier for individuals and small groups to express their views. The NPS has analyzed the comments and expects to publish a final rule in early 2012.

*Retrospective Review of Regulations*

President Obama's Executive Order 13563 directs agencies to make the regulatory system work better for the American public. Regulations should ''* * * protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' DOI's plan for retrospective regulatory review identifies specific efforts to relieve regulatory burdens, add jobs to the economy, and make regulations work better for the American public while protecting our environment and resources. The DOI plan seeks to strengthen and maintain a culture of retrospective review by consolidating all regulatory review requirements [1] into DOI's annual regulatory plan. DOI has selected the following regulatory efforts to focus on over the next 2 years:

• *Oil and Gas Royalty Valuation Rules (Office of Natural Resources Revenue)*—DOI is exploring a simplified market-based approach to arrive at the value of oil and gas for royalty purposes that could dramatically reduce accounting and paperwork requirements and costs on industry and better ensure proper royalty valuation by creating a more transparent royalty calculation method.

• *Endangered Species Act Rules (Fish and Wildlife Service)*—The Fish and Wildlife Service (FWS), working in conjunction with the National Marine Fisheries Service, will revise and update the ESA implementing regulations and policies to improve conservation effectiveness, reduce administrative burden, enhance clarity and consistency for impacted stakeholders and agency staff, and encourage partnerships, innovation, and cooperation. FWS has already proposed a rule on May 17, 2011, that would minimize the requirements for written descriptions of critical habitat boundaries in favor of map and Internet-based descriptions. FWS anticipates issuing the final rule in the spring of 2012. Additionally, FWS will develop proposed rules and/or policies to amend existing regulations related to:

• Habitat conservation plans;

[1] DOI conducts regulatory review under numerous statutes, Executive orders, memoranda, and policies, including but not limited to the Regulatory Flexibility Act of 1980 (RFA), the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Executive Orders 12866 and 13563, and the DOI Departmental Manual.

• Safe harbor agreements;
• Candidate conservation agreements;
• The process and procedures for designation of critical habitat;
• Section 7 consultation to revise the definition of ''destruction or adverse modification'' of critical habitat; and
• Issuance of incidental take permits during section 7 consultation.

• *Commercial Filming on Public Land Rules*—This joint effort between the National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), and Bureau of Indian Affairs (BIA) will create consistent regulations and a unified fee schedule for commercial filming and still photography on public land. It will provide the commercial filming industry with a predictable fee for using Federal lands, while earning the Government a fair return for the use of that land.

• *Offshore Energy Safety and Environmental Rules (BSEE)*—In the wake of the Deepwater Horizon oil spill, DOI immediately instituted regulatory reforms that strengthened the protection of workers' health and safety and enhanced environmental safeguards. The Bureau of Safety and Environmental Enforcement (BSEE), formerly part of the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) is now considering ways to apply ''safety case''-type performance standards, such as those widely applied internationally, to the U.S. offshore drilling regulatory regime. A hybrid combination of performance-based and prescriptive standards will provide flexibility to adapt to changing technologies and increasingly complex operational conditions, while maintaining worker and environmental protections.

• *Leasing (BIA)*—BIA is amending its leasing regulations to eliminate the need to follow multiple cross-references in the regulations. The amendments will also delete the requirement for BIA review of permits, which some view as unjustified and excessively burdensome.

• *Land Classification Regulations (BLM)*—BLM is amending its regulations to remove obsolete land classification regulations and consolidate these regulations into the existing planning system regulations. These changes will benefit the public by consolidating all land use decisions into one systematic process.

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 focus of DOI's major regulatory bureaus and offices is summarized below.

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. The 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, BIA 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 better ways to serve its beneficiaries. The American Indian Probate Reform Act of 2004 (AIPRA) made clear that regulatory changes were necessary. BIA has 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 that provide jobs and fund services that support the health and well-being of tribal members. 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 for Indian Affairs. BIA 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. BIA will ensure that all regulations that it drafts or revises 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 amending regulations affecting land title and records, conveyances of trust or restricted land, leasing, grazing, trespass, rights-of-way, and energy and minerals. These regulatory changes will help the Department better serve beneficiaries and will standardize procedures for consistent execution of fiduciary responsibilities across the BIA.

• Identify and develop regulatory changes necessary for improved Indian education.

BIA is 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. Most of these comments claim that the current process is cumbersome and overly restrictive. The BIA is reviewing the Federal acknowledgment regulations to determine if any regulatory changes are appropriate.

• Revise regulations governing administrative appeals and other processes to increase transparency.

The 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 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.

The 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. The BLM manages such varied uses as energy and mineral development, outdoor recreation, livestock grazing, and forestry and woodlands products.

The BLM has identified the following three areas of regulatory priorities.

- Energy Independence
- Treasured Landscapes
- Native American Nations

The summaries that follow explain how these three areas promote the BLM mission and the priorities of the Department.

Energy Independence

BLM manages more Federal land than any other agency—more than 245 million surface acres and 700 million subsurface acres of mineral estate. Thus, 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. The BLM is analyzing proposals for increasing renewable energy development on public lands. The BLM will manage these proposals to assure they proceed 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. These projects will create environmentally friendly jobs and help sustain the quality of life that Americans enjoy today.

Another BLM priority is siting and authorizing transmission corridors to assist the national effort to move renewable energy from production sites to market. The BLM has already designated more than 5,000 miles of energy transport corridors. The BLM will authorize rights-of-way across public lands through these energy transport corridors to allow development of transmission lines.

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. The 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. The 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

The BLM's regulatory focus is directed primarily by the priorities of the President and Congress, which include:

- Generating jobs and promoting a healthy economy by 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.

The BLM's specific regulatory priorities include:

• Revising onshore oil and gas operating standards.

The 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. The 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.

The 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. The 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.

• Amending rules on royalty rate increases for new Federal Onshore Competitive Oil and Gas Leases.

The BLM will consider amending its oil and gas regulations to set higher royalty rates for new Federal onshore competitive oil and gas leases issued on or after the effective date of the rule. This rule would revise existing regulations by increasing royalty rates based on the options set out in the proposed rule.

The Bureau of Ocean Energy Management, Regulation, and Enforcement

The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) replaced the former Minerals Management Service (MMS). On October 1, 2011, BOEMRE was reorganized and divided into two new Bureaus, under the Assistant Secretary for Land and Minerals Management:

(1) The Bureau of Ocean Energy Management (BOEM) now functions as the resource manager for the conventional and renewable energy and mineral resources on the OCS. It fosters 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 (BSEE) applies 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.

Our regulatory focus for fiscal year 2012 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.

BOEM's regulatory priorities are to:

• Finalize Regulations for Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf

This final rule updates and streamlines the existing OCS leasing regulations and clarifies implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. This final rule reorganizes leasing requirements to communicate more effectively the leasing process, as it has evolved over the years. This final rule makes changes to 30 CFR parts 250, 256, and 260 that relate to the oil and gas leasing and bonding requirements.

BSEE's regulatory priorities are to:

• Establish Additional Requirements for Safety Measures for Drilling and Other Well Operations for Oil and Gas

This will be an Advance Notice of Proposed Rulemaking to address recommendations from the ''Increased Safety Measures for Energy Development on the Outer Continental Shelf'' report that were not covered by an Interim Final Rule BOEMRE, BSEE's predecessor, published on October 14, 2010. The safety measures recommendations include additional requirements for blowout preventers, remotely operated vehicles, secondary control systems, and cement evaluation techniques. Detailed responses to the questions and ideas posed in this Advance Notice of Proposed Rulemaking would allow BSEE to develop more comprehensive regulations, if needed, and have a better understanding of the impacts.

• Revise Regulations on Safety and Environmental Management Programs for Offshore Operations and Facilities

This rulemaking proposes to revise 30 CFR part 250 (subpart S) regulations to require operators to develop and implement additional provisions in their Safety and Environmental Management Systems (SEMS) programs for oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). These revisions pertain to developing and implementing: (1) Stop work authority, (2) ultimate work authority, (3) requiring employee participation in the development and implementation of SEMS programs, and (4) establishing requirements for reporting unsafe working conditions. In addition, this proposed rule (5) requires independent third parties to conduct audits of operators' SEMS programs and (6) establishes further requirements relating to conducting job safety analyses (JSA) for activities identified in an operator's SEMS program. BSEE believes that these new requirements will further reduce the likelihood of accidents, injuries, and spills in connection with OCS activities,

by requiring OCS operators to specifically address issues associated with human behavior as it applies to their SEMS program.

• Develop additional rules and regulations as a result of ongoing reviews of BSEE's offshore regulatory regime.

Several investigations and reviews of BOEMRE, now BSEE, have been and 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/United States Coast Guard (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 the current regulatory system. BSEE expects 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. The Secretary established the Ocean Energy Safety Advisory Committee to provide advice on matters related to drilling and workplace safety, and spill containment and response. This Committee is expected to make recommendations for new or modified regulations.

Office of Natural Resources Revenue

The revenue responsibilities of the former MMS now are located in the Office of Natural Resources Revenue (ONRR), which will continue to collect, account for, and disburse revenues from Federal offshore energy and mineral leases and from onshore mineral leases on Federal and Indian lands. The program operates nationwide and is primarily responsible for timely and accurate collection, distribution, and accounting for revenues associated with mineral and energy production. The regulatory program of ONRR seeks to:

• Simplify valuation regulations.

ONRR plans to simplify the regulations at 30 CFR part 1206 for establishing the value for royalty purposes of (1) oil and natural gas produced from Federal leases; and (2) coal and geothermal resources produced from Federal and Indian leases. Additionally, the proposed rules would consolidate sections of the regulations common to all minerals, such as definitions and instructions regarding how a payor should request a valuation determination. ONRR published Advance Notices of Proposed Rulemaking (ANPRMs) to initiate the rulemaking process and to obtain input from interested parties.

• 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 negotiated rulemaking process involving key stakeholders.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Under SMCRA, OSM has two principal functions. They are:

• The regulation of surface coal mining and reclamation operations; and

• The reclamation and restoration of abandoned coal mine lands.

In enacting SMCRA, Congress directed OSM to ''strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.'' In response to its statutory mandate, OSM has sought to develop and maintain a stable regulatory program that is safe, cost-effective, and environmentally sound. A stable regulatory program ensures that the coal mining industry has clear guidelines for operation and reclamation, and that citizens know how the program is being implemented.

OSM's Federal regulatory program sets minimum requirements for obtaining a permit for surface and underground coal mining operations, sets performance standards for those operations, requires reclamation of lands and waters disturbed by mining, and requires enforcement to ensure that the standards are met.

OSM is the primary regulatory authority for SMCRA enforcement until a State or Indian tribe develops its own regulatory program, which is no less effective than the Federal program. When a State or Indian tribe achieves ''primacy,'' it assumes direct responsibility for permitting, inspection, and enforcement activities under its federally approved regulatory program. Today, 24 of the 26 coal-producing States have primacy. In the 2006 amendments to SMCRA, Indian tribes with coal resources were provided the opportunity to assume primacy. No tribes have done so to date, although three tribes have expressed an interest in submitting a tribal program.

OSM's regulatory priorities for the coming year will focus on:

• Stream Protection.

Protect streams from the adverse effects of surface coal mining operations; and

• Coal Combustion Residues

Establish Federal standards for the beneficial use of coal combustion residues on active and abandoned coal mines.

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 endangered and threatened 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 almost 150-million-acre National Wildlife Refuge System, which includes 555 National Wildlife Refuges and 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.

Additionally, FWS is working with the National Oceanic and Atmospheric Administration and the Environmental Protection Agency, via a contract with the National Research Council (NRC), to review scientific issues associated with the Federal Insecticide, Fungicide, and Rodenticide Act. Once the NRC's report is completed, the agencies will work together to develop an approach that produces efficient, scientifically defensible biological evaluations protective of listed species.

Further, the FWS' Regional Directors and/or Ecological Services State Supervisors or Project leaders will be meeting with their State counterparts to discuss the role of State agencies in ESA initiatives to enhance their involvement in implementing the ESA's provisions.

National Park Service

The NPS preserves unimpaired the natural and cultural resources and values within almost 400 units of the National Park System encompassing nearly 84 million acres of lands and waters for the enjoyment, education, and inspiration of this and future generations. The NPS also cooperates with partners to extend the benefits of natural and resource conservation and outdoor recreation throughout the United States and the world.

To achieve this mission the NPS adheres to the following guiding principles:
• *Excellent Service:* Providing the best possible service to park visitors and partners.
• *Productive Partnerships:* Collaborating with Federal, State, tribal, and local governments, private organizations, and businesses to work toward common goals.
• *Citizen Involvement:* Providing opportunities for citizens to participate in the decisions and actions of the National Park Service.
• *Heritage Education:* Educating park visitors and the general public about their history and common heritage.
• *Outstanding Employees:* Empowering a diverse workforce committed to excellence, integrity, and quality work.
• *Employee Development:* Providing developmental opportunities and training so employees have the ''tools to do the job'' safely and efficiently.
• *Wise Decisions:* Integrating social, economic, environmental, and ethical considerations into the decisionmaking process.
• *Effective Management:* Instilling a performance management philosophy that fosters creativity, focuses on results, and requires accountability at all levels.
• *Research and Technology:* Incorporating research findings and new technologies to improve work practices, products, and services.

The NPS Division of Regulations and Special Park Uses provides agency coordination for a variety of activities that directly affect the management of visitor use and resource protection within the National Park System to carry out this mission. Our regulatory priorities include among other issues:

Revising existing regulations pertaining to:
• Commercial Film and Related Activities
• Solid Waste Disposal
• Non-Federal Oil and Natural Gas Rights
• Rights-of-Way

Establishing rules related to:
• Collection of Natural Products by Members of Federally Recognized Tribes for Traditional and Cultural Purposes
• Managing Winter Use at Yellowstone NP
• Managing Off Road Vehicle Use and Bicycling
• Implementation of the Native American Graves Protection and Repatriation Act
• Establishing Standards and Procedures for Disposition of Archeological Materials

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, Reclamation employs 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. Reclamation has continued to focus on increased security at its facilities.

The Reclamation regulatory program focus in fiscal year 2012 is to ensure that its 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:
• Rural Water Supply Program

Title I of Public Law 109–451 authorizes the 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, Reclamation is finalizing a rule that will define how it will identify and work with eligible rural communities. Reclamation published an interim final rule on November 17, 2008, and expects to publish a Second Notice of Proposed Rulemaking in 2012 that will address comments received from the public.
• Loan Guarantees

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, Reclamation is working with the Office of Management and Budget to publish a rule that will establish criteria for administering the

loan guarantee program. Reclamation published a proposed rule on October 6, 2008, and expects to publish a Second Notice of Proposed Rulemaking in 2012 that will address comments received from the public.

BILLING CODE 4310–10–P

## DEPARTMENT OF JUSTICE (DOJ)

*Statement of Regulatory Priorities*

The mission of the Department of Justice is to enforce the law and defend the interests of the United States according to the law, to ensure public safety against threats foreign and domestic, to provide Federal leadership in preventing and controlling crime, to seek just punishment for those guilty of unlawful behavior, and to ensure fair and impartial administration of justice for all Americans. In carrying out its mission, the Department is guided by four core values: (1) Equal justice under the law; (2) honesty and integrity; (3) commitment to excellence; and (4) respect for the worth and dignity of each human being. The Department of Justice is primarily a law-enforcement agency, not a regulatory agency; it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

The Department of Justice's key regulatory priority is the Prison Rape Elimination Act (PREA) rulemaking which will establish national standards for the prevention, detection, reduction, and punishment of prison rape. The regulatory priorities of the Department also include initiatives in the areas of civil rights, criminal justice, and immigration. These initiatives are summarized below. In addition, 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.

*Prison Rape Elimination*

Pursuant to the Prison Rape Elimination Act of 2003 (PREA or the ''Act''), 42 U.S.C. section 15601 *et seq.,* the Department is drafting regulations to adopt national standards for the prevention, detection, reduction, and punishment of prison rape. On February 3, 2011, the Department published for public comment a Notice of Proposed Rulemaking setting forth comprehensive national standards for the detection, prevention, reduction, and punishment of prison rape in prisons, jails, lockups, community confinement facilities, and juvenile facilities operated by Department of Justice, State, local, and private agencies. See 76 FR 6248 (Feb. 3, 2011). In developing these proposed standards, the Department benefited from the findings and recommendations of the National Prison Rape Elimination Commission (NPREC), which had undertaken a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison sexual assaults on government functions and on the communities and social institutions in which they operate. The Department received over 1,300 public comments in response to the proposed rule, reviewed and analyzed those comments, and drafted the final rule for submission to OMB. PREA mandates that the 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.'' 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 worked with an outside contractor to assess the costs imposed by its proposed rule and to support a Regulatory Impact Assessment that will accompany the final rule. Once the rulemaking process has been completed, the Department's PREA standards will constitute the most comprehensive and assertive approach ever undertaken in this country to combating sexual abuse against persons who are incarcerated

*Civil Rights*

In September 2010, the Department published its final rules amending its regulations implementing title II and title III of the Americans with Disabilities Act (ADA). Title II prohibits disability based discrimination by public entities. Title III prohibits disability based 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 important policy issues. During the course of this rulemaking, the Department became aware of the need to promulgate regulations in four additional subject matter areas—the accessibility of emergency call center services (Next Generation 9–1–1), captioning and video description in movie theaters,, use of accessible Web sites, 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. The comment period for these ANPRMs closed on January 24, 2011. In addition to soliciting written public comments, the Department held public hearings on the ANPRMs in November and December 2010 and January 2011. The subject matter of these ANPRMs will be the focus of the Civil Rights Division's regulatory activities for FY 2012, as well as FY 2013. The Department also plans to propose amendments to its ADA regulations and its section 504 regulations to implement the ADA Amendments Act of 2008, which took effect on January 1, 2009.

The subjects addressed in the ANPRMs published on July 26, 2010, included:

*Next Generation 9–1–1.* This ANPRM sought information on possible revisions to the Department's regulation to ensure direct access to Next Generation 9–1–1 (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 NG 9–1–1 services 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 people with communication disabilities will be able to use the new systems. Therefore, the Department published this ANPRM to begin to develop appropriate regulatory guidance for PSAPs that are making this transition. The Department is in the

process of completing its review of the approximately 146 public comments it received in response to its NG 9–1–1 ANPRM and expects to publish an NPRM addressing accessibility of NG 9–1–1 in FY 2012.

*Captioning and Video Description in Movie Theaters.* 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. C (2011), but it did not address 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. The Department issued an ANPRM on July 26, 2010, 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. The Department received approximately 1171 public comments in response to its movie captioning and video description ANPRM. The Department is in the process of completing its review of these comments and expects to publish an NPRM addressing captioning and video description in movie theaters in FY 2012.

*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 Web sites. Being unable to access Web sites 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 web sites. Through government web sites, 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 often 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 web sites 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 web sites to make their sites accessible to and usable by individuals with disabilities.

In particular, the Department's ANPRM on Web site accessibility sought public comment regarding what standards, if any, it should adopt for Web site accessibility, whether the Department should adopt coverage limitations for certain entities, like small businesses, and what resources and services are available to make existing web sites accessible to individuals with disabilities. The Department also solicited comments on the costs of making Web sites accessible and on the existence of any other effective and reasonably feasible alternatives to making Web sites accessible. The Department received approximately 440 public comments and is in the process of reviewing these comments. The Department anticipates publishing separate NPRMs addressing Web site accessibility pursuant to titles II and III of the ADA in FY 2013.

*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 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 sought information about other categories of equipment, including beds in accessible guest rooms, and medical equipment and furniture. The Department received approximately 420 comments in response to its ANPRM and is in the process of reviewing these comments. The Department has decided to publish

in FY 2012 a separate NPRM pursuant to title III of the ADA on beds in accessible guest rooms and a more detailed ANPRM pursuant to titles II and III of the ADA that focuses solely on accessible medical equipment and furniture. The remaining items of equipment and furniture addressed in the 2010 ANPRM will be the subject of an NPRM that the Department anticipates publishing in FY 2013.

*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. (74 FR 6131) 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 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, 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 Department finalized the removal of the December 2008 regulations on November 23, 2010. The Department published an NPRM in the **Federal Register** on March 3, 2011, proposing a new rule and seeking public input on the certification procedure for chapter 154 and the standards the Attorney General will apply in making certification decisions. The comment period for the proposed new rule closed on June 1, 2011.

*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.

*Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Initiatives.* 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, among other objectives, 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. ATF will continue, as a priority during fiscal year 2012, 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).

Pursuant to Executive Order 13563 ''Improving Regulation and Regulatory Review,'' ATF is initiating a rulemaking proceeding to amend existing regulations and extend the term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years. The additional time will allow importers sufficient time to complete the importation of an authorized commodity before the permit expires and eliminate the need for importers to submit new and duplicative import applications. ATF believes that extending the term of import permits will result in substantial cost and time savings for both ATF and industry. ATF also has begun a rulemaking process that will lead to promulgation of a revised set of regulations (27 CFR part 771) governing the procedure and practice for disapproval of applications for explosives licenses or permits.

*Drug Enforcement Administration (DEA) Initiatives.* DEA is the primary agency responsible for coordinating the drug law enforcement activities of the United States. DEA also assists in the implementation of the President's National Drug Control Strategy. DEA's mission is to enforce U.S. controlled substance laws and regulations and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacturing, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States, including organizations that use drug trafficking proceeds to finance terrorism. A strategic component of the DEA's law enforcement mission is the diversion control program (DCP). The DCP carries out the mandates of the Controlled Substances and Chemical Diversion and Trafficking Acts. DEA drafts and publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA, together with these regulations, are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes.

In 2011, the President declared a national epidemic of prescription drug abuse, which has emphasized the importance of the Department's regulatory role with respect to controlled substances. DEA has initiated National Take-Back events to purge America's home medicine cabinets of unwanted and unused drugs, as well as assisting in other strategies and increased enforcement to address doctor shopping and pill mills. DEA schedules new and emerging substances for control under the CSA to protect public health and safety. During fiscal year 2012, among other regulatory reviews and initiatives, DEA plans to propose regulations implementing the Secure and Responsible Drug Disposal Act of 2010 (Pub. L. 111–273). DEA also plans to issue final regulations on electronic prescriptions for controlled substances subsequent to an Interim Final Rule currently in effect, which 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.

*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*

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 (Board) 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 aliens should be removed from the United States or should be granted some form of relief from removal. The Board has jurisdiction over appeals from the decisions of immigration judges, 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 custody determinations regarding the detention 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 furtherance of these goals, the Department is drafting a regulation to improve the recognition and accreditation process for organizations and representatives that appear in immigration proceedings. With the assistance of DHS, the Department is also drafting a regulation pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to implement procedures that take into account the specialized needs of unaccompanied alien children in removal proceedings. In addition, the Department is considering regulatory action to address mental incompetency issues in removal proceedings. Finally, in response to Executive Order 13653, the Department is retrospectively reviewing EOIR's regulations to eliminate regulations that unnecessarily duplicate DHS's regulations and update outdated references to the pre-2002 immigration system.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final Justice Department plan can be found at: *http://www.justice.gov/open/doj-rr-final-plan.pdf.*

| RIN | Title | Description |
|---|---|---|
| 1140–AA42 ..... | Importation of Arms, Ammunition and Implements of War and Machine Guns, Destructive Devices, and Certain Other Firearms; Extending the Term of Import Permits''. | The regulations in 27 CFR 447 and 479 generally provide that firearms, ammunition, and defense articles may not be imported into the United States except pursuant to a permit. Section 447.43 provides that import permits are valid for one year from their issuance date. I ATF will consider whether these regulations could be revised to achieve the same regulatory objective in a manner that is less burdensome for both industry and ATF. |
| 1117–AB34 ..... | Establishment of Quotas Required by the Controlled Substances Act''. | The regulations in 21 CFR parts 1303 and 1315 apply quotas to registered manufacturers of Schedule I and II controlled substances and certain List I chemicals. The quotas are intended to control the available quantities of the basic ingredients needed for the manufacture of certain substances, to reduce the risk of diversion while ensuring sufficient availability to satisfy the legitimate needs of the United States. DEA will explore strategies to modernize the quota system to achieve greater efficiency and effectiveness and reduce the burden on applicants. Although the Department expects that manufacturers and the DEA will benefit from enhanced efficiency and a reduction in paperwork, it cannot quantify the burden and cost reductions until the working group identifies the specific changes it will implement. |

## DOJ—LEGAL ACTIVITIES (LA)

*Final Rule Stage*

### 85. National Standards To Prevent, Detect, and Respond to Prison Rape

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 5 U.S.C. 301; 28 U.S.C. 509; 28 U.S.C. 510; 42 U.S.C. 15607

*CFR Citation:* 28 CFR 115.

*Legal Deadline:* Final, Statutory, June 23, 2010. 42 U.S.C. section 15607 directed the Attorney General to promulgate a final rule within 1 year after receiving the report and recommendations of the National Prison Rape Elimination Commission.

*Abstract:* In the Prison Rape Elimination Act of 2003 (PREA), Public Law 108–79, codified at 42 U.S.C. sections 15601 to 15609, Congress

directed the Attorney General to ''publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. section 15607(a)(1). The statute further directed that the Attorney General ''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.'' 42 U.S.C. section 15607(a)(3). In accordance with PREA, the Department is drafting a final rule setting forth national standards for enhancing the prevention, detection, and response to sexual abuse in confinement settings. The Department published a Notice of Proposed Rulemaking on February 3, 2011 (see 76 FR 6248), identifying the proposed standards, and it received over 1,300 public comments in response.

*Statement of Need:* Many of the evidentiary and public policy bases for the final rule are set forth in the statute, in which Congress set forth 15 findings relating to the prevalence of prison rape and its impact on society. See 42 U.S.C. section 15601. In summary, prison rape is a widespread problem that causes significant harm to its victims and imposes significant costs to society as a whole. Given the violent, destructive, reprehensible, and illegal nature of rape and sexual abuse in any setting, strong measures are needed to combat its prevalence in correctional settings. Tolerance of sexual abuse of prisoners in the government's custody is incompatible with American values.

*Summary of Legal Basis:* PREA states that the Attorney General ''shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.'' 42 U.S.C. section 15607(a)(1). The standards ''shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the [National Prison Rape Elimination] Commission * * *, and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' Id. section 15607(a)(2) and (a)(3). In June 2009, the Commission forwarded to the Attorney General a lengthy report describing its findings and recommending national standards.

*Alternatives:* Given the specific direction of Congress, the Department is obligated to issue a rule that promulgates national standards to combat prison rape. PREA also gives the Attorney General the option of ''providing a list of improvements for consideration by correctional facilities,'' to the extent that a particular national standard would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. 42 U.S.C. section 15607(a)(3). The Department has received input from numerous stakeholders concerning the development of the national standards and, as part of the development process, considered a wide range of proposals and alternatives. These proposals include the standards recommended by the Commission, as well as alternative approaches proposed by various public stakeholders.

*Anticipated Cost and Benefits:* In directing the Attorney General to promulgate national standards that would ''eliminate'' prison rape by enhancing its prevention, detection, reduction, and punishment, Congress understood that Federal, State, and local agencies (as well as private entities) that operate inmate confinement facilities and that adopt the standards would likely have to incur costs to come into, and remain in, compliance with the standards. However, any such costs more than outweighed by the benefits of avoiding prison rape. Prevention of prison rape has benefits that can be monetized, as well as benefits that cannot be monetized. The monetized benefits inure primarily to the victims of prison sexual abuse (which number over 200,000 per year) and include the costs of medical and mental health care treatment as well as pain, suffering, and diminished quality of life, among other factors. For the most serious category of prison sexual abuse, the Department's Initial Regulatory Impact Assessment (IRIA) accompanying the Notice of Proposed Rulemaking estimated the cost per adult victim as ranging from $200,000 to $300,000. Correspondingly, the IRIA estimated that if all affected agencies adopt the standards, full compliance with the standards would cost, in the aggregate, over half a billion dollars a year when annualized over 15 years. Using a breakeven analysis, this means that the standards would have to result in the avoidance of approximately 2 percent or less of the baseline number of annual prison sexual abuse victims for the costs of full compliance to break-even with the monetized benefits of the standards. This does not include the many non-monetizable benefits of prison rape avoidance, which include benefits for victims, for inmates who are not victims, for families of inmates, for prison administrators and staff, and for society at large. The final rule will include a final Regulatory Impact Assessment.

*Risks:* The final rule is intended to carry out the intent of Congress to eliminate prison rape. The risks from the failure to promulgate the final rule are primarily that inmates in Federal, State, and local facilities would continue to be at a higher risk of sexual assault than they would be if the final rule is not promulgated.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/10/10 | 75 FR 11077 |
| ANPRM Comment Period End. | 05/10/10 | |
| NPRM | 02/03/11 | 76 FR 6248 |
| NPRM Comment Period End. | 04/04/11 | |
| Final Action | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Governmental Jurisdictions, Organizations.

*Government Levels Affected:* Federal, Local, State.

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

*URL for Public Comments: regulations.gov.*

*Agency Contact:* Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, *Phone:* 202 514–8059, *Fax:* 202 353–2371, *Email: robert.hinchman@usdoj.gov*

*RIN:* 1105–AB34

BILLING CODE 4410–BP–P

## DEPARTMENT OF LABOR

*Fall 2011 Statement of Regulatory Priorities*

The Department of Labor's fall 2011 agenda continues Secretary Solis' vision of *Good Jobs for Everyone.* It also renews the Labor Department's commitment to efficient and effective regulation through the review and modification of our existing regulations, consistent with Executive Order 13563 (''E.O. 13563'').

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;
- 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.

The Department continues to use a variety of mechanisms to achieve the goal of *Good Jobs for Everyone,* including increased enforcement actions, increased education and outreach, and regulatory actions that foster compliance. At the same time, the Department is enhancing the efficiency and effectiveness of its efforts through targeted regulatory actions designed to improve compliance while reducing regulatory burdens. The Department's Plan/Prevent/Protect and Openness and Transparency compliance strategies and the implementation of E.O. 13563 create unifying themes that seek to foster a new calculus that strengthens protections for workers. By requiring employers and other regulated entities to take full ownership over their adherence to Department regulations and promoting greater openness and transparency to put workers in a better position to judge whether their workplace is one that values health and safety, work-life balance, and diversity, the Department seeks to significantly increase compliance. The increased effectiveness of this compliance strategy will enable the Department to achieve the *Good Jobs for Everyone* goal in a regulatory environment that is more efficient and less burdensome.

*Plan/Prevent/Protect Compliance Strategy*

The Department has already published several regulatory actions toward the completion of requirements that employers develop programs to address specific issues of worker protection, security, and equity. Some of these issues have included controlling the spread of infectious diseases, examining work areas in underground coal mines for mandatory violations, and identifying patterns of violations in mines. The collection of regulatory actions in the Department's Plan/Prevent/Protect strategy is designed to ensure employers and other regulated entities are in full compliance with the law every day, not just when Department inspectors come calling. As announced with the spring 2010 regulatory agenda, this strategy requires 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, may be subject to remedial action. However, 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.

In the fall 2011 regulatory agenda, the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), and the Office of Federal Contract Compliance Programs (OFCCP) will all propose regulatory actions furthering the Department's implementation of the Plan/Prevent/Protect strategy.

*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 2011 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 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 2011 regulatory plan includes examples of such regulatory initiatives to address such specific concerns.

MSHA is planning regulatory initiatives to respond to specific health and safety needs of workers: (1) MSHA plans to finalize the standard Lowering Miners' Exposure to Coal Mine Dust, including Continuous Personal Dust Monitors in April 2012; and (2) MSHA plans to finalize the rule covering Examinations of Work Areas in Underground Coal Mines in March 2012.

Workers across many industries face serious hazards from vehicles perform backing maneuvers and from equipment that can pin, crush, or strike. OSHA and MSHA will both publish regulatory actions concerning these hazards.

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.

*Retrospective Review of Existing Rules*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.dol.gov/regulations/EO13563Plan.pdf.*

| Regulatory Identifier No. | Title of Rulemaking | Whether It Is Expected to Significantly Reduce Burdens on Small Businesses |
|---|---|---|
| 1218–AC20 | Hazard Communication | Yes. |
| 1218–AC34 | Bloodborne Pathogens | No. |
| 1218–AC64; 1218–AC65 | Updating OSHA Standards Based on National Consensus Standards—Acetylene and Personal Protective Equipment. | No. |
| 1218–AC67 | Standard Improvement Project—Phase IV (SIP IV) | To be determined. |
| 1218–AC75 | Cranes and Derricks in Construction: Revision to Digger Derricks' Requirements | No. |
| 1218–AC74 | Review/Lookback of OSHA Chemical Standards | To be determined. |
| 1219–AB72 | Criteria and Procedures for Proposed Assessment of Civil Penalties (Part 100) | To be determined. |
| 1250–AA05 | Sex Discrimination Guidelines | To be determined. |
| 1210–AB47 | Amendment of Abandoned Plan Program | Yes. |
| 1205–AB59 | Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations. | To be determined. |

The fall 2011 regulatory agenda aims to achieve more efficient and less burdensome regulation through our renewed commitment to conduct retrospective reviews of regulations. On January 18, 2011, the President issued Executive Order (E.O.) 13563 entitled ''Improving Regulation and Regulatory Review.'' The E.O. aims to ''strike the right balance'' between what is needed to protect health, welfare, safety, and the environment for all Americans, and what we need to foster economic growth, job creation, and competitiveness.

In August 2011, as part of a Governmentwide response to E.O. 13563, the Department published its Plan for Retrospective Analysis of Existing Rules, which identifies several burden-reducing review projects. For example, OSHA's Standards Improvement Project III (SIP III) rulemaking achieved a 1.9 million burden hour reduction, and we anticipate that OSHA's SIP IV project will similarly yield savings for employers. OSHA's Hazard Communication/Globally Harmonized System for Classification and Labeling of Chemicals proposal has estimated savings for employers ranging from $585 million to $792.7 million. Based on preliminary estimates, EBSA's Abandoned Plan Program amendments may reduce costs by approximately $1.12 million. These projects estimate monetized savings that would eliminate roughly between $580 to $790 million in annual regulatory burdens.

The Plan also formalizes the development of this semiannual regulatory agenda as a system through which the Department identifies potential regulations for review. This regulatory agenda provides public notice of the Department's intention to initiate or continue work on approximately 10 review projects; more than 13 percent of all of the Department's planned regulatory actions.

*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 and emerging hazards 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 and retrospective review projects that will update regulations and reduce burdens on regulated communities. OSHA's retrospective review projects under E.O.13563 include consideration of the Bloodborne Pathogens standard, updating consensus standards, phase IV of OSHA's standard improvement project (SIP IV), and reviewing various permissible exposure levels.

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. 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. 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 and July 2011 stakeholder meetings.

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 concerned with 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 settings with less infrastructure and fewer resources, but with an expanding worker population.

Injury and Illness Prevention Program (12P2)

OSHA's Injury and Illness Prevention 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, New Jersey; 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 hazards. 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.

Openness and Transparency

Modernizing Recordkeeping

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, OSHA will explore requiring employers to electronically submit to the Agency data required by part 1904 (Recording and Reporting Occupational Injuries). The proposed rule will enable OSHA to conduct data collections ranging from the periodic collection of all part 1904 data from a handful of employers to the annual collection of summary data from many employers. 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. The proposed rule also does not add to or change the recording criteria or definitions in part 1904. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA.

Whistleblower Protection Regulations

The ability of workers to speak out and exercise their legal rights without fear of retaliation is essential to many of the legal protections and safeguards that all Americans value. Whether the goal is the safety of our food, drugs, or workplaces, the integrity of our financial system, or the security of our transportation systems, whistleblowers have been essential to ensuring that our laws are fully and fairly executed. In the fall regulatory agenda, OSHA proposes to issue procedural rules that will establish consistent and transparent procedures for the filing of whistleblower complaints under eight statutes. They include procedures for handling employee retaliation complaints filed under the:

- National Transit System Security Act, and Federal Railroad Safety Act, as amended by the Implementing Recommendations of the 9/11 Commission Act
- Surface Transportation Assistance Act, as amended by the Implementing Recommendations of the 9/11 Commission Act
- Consumer Product Safety Improvement Act
- Consumer Financial Protection Act of 2010, and section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Sarbanes Oxley Act, as amended by section 922 (b) and (c) and section 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- Affordable Care Act
- Seaman's Protection Act
- FDA Food Safety Modernization Act

These procedural rules will strengthen OSHA's enforcement of its whistleblower program by providing specific timeframes and guidance for filing a complaint with OSHA, issuing a finding, avenues of appeal, and allowable remedies. OSHA is committed to its whistleblower program and to ensuring that all America's workers have a voice in the workplace.

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. The seriousness of the health hazards associated with silica exposure is demonstrated by the large number of fatalities and disabling illnesses that continue to occur. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries. 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.

Preventing Backover Injuries and Fatalities

Workers across many industries face a serious hazard when vehicles perform backing maneuvers, especially vehicles with an obstructed view to the rear. OSHA is collecting information on this hazard and researching emerging technologies that may help to reduce this risk. NIOSH reports, for example, that one-half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause at least 60 occupational deaths per year. Emerging technologies that address the risks of backing operations include cameras, radar, and sonar—to help view or detect 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. Along with MSHA, which is developing regulations concerning Proximity Detection Systems, and based on information collected and the Agency's review and research, the Agency may consider rulemaking as an appropriate measure to address this source of employee risk.

E.O. 13563

Hazard Communication/Globally Harmonized System for Classification and Labeling of Chemicals

The proposed modifications in its NPRM concerning the HCS are expected to benefit employers in two primary ways. First, the harmonization of hazard classifications, safety data sheet (SDSs) formats, and warning labels will yield substantial savings to businesses, once the standard is fully implemented. On the producer side, fewer different SDSs will have to be produced for affected chemicals, and many SDSs will be able to be produced at lower cost due to harmonization and standardization. Second, for users, OSHA expects that they will see reductions in operating costs due to the decreased number of SDSs, the standardization of SDSs that will make it easier to locate information

and determine handling requirements, and other factors related to simplification and uniformity that will improve workplace efficiency. Finally, OSHA estimates that the revisions to the HCS will result in reductions in the cost of training employees on the HCS in future periods because standardized SDS and label formats will reduce the amount of time needed to familiarize employees with the HCS and fewer systems will have to be taught since all producers will be using the same system.

OSHA's preliminary estimate is that establishing a harmonized system for the classification and labeling of chemicals will create a substantial annualized savings for employers ranging from $585 million to $792.7 million. The majority of these benefits will be realized through increases in productivity for health and safety managers, as well as for logistics personnel with savings ranging from $475.2 million to $569 million. Simplifying requirements for hazard communication training are estimated to provide savings up to $285.3 million. Additionally, establishing uniform safety data sheets and labels will save between $16 million and $32.2 million. OSHA plans to publish the final rule in 2012. This rulemaking is economically significant with an estimated annual cost of over $200 million.

Bloodborne Pathogens

OSHA will undertake a review of the Bloodborne Pathogen Standard in accordance with the requirements of the Regulatory Flexibility Act, section 5 of Executive Order 12866, and E.O. 13563. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Updating OSHA Standards Based on National Consensus Standards—Acetylene and Personal Protective Equipment Standards

Under section 6(a) of the OSH Act, during the first 2 years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. In the more than 40 years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards. However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. This project is part of a multi-year project to update OSHA standards that are based on consensus standards.

Standard Improvement Project—Phase IV (SIP IV)

OSHA's Standards Improvement Projects (SIPs) are intended to remove or revise duplicative, unnecessary, and inconsistent safety and health standards. The Agency has published three earlier final standards to remove unnecessary provisions, thus reducing costs or paperwork burden on affected employers. The Agency believes that these standards have reduced the compliance costs and eliminated or reduced the paperwork burden for a number of its standards. The Agency only considers such changes to its standards so long as they do not diminish employee protections. The Agency is initiating a fourth rulemaking effort to identify unnecessary or duplicative provisions or paperwork requirements that is limited solely to its construction standards in 29 CFR 1926.

Cranes and Derricks in Construction: Revision to Digger Derricks' Requirements

OSHA published its final Cranes and Derricks in Construction Standard in August 2010. Edison Electric Institute (EEI) filed a petition for review challenging several aspects of the standard, including the scope of the exemption for digger derricks. As part of the settlement agreement with EEI, OSHA agreed to publish a direct final rule expanding the scope of a partial exemption for work by digger derricks. In the direct final rule, OSHA will revise the scope provision on digger derricks as an exemption for all work done by digger derricks covered by subpart V of 29 CFR 1926.

Review—Lookback of OSHA Chemical Standards

The majority of OSHA's Permissible Exposure Limits (PELs) were adopted in 1971 under section 6(a) of the OSH Act, and only a few have been successfully updated since that time. There is widespread agreement among industry, labor, and professional occupational safety and health organizations that OSHA's PELs are outdated and need revising in order to take into account newer scientific data that indicates that significant occupational health risks exist at levels below OSHA's current PELs. In 1989, OSHA issued a final standard that lowered PELs for over 200 chemicals and added PELs for 164. However, the final rule was challenged and ultimately vacated by the 11th Circuit Court of Appeals in 1991 citing deficiencies in OSHA's analyses. Since that time, OSHA has made attempts to examine its outdated PELs in light of the Court's 1991 decision. Most recently, OSHA sought input through a stakeholder meeting and web forum to discuss various approaches that might be used to address its outdated PELs. As part of the Department's Regulatory Review and Lookback Efforts, OSHA is developing a Request for Information (RFI), seeking input from the public to help the Agency identify effective ways to address occupational exposure to chemicals.

*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. MSHA's retrospective review projects under E.O. 13563 addresses revising the process for proposing civil penalties.

Plan/Prevent/Protect

Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

MSHA 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, to address violations of standards. The final rule would assure that underground coal mine operators find and fix violations during pre-shift, supplemental, on-shift, and weekly examinations, thereby improving health and safety for miners.

Respirable Crystalline Silica Standard

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 recommendations of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, the 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.

Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

MSHA published a proposed rule to address the danger that miners face when working near continuous mining machines in underground coal mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that action was necessary to protect miners. From 1984 to 2011, there have been 31 fatalities resulting from crushing and pinning accidents involving continuous mining machines. Continuous mining machines 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 rule would strengthen the protection for underground miners by reducing the potential for pinning, crushing, or striking hazards associated with working close to continuous mining machines.

Proximity Detection Systems for Mobile Machines in Underground Mines

MSHA plans to publish a proposed rule to require underground coal mine operators to equip shuttle cars, coal hauling machines, continuous haulage systems, and scoops with proximity detection systems. Miners working near these machines face pinning, crushing, and striking hazards that have resulted, and continue to result, in accidents involving life threatening injuries and death. The proposal would strengthen protections for miners by reducing the potential for pinning, crushing, or striking accidents in underground mines.

Openness and Transparency

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 final 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 final rule would reflect statutory intent, simplify the pattern of violations criteria, and improve consistency in applying the pattern of violations criteria.

MSHA developed an online service that enables mine operators, miners, and others to monitor a mining operation to determine if the mine could be approaching a potential pattern of violations. The web tool contains the specific criteria that MSHA uses to review a mine for a potential pattern of violations. The pattern of violations monitoring tool promotes openness and transparency in government.

Notification of Legal Identity

The existing requirements do not provide sufficient information for MSHA to identify all of the mine ''operators'' responsible for operator safety and health obligations under the Federal Mine Safety and Health Act of 1977, as amended. This proposed regulation would expand the information required to be submitted to MSHA to create more transparent and open records that would allow the Agency to better identify and focus on the most egregious or persistent violators and more effectively deter future violations by imposing penalties and other remedies on those violators.

Addressing Targeted Hazards

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.

E.O. 13563

Criteria and Procedures for Proposed Assessment of Civil Penalties (Part 100)

MSHA plans to publish a proposed rule to revise the process for proposing civil penalties. The assessment of civil penalties is a key component in MSHA's strategy to enforce safety and health standards. The Congress intended that the imposition of civil penalties would induce mine operators to be proactive in their approach to mine safety and health, and take necessary action to prevent safety and health hazards before they occur. MSHA believes that the procedures for assessing civil penalties can be revised to improve the efficiency of the Agency's efforts and to facilitate the resolution of enforcement issues.

*Office of Federal Contract Compliance Programs (OFCCP)*

Through the work of the Office of Federal Contract Compliance Programs, DOL ensures that contractors and subcontractors doing business with the Federal Government at nearly 200,000 establishments take affirmative action to create fair and diverse workplaces. OFCCP also combats discrimination based on race, color, religion, sex, national origin, disability, or status as a protected veteran by ensuring that Federal contractors recruit, hire, train, promote, terminate, and compensate workers in a non-discriminatory manner. DOL, through OFCCP, protects workers, promotes diversity and enforces civil rights laws.

Plan/Prevent/Protect

Construction Contractor Affirmative Action Requirements

OFCCP will publish a proposed rule that would enhance the effectiveness of the affirmative action programs of Federal and federally assisted construction contractors and subcontractors. The proposed rule would strengthen affirmative action programs particularly in the areas of recruitment, training, and apprenticeships. The proposed rule

would also provide contractors and subcontractors the tools to assess their progress and appropriately tailor their affirmative action plans. The proposed rule would also allow contractors and subcontractors to focus on their affirmative action obligations earlier in the contracting process. 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.

E.O. 13563

Sex Discrimination Guidelines

The Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, as amended, which prohibits Federal Government contractors and subcontractors from discriminating against individuals in employment on the basis of race, color, sex, religion, or national origin, and requires them to take affirmative action. OFCCP regulations at 41 CFR part 60–20 set forth the interpretations and guidelines for implementing Executive Order 11246, as amended, in regard to promoting and ensuring equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors without regard to sex. This nondiscrimination requirement also applies to contractors and subcontractors performing under federally assisted construction contracts. The guidance in part 60–20 is more than 30 years old and warrants a regulatory lookback. OFCCP will issue a Notice of Proposed Rulemaking to create sex discrimination regulations that reflect the current state of the law in this area.

*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 140 million Americans covered by an estimated 718,000 private retirement plans, 2.5 million health plans, and similar numbers of other welfare benefit plans, which together hold $6.7 trillion in assets.

EBSA will continue to issue guidance implementing the health reform provisions of the Affordable Care 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. EBSA's retrospective review project under E.O.13563 is Abandoned Plan Program amendments.

Addressing Targeted Issues of Employee Benefits

Health Reform Implementation

Since the passage of health care reform, EBSA has helped put the employment-based health provisions into action. Working with HHS and Treasury, EBSA has issued regulations covering issues such as the elimination of preexisting condition exclusions for children under age 19, internal and external appeals of benefit denials, the extension of coverage for children up to age 26, and a ban on rescissions (which are retroactive terminations of health care coverage). These regulations will eventually impact up to 138 million Americans in employer-sponsored plans. EBSA will continue its work in this regard, to ensure a smooth implementation of the legislation's market reforms, minimizing disruption to existing plans and practices, and strengthening America's health care system.

Enhancing Participant Protections

EBSA will re-propose amendments to its regulations to clarify the circumstances under which a person will be considered a ''fiduciary'' when providing investment advice to retirement plans and other employee benefit plans and 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 standards of care when providing the investment advice that is relied upon by millions of plan sponsors and workers.

Lifetime Income Options

EBSA, in 2010, published a request for information concerning steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefit distribution options for participants and beneficiaries of defined contribution plans. EBSA also held a hearing with the Department of the Treasury and Internal Revenue Service to further explore these possibilities. 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. EBSA now has established a public record which supports further consideration or action in a number of areas including pension benefit statements, participant education, and fiduciary guidance. With regard to pension benefit statements specifically, EBSA is working on a proposed rule under ERISA section 105 that would require or facilitate the presentation of a participant's accrued benefits; *i.e.,* the participant's account balance, as a lifetime income stream of payments, in addition to presenting the benefits as an account balance.

Promoting Openness and Transparency

In addition to its health care reform and participant protection initiatives discussed above, 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 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 1210–AB18). In addition, EBSA will be finalizing amendments to 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.

E.O. 13563

Abandoned Plan Program Amendment

In 2006, the Department published regulations that facilitate the termination and winding up of 401(k)-type retirement plans that have been abandoned by their plan sponsors. The regulation establishes a streamlined program under which plans are terminated with very limited involvement of EBSA regional offices. EBSA now has 6 years of experience with this program and believes certain changes would improve the overall efficiency of the program and increase its usage.

EBSA intends to revise the regulations to expand the program to include plans of businesses in liquidation proceedings to reflect recent changes in the U.S. Bankruptcy Code. The Department believes that this expansion has the potential to substantially reduce burdens on these plans and bankruptcy trustees. Plans of businesses in liquidation currently do not have the option of using the streamlined termination and winding-up procedures under the program. This is true even though bankruptcy trustees, pursuant to the Bankruptcy Code, can have a legal duty to administer the plan. Thus, bankruptcy trustees, who often are unfamiliar with applicable fiduciary requirements and plan-termination procedures, presently have little in the way of a blueprint or guide for efficiently terminating and winding up such plans. Expanding the program to cover these plans will allow eligible bankruptcy trustees to use the streamlined termination process to better discharge its obligations under the law. The use of streamlined procedures will reduce the amount of time and effort it would take ordinarily to terminate and wind up such plans. The expansion also will eliminate Government filings ordinarily required of terminating plans. Participation in the program will reduce the overall cost of terminating and winding up such plans, which will result in larger benefit distributions to participants and beneficiaries in such plans.

EBSA preliminarily estimates that approximately 165 additional plans will benefit from the amended abandoned plans regulation and accompanying class exemption. EBSA expects that the cost burden reduction that will result from this initiative will be approximately $1.12 million.

Please note that this preliminary estimate only reflects short-term burden reduction costs for bankruptcy trustees to terminate plans under the rule. EBSA expects substantial benefits will accrue to participants and beneficiaries covered by these plans, because their account balances will be maximized for two primary reasons. First, prompt, efficient termination of these plans will eliminate future administrative expenses charged to the plans that otherwise would diminish plan assets. Second, by following the specific standards and procedures set forth in the rule, the Department expects that overall plan termination costs will be reduced due to increased efficiency.

*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, which 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 Executive Order 13496, which requires Federal contractors to notify their employees concerning their rights to organize and bargain collectively under Federal labor laws.

Openness and Transparency

Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA

OLMS published a proposed regulatory initiative in June 2011, which is a transparency regulation intended to provide workers with information critical to their effective participation in the workplace. The proposed regulations would 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 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 in its proposal reconsidered 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.

Form LM–30: Labor Organization Officer and Employee Conflict-of-Interest Reporting

OLMS published a final rule in October 2011 revising the Form LM–30 Labor Organization Officer and Employee Report, which discloses actual or likely conflicts between the financial interests of a union official and the interests of the union. In addition to seeking greater transparency of actual or likely conflicts of interest, this rule is also a burden reduction regulation.

*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. ETA plans a retrospective review of the Rounding Rule for the Total Unemployment Rate Benefits Trigger.

Addressing Targeted Concerns of Workers

Temporary Non-Agricultural Employment of H–2B Aliens in the United States

As part of the Department's foreign 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 approved temporary labor certification.

This rulemaking seeks to ensure that only those employers who demonstrate a real temporary need for foreign workers will have access to H–2B workers. The 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. The rule will explore strengthening existing worker enforcement to ensure adequate protections for both U.S. and H–2B workers. The rulemaking will include greater transparency and openness to provide U.S. workers with greater information and access to job opportunities.

E.O. 13563

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 nondiscrimination and affirmative action efforts that provide equal opportunity for all applicants to apprenticeship and apprentices, regardless of race, gender, national origin, color, religion, or disability.

## DOL—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP)

*Proposed Rule Stage*

### 86. Construction Contractors' Affirmative Action Requirements

*Priority:* Other Significant.

*Legal Authority:* Sec. 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

*CFR Citation:* 41 CFR 60–1; 41 CFR 60–4.

*Legal Deadline:* None.

*Abstract:* The regulations implementing the affirmative action obligations of construction contractors 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. This Notice of Proposed Rulemaking (NPRM) would revise 41 CFR part 60–1 and 60–4 by removing outdated regulatory provisions, proposing a new method for establishing affirmative action goals, and proposing other revisions to the affirmative action requirements that reflect the realities of the labor market and employment practices in the construction industry today.

*Statement of Need:* These regulations, last revised in 1980, have proven ineffective at making meaningful progress in the employment of women and certain minorities in the construction industry. Analysis of 2006 to 2008 ACS data for 27 on-site construction occupations reveals a significant disparity between the percentage of women in construction occupations in the construction industry and the percentage of women in construction occupations in all other industries. The representation of African Americans in the construction industry is substantially less than would be expected given their representation in all other industries. For example, in 23 of the 27 occupations analyzed, disparities were found in the representation of African Americans. 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:* The proposed rule would adopt a new framework for implementing affirmative action requirements in the construction industry and proposes standards for designating projects ''mega construction projects.'' 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 obtain on-site construction jobs. Recent reports on the national unemployment rate show significantly higher unemployment in these populations than in others. The African American unemployment rate is at record high numbers. More detailed cost and benefit analyses will be made as the NPRM is developed. Data all show significant underrepresentation of these groups in the construction industry.

*Risks:* Failure to provide updated regulations may impede the equal opportunity rights of some workers in protected classes.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, Room C3325, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–0103, *TDD Phone:* 202 693–1337, *Fax:* 202 693–1304, *Email: ofccp-public@dol.gov.*

*Related RIN:* Previously reported as 1215–AB81.

*RIN:* 1250–AA01

## DOL—OFFICE OF LABOR-MANAGEMENT STANDARDS (OLMS)

*Final Rule Stage*

### 87. Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA

*Priority:* Other Significant.

*Legal Authority:* 29 U.S.C. 433; 29 U.S.C. 438

*CFR Citation:* 29 CFR 405; 29 CFR 406.

*Legal Deadline:* None.

*Abstract:* The Department published a 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 revised interpretation would narrow the scope of the advice exemption.

*Statement of Need:* The Department of Labor proposed 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's proposal stated 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. The proposal stated that 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 ..... | 06/21/11 | 76 FR 36178 |
| NPRM Comment Period End. | 08/22/11 | |
| NPRM Comment Period Extended. | 07/29/11 | 76 FR 45480 |
| NPRM Comment Period End. | 09/21/11 | |
| Final Action ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*URL for More Information: www.olms.dol.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Office of Labor-Management Standards, Room N–5609, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–1254, *Fax:* 202 693–1340, *Email: davis.andrew@dol.gov.*

*Related RIN:* Previously reported as 1215–AB79.

*RIN:* 1245–AA03

## DOL—EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

*Proposed Rule Stage*

### 88. Equal Employment Opportunity in Apprenticeship Amendment of Regulations

*Priority:* Other Significant.

*Legal Authority:* Sec. 1, 50 Stat 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. 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 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 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 and recent revisions to 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 issues'' 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 ..... | 02/00/12 | |

*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 E.O. 13132.

*Agency Contact:* John V. Ladd, Office of Apprenticeship, Department of Labor, Employment and Training Administration, Room N5311, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2796, *Fax:* 202 693–3799, *Email: ladd.john@dol.gov.*

*RIN:* 1205–AB59

## DOL—ETA

*Final Rule Stage*

### 89. 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 U.S.C. 1101(a)(15)(H)(ii)(B)); 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)

*CFR Citation:* 20 CFR 655.

*Legal Deadline:* None.

*Abstract:* The Department published a Notice of Proposed Rulemaking (NPRM) on March 18, 2011. The public comment period closed on May 17, 2011. The Department of Homeland Security (DHS) regulations require employers to apply for a temporary labor certification from the Department of Labor before H–2B petitions 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 NPRM proposed 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), 8 U.S.C. 1184(c)(1), and 8 CFR 214.2(h).

*Alternatives:* The public was afforded an opportunity to provide comments on the proposed regulatory changes when the Department published 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 have been provided in the NPRM. The Department of Labor sought 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 ..... | 03/18/11 | 76 FR 15130 |
| NPRM Comment Period End. | 05/17/11 | |
| Final Rule ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* State.

*Agency Contact:* William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Department of Labor, Employment and Training Administration, Room C–4312, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–3010, *Email: carlson.william@dol.gov.*

*RIN:* 1205–AB58

## DOL—EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

*Proposed Rule Stage*

### 90. Definition of ''Fiduciary''

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 29 U.S.C. 1002; ERISA sec 3(21); 29 U.S.C. 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 | |

| Action | Date | FR Cite |
|---|---|---|
| Second NPRM .... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Jeffrey J. Turner, Chief, Division of Regulations, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5655, FP Building, Washington, DC 20210, *Phone:* 202 693–8500.

*RIN:* 1210–AB32

## DOL—MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

*Proposed Rule Stage*

### 91. Respirable Crystalline Silica

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 811

*CFR Citation:* 30 CFR 58.

*Legal Deadline:* None.

*Abstract:* Current standards limit exposures to quartz (crystalline silica) in respirable dust. 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/m$^3$ 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. The formula is designed to limit exposures to 0.1 mg/m$^3$ (100 μg) of silica. NIOSH recommends a 50 μg/m$^3$ 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 section 101 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' exposures to respirable crystalline silica.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*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:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*RIN:* 1219–AB36

## DOL—MSHA

### 92. Criteria and Procedures for Proposed Assessment of Civil Penalties

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 30 U.S.C. 815; 30 U.S.C. 820; 30 U.S.C. 957

*CFR Citation:* 30 CFR 100.

*Legal Deadline:* None.

*Abstract:* MSHA will develop a proposed rule to revise the process for proposing civil penalties. The assessment of civil penalties is a key component in MSHA's strategy to enforce safety and health standards. The Congress intended that the imposition of civil penalties would induce mine operators to be proactive in their approach to mine safety and health, and take necessary action to prevent safety and health hazards before they occur. MSHA believes that the procedures for assessing civil penalties can be revised to improve the efficiency of the Agency's efforts and to facilitate the resolution of enforcement issues.

*Statement of Need:* Section 110(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires MSHA to assess a civil penalty for a violation of a mandatory health or safety standard or violation of any provision of the Mine Act. The mine operator has 30 days from receipt of the proposed assessment to contest it before the Federal Mine Safety and Health Review Commission (Commission), an independent adjudicatory agency established under the Mine Act. A proposed assessment that is not contested within 30 days becomes a final order of the Commission. A proposed assessment that is contested within 30 days proceeds to the Commission for adjudication. The proposed rule would promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties.

When issuing citations or orders, inspectors are required to evaluate safety and health conditions and make decisions about the statutory criteria related to assessing penalties. The proposed changes in the measures of the evaluation criteria would result in fewer areas of disagreement and earlier resolution of enforcement issues. The proposal would require conforming changes to the Mine Citation/Order form (MSHA Form 7000–3).

*Summary of Legal Basis:* Section 104 of the Mine Act requires MSHA to issue citations or orders to mine operators for any violations of a mandatory health or safety standard, rule, order, or regulation promulgated under the Mine Act. Sections 105 and 110 of the Mine Act provide for assessment of these penalties.

*Alternatives:* The proposal would include several alternatives in the preamble and requests comments on them.

*Anticipated Cost and Benefits:* MSHA will prepare estimates of the anticipated costs and benefits in a preliminary regulatory economic analysis to accompany the proposed rule.

*Risks:* MSHA's existing procedures for assessing civil penalties can be revised to improve the efficiency of the Agency's efforts and to facilitate the resolution of enforcement issues. In the overwhelming majority of contested cases before the Commission, the issue is not whether a violation occurred.

Rather, the parties disagree on the gravity of the violation, the degree of mine operator negligence, and other criterion. The proposed changes should result in fewer areas of disagreement and earlier resolution of enforcement issues, which should result in fewer contests of violations or proposed assessments.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information: www.msha.gov/regsinfo.htm.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*RIN:* 1219–AB72

## DOL—MSHA

### 93. • Proximity Detection Systems for Mobile Machines in Underground Mines

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 811

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* MSHA will develop a proposed rule to address the hazards that miners face when working near mobile equipment in underground mines. MSHA has concluded, from investigations or accidents involving mobile equipment and other reports, that action is needed to protect miner safety. Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. The proposed rule 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 part of the Secretary's strategy for securing safe and healthy workplaces, the OSHA will also 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(a) 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 preliminary regulatory economic analysis to accompany the proposed rule.

*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. | 02/01/10 | 75 FR 5009 |
| RFI Comment Period Ended. | 04/02/10 | |
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information: www.msha.gov/regsinfo.htm.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*Related RIN:* Related to 1219–AB65.

*RIN:* 1219–AB78

## DOL—MSHA

*Final Rule Stage*

### 94. Lowering Miners' Exposure to Coal Mine Dust, Including Continuous Personal Dust Monitors

*Priority:* Other Significant

*Legal Authority:* 30 U.S.C. 811; 30 U.S.C. 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 final rule is an important element in MSHA's Comprehensive Black Lung Reduction Strategy (Strategy) to ''End Black Lung Now.''

*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 will develop a regulatory economic analysis to accompany the final 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 |
| Notice of Public Hearings; Corrections. | 11/15/10 | 75 FR 69617 |
| NPRM—Rescheduling of Public Hearings; Correction. | 11/30/10 | 75 FR 73995 |
| NPRM Comment Period End. | 02/28/10 | |
| Public Hearing ..... | 12/07/10 | |
| Public Hearing ..... | 01/11/11 | |
| Public Hearing ..... | 01/13/11 | |
| Public Hearing ..... | 01/25/11 | |
| Public Hearing ..... | 02/08/11 | |
| Public Hearing ..... | 02/10/11 | |
| Public Hearing ..... | 02/15/11 | |
| NPRM Comment Period Extended. | 01/14/11 | 76 FR 2617 |
| Request for Comment. | 03/08/11 | 76 FR 12648 |
| NPRM Comment Period End. | 05/02/11 | |
| NPRM Comment Period Extended. | 05/04/11 | 76 FR 25277 |
| NPRM Comment Period End. | 05/31/11 | |
| NPRM Comment Period Extended. | 05/27/11 | 76 FR 30878 |
| NPRM Comment Period End. | 06/20/11 | |
| Final Rule ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information:* *www.msha.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*RIN:* 1219–AB64

## DOL—MSHA

### 95. Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 811

*CFR Citation:* 30 CFR 75.1732.

*Legal Deadline:* None.

*Abstract:* The Mine Safety and Health Administration (MSHA) will develop a final rule to address hazards that miners face when working near continuous mining machines in underground coal mines. MSHA has concluded, from investigations of accidents involving continuous mining machines and other reports, that action is necessary to protect miners. Continuous mining machines can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. The final rule would strengthen the protection for underground coal miners by reducing the potential of pinning, crushing, or striking hazards associated with working close to continuous mining machines. As a part of the Secretary's strategy for securing safe and healthy workplaces, the OSHA will also 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(a) 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 final rule.

*Risks:* The lack of proximity detection systems on continuous mining machines in underground coal 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 |
| RFI Comment Period Ended. | 04/02/10 | |
| NPRM ..... | 08/31/11 | 76 FR 54163 |
| Notice of Public Hearing. | 10/12/11 | 76 FR 63238 |
| NPRM Comment Period End. | 11/14/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information:* *www.msha.gov/reginfo.htm.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*RIN:* 1219–AB65

## DOL—MSHA

### 96. Pattern of Violations

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 814(e); 30 U.S.C. 957

*CFR Citation:* 30 CFR 104.

*Legal Deadline:* None.

*Abstract:* MSHA is preparing a final 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 to be used for operators who have demonstrated a disregard for the health and safety of miners. The final rule 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 508 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 develop a regulatory economic analysis to accompany the final 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 ..... | 02/02/11 | 76 FR 5719 |
| NPRM Comment Period End. | 04/04/11 | |
| NPRM Comment Period Extended. | 04/04/11 | 76 FR 18467 |
| NPRM Comment Period End. | 04/18/11 | |
| Notice of Public Hearing and Extension of Comment Period. | 05/04/11 | 76 FR 25277 |
| Notice of Public Hearing and Extension of Comment Period. | 06/20/11 | 76 FR 35801 |
| NPRM Comment Period End. | 06/30/11 | |
| Comment Period End. | 08/01/11 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information: www.msha.gov/regsinfo.htm.*

*URL for Public Comments: http://www.regulations.gov.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov.*

*RIN:* 1219–AB73

## DOL—MSHA

### 97. Examination of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 811; 30 U.S.C. 961

*CFR Citation:* 30 CFR 75.

*Legal Deadline:* None.

*Abstract:* In the ever changing mine environment, it is critical that hazardous conditions be recognized and abated quickly. Additionally, other conditions that could develop into a hazard if left uncorrected must also be eliminated. Operator examinations for hazards and violations of mandatory health or safety standards are mandated in the Mine Act and are a critical component of an effective safety and health program for underground mines. While this requirement was previously included in regulations, the 1992 final rule addressing ventilation in underground coal mines only included the requirement that the mine examiners look for hazardous conditions. The 1992 rule omitted from the standard the text taken from the Mine Act requiring examinations for violations of mandatory health or safety standards during preshift examinations. The final rule will revise existing standards for preshift, supplemental, on-shift, and weekly examinations to address violations of mandatory health or safety standards.

*Statement of Need:* Underground coal mines usually present harsh and hostile working environments, and the ventilation system is the most vital life support system in underground mining. A properly operating ventilation system is essential for maintaining a safe and healthful working environment. Examinations of work areas that include the ventilation system are the first line of defense for miners working in underground coal mines and are necessary to protect miners. Conditions in underground coal mines change rapidly—roof that appears adequately supported can quickly deteriorate and fall; stoppings can crush out and short-circuit air currents; conveyor belts can become misaligned or belt roller bearings can fail, resulting in an ignition source; and methane can accumulate in areas where it may not have been detected.

Diligent compliance with safety and health standards and safety-conscious work practices provide a substantial measure of protection against mine accidents and emergencies. To assure optimum safety of miners, it is imperative that operators find violations of health or safety standards, correct them, and record corrective actions taken.

*Summary of Legal Basis:* Promulgation of this regulation is authorized by sections 101 and 303 (d)(1) and (f) of the Federal Mine Safety and Health Act of 1977.

*Alternatives:* The proposal included several alternatives in the preamble and requested comments on them.

*Anticipated Cost and Benefits:* MSHA estimated that the proposed rule would cost $15.3 million yearly and result in net benefits of $6.0 million yearly.

*Risks:* Failure to conduct adequate examinations to identify, report, and correct hazardous conditions and violations of health and safety standards has resulted in serious accidents and fatalities. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/27/10 | 75 FR 81165 |
| NPRM Comment Period End. | 02/25/11 | |
| NPRM Extension of Comment Period. | 03/01/11 | 76 FR 11187 |
| NPRM Comment Period End. | 03/28/11 | |
| Notice of Public Hearing and Extension of Comment Period. | 05/04/11 | 76 FR 25277 |
| NPRM Comment Period End. | 06/30/11 | |

| Action | Date | FR Cite |
|---|---|---|
| Notice of Public Hearing and Extension of Comment Period. | 06/20/11 | 76 FR 35801 |
| NPRM Comment Period End. | 08/01/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*URL for More Information:* *www.msha.gov/regsinfo.htm.*

*Agency Contact:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939, *Phone:* 202 693–9440, *Fax:* 202 693–9441, *Email: fontaine.roslyn@dol.gov*.

*Related RIN:* Related to 1219–AB71.

*RIN:* 1219–AB75

## DOL—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

*Prerule Stage*

### 98. Infectious Diseases

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 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.

*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. | 12/30/10 | |
| Stakeholder Meetings. | 07/29/11 | |
| Initiate SBREFA .. | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AC46

## DOL—OSHA

### 99. Injury and Illness Prevention Program

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 29 U.S.C. 653; 29 U.S.C. 655(b); 29 U.S.C. 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 to 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.

*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 .. | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AC48

## DOL—OSHA

### Proposed Rule Stage

### 100. Occupational Exposure to Crystalline Silica

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect State, local or tribal governments.

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 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. ASTM International 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.

*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 ..... | 02/00/12 | |

*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.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AB70

## DOL—OSHA

### 101. Improve Tracking of Workplace Injuries and Illnesses

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 29 U.S.C. 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 ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AC49

## DOL—OSHA

*Final Rule Stage*

### 102. Hazard Communication

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 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. OSHA published the NPRM on September 30, 2009, and held public hearings in Washington, DC, and Pittsburgh, PA, in March 2010. The record closed on June 1, 2010.

*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 | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Local, State.

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

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email:* *dougherty.dorothy@dol.gov*.

*RIN:* 1218–AC20

BILLING CODE 4510–04–P

## 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 of nonregulatory 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 16 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 its

efforts to implement safety management systems.

• The Federal Motor Carrier Safety Administration (FMCSA) continues its work to strengthen the requirements for Electronic On-Board Recorders.

• The FMCSA will continue its work to revise motor carrier safety fitness procedures.

• The National Highway Traffic Safety Administration (NHTSA) will continue its rulemaking to reduce death and injury resulting from incidents involving motorcoaches.

We are taking actions to address other important issues. For example:

• The NHTSA is engaged in a major rulemaking to address fuel economy standards for passenger cars and light trucks.

• The Office of the Secretary of Transportation (OST) remains focused on 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 of 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 email 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; a continually expanding Internet page that provides important regulatory information, including ''effects'' reports and status reports (*http://regs.dot.gov/*); and the continued exploration and 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.

• Retrospective Review of Existing Regulations

In accordance with Executive Order (E.O.) 13563 ''Improving Regulation and Regulatory Review,'' the Department actively engaged in a special retrospective review of our existing rules to determine whether they need to be revised or revoked. This review was in addition to those reviews in accordance with section 610 of the Regulatory Flexibility Act, Executive Order 12866, and the Department's Regulatory Policies and Procedures. As part of this effort, we also reviewed our processes for determining what rules to review and ensuring the rules are effectively reviewed. As a result of the review, we identified many rules for expedited review and changes to our retrospective review process. Our retrospective review plan in response to E.O. 13563 can be found at *www.regs.dot.gov;* the results of the review of our rules can also be found there and in appendix D to our regulatory agenda.

• Each rulemaking initiated as a result of the retrospective review is included in the list below with a Regulation Identification Number (RIN) to assist in following the action through the rulemaking process. Additionally, at the end of each title, existing rulemaking actions will be been identified by adding ''RRR'' and those that are new will be indicated by ''RRR*''.

| RIN | Title | Likely Potential for Positive Effects on Small Businesses |
|---|---|---|
| 2120–AJ94 | Enhanced Flight Vision System (EFVS) (RRR*) | Y |
| 2120–AJ97 | 14 CFR Part 16; Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (RRR*) | |
| 2120–AK00 | Medical Certificate Endorsement Issue (RRR*) | |
| 2120–AK01 | Combined Drug and Alcohol Testing Programs for Operators Conducting Commercial Air Tours (RRR*). | Y |
| 2120–AK03 | CAT III Definitions (RRR*). | |
| 2125–AF41 | National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Engineering Judgments (RRR). | |

| RIN | Title | Likely Potential for Positive Effects on Small Businesses |
|---|---|---|
| 2125–AF43 | National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Compliance Dates Revision (RRR*). | |
| 2127–AK98 | Pedestrian Safety Global Technical Regulation (GTR) (RRR*) | Y |
| 2127–AK99 | Federal Motor Vehicle Standard No. 108; Lamps, reflective devices, and associated equipment—Color Boundaries (RRR*). | Y |
| 2127–AL00 | Federal Motor Vehicle Safety Standard No. 108; Lamps, reflective devices, and associated equipment—Reconsideration (RRR*). | |
| 2127–AL02 | FMVSS No. 126, Petition for Reconsideration of Electronic Stability Control (ESC) (RRR*). | |
| 2127–AL03 | Part 571 FMVSS No. 205, Glazing Materials, GTR (RRR*) | Y |
| 2127–AL05 | Amend FMVSS No. 210 to Incorporate the Use of a New Force Application Device (RRR*). | |
| 2130–AC06 | Training Standards for Railroad Employees (RRR). | |
| 2130–AC16 | Locomotive Safety Standards Amendments (RRR) | Y |
| 2130–AC27 | Positive Train Control Systems Amendments (RRR*). | |
| 2132–AB02 | Major Capital Investment Projects (RRR). | |
| 2133–AB74 | Cargo Preference (RRR). | |
| 2133–AB77 | MARAD NEPA Procedures (RRR*). | |
| 2133–AB78 | Transportation Priority Allocation System, Part 341 (RRR*). | |
| 2133–AB79 | Administrative Claims, Part 327 (RRR*). | |
| 2133–AB80 | Operating Differential Subsidy and Construction Differential Subsidy Programs (RRR*). | |
| 2133–AB81 | Foreign Transfer Regulations (RRR*). | |
| 2133–AB82 | War Risk Ship Valuation (RRR*). | |
| 2137–AE77 | Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR*). | |
| 2137–AE78 | Hazardous Materials: Miscellaneous Amendments (RRR*) | Y |
| 2137–AE79 | Hazardous Materials: Miscellaneous Amendments; Petitions for Rulemaking (RRR*) | Y |
| 2137–AE80 | Hazardous Materials: Miscellaneous Pressure Vessel Requirements (DOT Spec Cylinders) (RRR*). | Y |
| 2137–AE81 | Hazardous Materials: Reverse Logistics (RRR*) | Y |
| 2137–AE82 | Hazardous Materials: Incorporation of Certain Special Permits and Competent Authorities into the HMR (RRR*). | Y |

*Some of the entries on this list may be completed actions, which do not appear in *The Regulatory Plan/Agenda*. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on *Reginfo.gov* in the Completed Actions section for DOT.

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 at *www.regs.dot.gov,* as well as through a list-serve. 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 continues 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 2012, OST will continue to focus its efforts on enhancing airline passenger protections by requiring carriers to adopt various consumer service practices under the following rulemaking initiatives:

- Accessibility of Carrier Web sites and Ticket Kiosks (2105–AD96)
- Enhancing Airline Passenger Protections III (2105–AE11)
- Carrier-Supplied Medical Oxygen, Accessible In-Flight Entertainment Systems, Service Animals, and Accessible Lavatories on Single-Aisle Aircraft (2105–AE12).

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 Destination 2025—a transformation of the Nation's aviation system in which air traffic will move safely, swiftly, efficiently, and seamlessly around the globe. Our vision is to develop new systems and to enhance a culture that increases the safety, reliability, efficiency, capacity, and environmental performance of our aviation system. To meet our vision will require enhanced skills, clear communication, strong leadership, effective management, innovative technology, new equipment, advanced system oversight, and global integration.

FAA activities that may lead to rulemaking in fiscal year 2012 include continuing to:

• Promote and expand 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.

• 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.

• Develop and implement Safety Management Systems (SMS) where these systems will improve safety of aviation and aviation-related activities. An SMS proactively identifies potential hazards in the operating environment, analyzes the risks of those hazards, and encourages mitigation prior to an accident or incident. In its most general form, an SMS is a set of decisionmaking tools that can be used to plan, organize, direct, and control activities in a manner that enhances safety.

FAA top regulatory priorities for 2011 through 2012 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)

• Congestion Management for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (2120–AJ89)

• Safety Management System for Certificate Holders Operating Under 14 CFR Part 121 (2120–AJ86)

The Crewmember and Aircraft Dispatcher Training rulemaking would:

• Reduce human error and improve performance;

• 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:

• Codify current agency guidance

• Address National Transportation Safety Board recommendations;

• Provide certificate holders and pilots with tools and procedures that will aid in reducing accidents, including potential equipage requirements; and

• Amend all part 135 commercial helicopter operations regulations to include pilot training and alternate airport weather minimums.

The Congestion Management rulemaking for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport would:

• Replace the orders limiting scheduled operations at John F. Kennedy International Airport (JFK), limiting scheduled operations at Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA); and

• Provide a longer-term and comprehensive approach to congestion management at JFK, EWR, and LGA

The Safety Management System for Certificate Holders Operating Under 14 CFR Part 121 rulemaking would:

• Require certain certificate holders to develop and implement an SMS;

• Propose a general framework from which a certificate holder can build its SMS; and

• Conform to International Civil Aviation Organization Annexes and adopt several National Transportation Safety Board recommendations.

*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 rulemaking actions outlined in the DOT Plan for Implementation of Executive Order 13563. In particular, FHWA will undertake two rulemakings that propose changes to the Manual on Uniform Traffic Control Devices (MUTCD). The first of these rulemakings (RIN 2125–AF41, Engineering Judgment) would clarify the use of engineering judgment and studies in the application of traffic control devices. A separate rulemaking (RIN 2125–AF43, Compliance Dates Revision) would revise the compliance dates for certain requirements in the MUTCD. Consistent with the principles outlined in Executive Order 13563, the FHWA anticipates these actions would provide clarity and needed flexibility, as well as reduce burdens on State and local governments. We believe our approach in both rulemakings is consistent with the requirements of Executive Order 13563, including its emphasis on consideration of benefits and costs (sections 1(a) and 1(b)), its requirement of an open exchange of information with stakeholders (section 2(a)), and, in particular, its call for retrospective analysis of existing rules, including streamlining and modification

to make such rules less burdensome (section 6). These rulemakings are also consistent with a Presidential Memorandum regarding Administrative Flexibility, which calls for reducing burdens and promoting flexibility for State and local governments.

*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 2012 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) Carrier Safety Fitness Determination (RIN 2126–AB11) and (2) 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.

In FY 2012, FMCSA will continue its work on the Comprehensive Safety Analysis (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.

Also in FY 2012, 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 nonregulatory 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 focus on the high-priority vehicle safety issue of motorcoaches and their occupants, and will publish several notices in fiscal year 2012 to that end. NHTSA will issue 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 is also considering proposing new Federal motor vehicle safety standards (FMVSS) for motorcoach rollover structural integrity requirements, as well as requirements for electronic stability control systems for motorcoaches and truck tractors. Together, these three rulemaking actions will address 12 recommendations issued by the National Transportation Safety Board related to motorcoach safety.

In fiscal year 2012, 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 the Environmental Protection Agency (EPA), a joint final rule setting corporate average fuel economy (CAFE) standards for light trucks and passenger cars for model years 2017 and beyond. To further enhance the safety of passenger vehicles and pedestrians, NHTSA is considering proposing, in response to the Pedestrian Safety Enhancement Act of 2010, a FMVSS to provide a means of alerting blind and other pedestrians of motor vehicle operation.

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 20 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 many of the RSIA08 actions that include developing requirements for train conductor certification, roadway worker protection, track safety, alcohol and drug testing of maintenance-of-way personnel, and training for railroad employees. Other 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, which will be a multi-year effort due to the underlying statutory requirements that must be undertaken prior to the issuance of any final rule. Finally, FRA will be engaging in two rulemaking proceedings to address various issues related to the implementation of positive train control systems. FRA expects these regulatory actions to provide substantial benefits to the industry while ensuring the safe and effective implementation of the technology.

*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 implements 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 notably, the Major Capital Investments (RIN 2132–AB02) ''New Starts'' 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. 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 following: Maritime Security, Voluntary Intermodal Sealift Agreement, National Defense Reserve Fleet and the Ready Reserve Force, Maritime Guaranteed Loan Financing, United States Merchant Marine Academy, Mariner Education and Training Support, and Deepwater Port Licensing. Additionally, MARAD will continue its monitoring and enforcement of U.S. cargo preference laws and implementation of MARAD's newest program, the ''America's Marine Highways Program.'' To date, the Department has identified marine corridors, and grants have been awarded under the America's Marine Highways Program.

MARAD's primary regulatory activities in fiscal year 2012 will be to update existing cargo preference-related regulations, to continue the update of existing regulations as part of the Department's Retrospective Regulatory Review effort, and to propose 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 reduction 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 findings of the National Transportation Safety Board and PHMSA's evaluation of transportation incident data. 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 be 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.

Additionally, PHMSA will consider whether or not to revise the requirements in the pipeline safety regulations addressing integrity management principles for gas transmission pipelines. Specifically, PHMSA will be reviewing the definition of an HCA (including the concept of a potential impact radius), the repair criteria for both HCA and non-HCA areas, requiring the use of automatic and remote-controlled shutoff valves, valve spacing, and whether applying the integrity management program requirements to additional areas would mitigate the need for class location requirements.

*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 2011 TO 2012 DOT REGULATORY PLAN

[This chart does not account for non-quantifiable benefits, which are often substantial]

| Agency/RIN No. | Title | Stage | Quantifiable Costs Discounted 2007 $ (Millions) | Quantifiable Benefits Discounted 2007 $ (Millions) |
|---|---|---|---|---|
| OST: | | | | |
| 2105–AD96 | Accessibility of Carrier Websites and Ticket Kiosks. | FR (TBD) | TBD | TBD |
| 2105–AE11 | Enhancing Airline Passenger Protections III. | SNPRM 08/12 | TBD | TBD |
| 2105–AE12 | Air Carrier Access Act (ACAA) | SNPRM 06/12 | TBD | TBD |
| Total for OST | | | 0 | 0 |
| FAA: | | | | |
| 2120–AJ00 | Part 121, subparts N and O | FR (TBD) | 222.9 | 199.1 |
| 2120–AJ53 | Helicopter Safety Initiatives and Misc Amendments. | FR 07/12 | 225 | 275 |
| 2120–AJ86 | SMS for part 121 | FR 07/12 | 375.5 | 500.8 |
| 2120–AJ89 | NY Congestion Management | NPRM 05/12 | TBD | TBD |
| Total for FAA | | | 823.4 | 974.9 |
| FMCSA: | | | | |
| 2126–AA97 | National Registry of Certified Medical Examiners. | FR 02/12 | 575 | 1,199 |
| 2126–AB11 | Carrier Safety Fitness Determination | NPRM 04/12 | 19 | 324 |
| Total for FMCSA | | | 594 | 1,523 |

QUANTIFIABLE COSTS AND BENEFITS OF RULEMAKINGS ON THE 2011 TO 2012 DOT REGULATORY PLAN—Continued

[This chart does not account for non-quantifiable benefits, which are often substantial]

| Agency/RIN No. | Title | Stage | Quantifiable Costs Discounted 2007 $ (Millions) | Quantifiable Benefits Discounted 2007 $ (Millions) |
|---|---|---|---|---|
| NHTSA: | | | | |
| 2127–AK56 | Seat Belts on Motorcoaches | FR 07/12 | 26.8–27.9 | 17.5–96.9 |
| 2127–AK79 | CAFE 2017 and Beyond | FR (TBD) | TBD | TBD |
| 2127–AK93 | Sound for Hybrid and Electric Vehicles | NPRM 07/12 | TBD | TBD |
| 2127–AK96 | Motorcoach Rollover Structural Integrity | NPRM 04/12 | TBD | TBD |
| 2127–AK97 | Electronic Stability Control Systems for Heavy Vehicles. | NPRM 01/12 | TBD | TBD |
| Total for NHTSA | | | 26.8–27.9 | 17.5–96.9 |
| FTA: | | | | |
| 2132–AB02 | Major Capital Investment Projects | NPRM 01/12 | TBD | TBD |
| Total for FTA | | | 0 | 0 |
| MARAD: | | | | |
| 2133–AB74 | Cargo Preference | 05/12 | TBD | TBD |
| Total for MARAD | | | 0 | 0 |
| Total for DOT | | | 1,444.2–1,445.3 | 2,515.4–2,594.8 |

**Notes:** 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.

Costs and benefits are generally discounted at a 7 percent discount rate over the period analyzed.

The Department of Transportation generally assumes that there are economic benefits to avoiding a fatality of $6.2 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)

*Proposed Rule Stage*

### 103. + Accessibility of Carrier Web Sites and Ticket Kiosks

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 41702; 49 U.S.C. 47105; 49 U.S.C. 41712

*CFR Citation:* 14 CFR 382.

*Legal Deadline:* None.

*Abstract:* This rulemaking was divided into two successive Air Carrier Access Act (ACAA) rulemakings. This one, as well as the second rulemaking (2105–AE12), address issues raised in another rulemaking RIN 2105–AD92. This rulemaking would consider: (1) The cost and technical issues involved in requiring carrier Web site accessibility and (2) whether automated kiosks operated by carriers at airports and elsewhere should be required to be accessible. After the public comment periods, we intend to consolidate the final decisions in this rulemaking and RIN 2105–AE12 into one document.

*Statement of Need:* This rulemaking proposes to provide greater accommodations for individuals with disabilities in accessing automated kiosks at U.S. airports and Web sites operated by U.S. and foreign air carriers and their ticket agents. Automated kiosks are widely used by U.S. and foreign air carriers at airports to provide customer services (*e.g.,* boarding pass and bag tag printing). Also, today's passengers increasingly rely on air travel Web sites for information about airline services, making reservations, and obtaining discounted airfares. Currently, neither airlines nor airports are required to make airport kiosks accessible to passengers with disabilities. Also, not all air travel information and services available to the public on Web sites are accessible to people with disabilities. Only DOT can protect air travelers with disabilities as states are preempted from regulating in these areas and no private right of action exists for airline consumers to enforce the Air Carrier Access Act.

*Summary of Legal Basis:* The legal basis for the proposed rule is the Air Carrier Access Act, which prohibits discrimination in airline service on the basis of disability, and section 504 of the Rehabilitation Act of 1973, which requires accessibility in airport terminal facilities that receive Federal financial assistance.

*Alternatives:* Since May 2008, the Department has attempted to address the problem of inaccessible Web sites by requiring U.S. and foreign air carriers to make discounted, Web-based fares and amenities available to passengers who self-identify as being unable to use an airline's inaccessible Web site due to their disability. The Department has also tried to address the problem of inaccessible kiosks by requiring U.S. and foreign air carriers to make equivalent service available to passengers with a disability who cannot readily use a carrier's automated kiosk due to their disability. Disability advocacy groups have repeatedly expressed opposition to these interim solutions as they do not enable them to independently access and use airlines' Web sites or kiosks.

*Anticipated Cost and Benefits:* Preliminary estimates show that the present value of net benefits of the requirement to ensure the accessibility of automated airport kiosks to be $70.4 million over the 10-year period from 2013 through 2022, using a 7 percent discount rate. With respect to the proposed requirements to ensure air travel Web site accessibility, our preliminary regulatory evaluation

estimates the expected present value of net benefits at $48.5 million over the period from 2013 through 2022, using the 7 percent discount rate.

*Risks:* N/A

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| SNPRM ..... | 09/26/11 | 76 FR 59307 |
| SNPRM Comment Period End. | 11/25/11 | |
| Extension of Comment Period and Clarification of Proposed Rule. | 11/21/11 | 76 FR 71914 |
| Supplemental NPRM Comment Period End. | 01/09/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, Room W94–302, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–4723, TDD *Phone:* 202 755–7687, *Email:* *bob.ashby@ost.dot.gov*.

*Related RIN:* Related to 2105–AE12.

*RIN:* 2105–AD96

## DOT—OST

### 104. • + Enhancing Airline Passenger Protections III

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 41712; 49 U.S.C. 40101; 49 U.S.C. 41702

*CFR Citation:* 14 CFR 244; 14 CFR 250; 14 CFR 253; 14 CFR 259; 14 CFR 399.

*Legal Deadline:* None.

*Abstract:* This rulemaking would address the following issues: (1) Whether the Department should require a marketing carrier to provide assistance to its code-share partner when a flight operated by the code-share partner experiences a lengthy tarmac delay; (2) whether the Department should enhance disclosure requirements on code-share operations, including requiring on-time performance data, reporting of certain data code-share operations, and codifying the statutory amendment of 49 U.S.C. 41712(c) regarding Web site schedule disclosure of code-share operations; (3) whether the Department should expand the on-time performance ''reporting carrier'' pool to include smaller carriers; (4) whether the Department should require travel agents to adopt minimum customer service standards in relation to the sale of air transportation; (5) whether the Department should require ticket agents to disclose the carriers whose tickets they sell or do not sell and information regarding any incentive payments they receive in connection with the sale of air transportation; (6) whether the Department should require ticket agents to disclose any preferential display of individual fares or carriers in the ticket agent's Internet displays; (7) whether the Department should require additional or special disclosures regarding certain substantial fees; *e.g.,* oversize or overweight baggage fees; (8) whether the Department should prohibit post-purchase price increase for all services and products not purchased with the ticket or whether it is sufficient to prohibit post-purchase prices increases for baggage charges that traditionally have been included in the ticket price; and (9) whether the Department should require that ancillary fees be displayed through all sale channels.

*Statement of Need:* On April 25, 2011, the Department of Transportation published in the **Federal Register** a final rule on Enhancing Airline Passenger Protections (76 FR 23110). Among other requirements, the rule contains several requirements for U.S. and foreign air carriers, ticket agents, and other sellers of air transportation to disclose to consumers the cost of certain ancillary services. The rule requires disclosure through various methods. One issue the rulemaking requested comment on was whether the Department should require information regarding the cost of airline ancillary services to be displayed through Global Distribution Systems in order to enhance transparency of such fees to consumers. Because the Department lacked critical information on the issue, the Department deferred the issue to this rulemaking. This rulemaking will address that issue as well as several other airline consumer protection proposals.

*Summary of Legal Basis:* The Department has authority and responsibility under 49 U.S.C. section 41712, in concert with 49 U.S.C. 40101 and 49 U.S.C. section 41702, to protect consumers from unfair and deceptive practices and to ensure safe and adequate service in air transportation.

*Alternatives:* One alternative would be to take no regulatory action. Also, various regulatory alternatives will be developed and the public will be afforded an opportunity to provide comments when the Department publishes the proposed rule in the **Federal Register.**

*Anticipated Cost and Benefits:* TBD

*Risks:* The risk of not taking regulatory action would be the continuation of a system where passengers cannot determine the true cost of their air travel.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Supplemental NPRM. | 08/00/12 | |

*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:* Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–9342, *TDD Phone:* 202 755–7687, *Fax:* 202 366–7152, *Email:* *blane.workie@ost.dot.gov*.

*Related RIN:* Related to 2105–AD72, Related to 2105–AD92.

*RIN:* 2105–AE11

## DOT—OST

### 105. • + Carrier-Supplied Medical Oxygen, Accessible In-Flight Entertainment Systems, Service Animals, and Accessible Labatories on Single Aisle Aircraft

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 41702; 49 U.S.C. 41712; 49 U.S.C. 47105

*CFR Citation:* 14 CFR 382.

*Legal Deadline:* None.

*Abstract:* This rulemaking is the one of two successive Air Carrier Access Act (ACAA) rulemakings that address issues raised in another rulemaking: RIN 2105–AD92. The second rulemaking is RIN 2105–AD96. This rulemaking action would consider (1) whether there are safety-related reasons for excluding service animals other than dogs that may be specific to foreign carriers; (2) whether the cost of requiring carriers to supply free in-flight medical oxygen would create an undue burden; and (3) whether providing high-contrast captioning on in-flight entertainment displays is technically and economically feasible. It would also address accessible lavatories on single-aisle aircraft and a rulemaking petition

from the Psychiatric Service Dog Society to eliminate provisions allowing carriers to require documentation and 48 hours advance notice for users of psychiatric service animals, and miscellaneous service animal issues. After the public comment periods, we intend to consolidate the final decisions in this rulemaking and RIN 2105–AD96 into one document.

*Statement of Need:* This rulemaking action would examine whether the Department should require carriers to provide in-flight medical oxygen, captioning on in-flight entertainment (IFE) systems, and accessible lavatories on single-aisle aircraft to provide individuals with disabilities greater access to air travel. Currently, few airlines make in-flight medical oxygen available to passengers and as a result individuals who are dependent on medical oxygen but cannot use portable oxygen concentrators are having difficulty traveling by air. Also, passengers who are deaf or hard-of-hearing have strongly advocated for captioning of IFE systems, arguing that the in-flight entertainment that is available to other passengers should also be available to them. Lavatories on single-aisle aircraft have also become a matter of interest to the Department as more and more single-aisle aircraft are used for longer flights and the absence of accessible lavatories makes travel difficult for passengers with disabilities.

This rulemaking action will also address whether to amend the existing regulation, which allows airlines to require users of psychiatric and emotional support service animals to provide documentation and advance notice of their planned travel with a service animal. An advocacy group representing users of psychiatric service dogs has filed a petition for rulemaking stating that the notice and medical documentation requirements stigmatize and discriminate against people with mental disabilities, and asking that it be repealed.

*Summary of Legal Basis:* This legal basis for the proposed rule is the Air Carrier Access Act (ACAA), which prohibits discrimination in airline service on the basis of disability.

*Alternatives:* Regulatory alternatives will be developed and the public will be afforded an opportunity to provide comments when the Department publishes the proposed rule in the **Federal Register.**

*Anticipated Cost and Benefits:* Estimates of costs and benefits are under development.

*Risks:* N/A.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Supplemental NPRM. | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, Room W94–302, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–4723, *TDD Phone:* 202 755–7687, *Email:* *bob.ashby@ost.dot.gov.*

*Related RIN:* Split from 2105–AD96.

*RIN:* 2105–AE12

## DOT—FEDERAL AVIATION ADMINISTRATION (FAA)

*Proposed Rule Stage*

### 106. + Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 44101; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 44716; 49 U.S.C. 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44912; 49 U.S.C. 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 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 |
| Proposed Rule; 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 | |
| Extended NPRM Comment Period End. | 08/10/09 | |
| Supplemental NPRM. | 05/20/11 | 76 FR 29336 |
| Supplemental NPRM Comment Period End. | 07/19/11 | |
| Supplemental NPRM Comment Period Extended. | 06/23/11 | 76 FR 36888 |
| Extended Supplemental NPRM Comment Period End. | 09/19/11 | |
| Analyzing Comments. | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* For flight crewmember information contact James K. Sheppard, 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:* Nancy L. Claussen, Federal Aviation Administration, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–8166, *Email: nancy.claussen@faa.gov.*

*RIN:* 2120–AJ00

## DOT—FAA

### 107. + New York Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40103; 49 U.S.C. 40106; 49 U.S.C. 40109; 49 U.S.C. 40113; 49 U.S.C. 44502; 49 U.S.C. 44514; 49 U.S.C. 44701; 49 U.S.C. 44719; 49 U.S.C. 46301

*CFR Citation:* 14 CFR 93.

*Legal Deadline:* None.

*Abstract:* This rulemaking would replace the current temporary orders limiting scheduled operations at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport with a more permanent rule to address the issues of congestion and delay at the New York area´s three major commercial airports, while also promoting fair access and competition. The rulemaking would help ensure that congestion and delays are managed by limiting scheduled and unscheduled operations. The rulemaking would also establish a secondary market for U.S. and foreign air carriers to buy, sell, trade, and lease slots amongst each other at each of the three airports. This would allow carriers serving or seeking to serve the New York area airports to exchange slots as their business models and strategic goals require.

*Statement of Need:* This rulemaking would replace the current temporary orders limiting scheduled operations at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport with a more permanent rule to address the issues of congestion and delay at the New York area's three major commercial airports, while also promoting fair access and competition. The rulemaking would help ensure that congestion and delays are managed by limiting scheduled and unscheduled operations. The rulemaking would also establish a secondary market for U.S. and foreign air carriers to buy, sell, trade, and lease slots amongst each other at each of the three airports. This would allow carriers serving or seeking to serve the New York area airports to exchange slots as their business models and strategic goals require.

*Summary of Legal Basis:* This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, sections 40101, 40103, 40105, and 41712. The Secretary of Transportation (Secretary) is the head of the DOT and has broad oversight of significant FAA decisions. See 49 U.S.C. 102 and 106. In addition, under 49 U.S.C. 41712, the Secretary has the authority to investigate and prohibit unfair and deceptive practices and unfair methods of competition in air transportation or the sale of air transportation.

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use the FAA deems necessary for safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of navigable airspace. Not only is the FAA required to ensure the efficient use of navigable airspace, but it must do so in a manner that does not effectively shut out potential operators at the airport and in a manner that acknowledges competitive market forces.

These authorities empower the DOT to ensure the efficient utilization of airspace by limiting the number of scheduled and unscheduled aircraft operations at JFK, EWR, and LGA, while balancing between promoting competition and recognizing historical investments in the airport and the need to provide continuity. They also authorize the DOT to investigate the transfer of slots and to limit or prohibit anti-competitive transfers.

*Alternatives:* The FAA considered two alternatives. The first alternative was to simply extend the existing orders. This alternative was rejected because the FAA wanted to increase competition by making slots available to more operators. The FAA believes these operators are likely to be small entities. The second alternative was to remove the existing orders. This alternative results in unacceptable delay costs from the increase in operations.

*Anticipated Cost and Benefits:* TBD

*Risks:* The FAA will review specific risks associated with this rulemaking.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Molly W. Smith, Federal Aviation Administration, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–3344, *Email: molly.w.smith@faa.gov.*

*RIN:* 2120–AJ89

## DOT—FAA

*Final Rule Stage*

### 108. + Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 1155; 49 U.S.C. 40101 to 40103; 49 U.S.C. 40120; 49 U.S.C. 41706; 49 U.S.C. 41721; 49 U.S.C. 44101; 49 U.S.C. 44106; 49 U.S.C. 44111; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46506; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531

*CFR Citation:* 14 CFR 1; 14 CFR 135; 14 CFR 91.

*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 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 3 years to 4 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 | 10/12/10 | 75 FR 62640 |
| NPRM Comment Period End. | 01/10/11 | |
| Final Rule | 07/00/12 | |

*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.*

*Agency Contact:* Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–8321.

*RIN:* 2120–AJ53

## DOT—FAA

### 109. + Safety Management Systems for Certificate Holders (Section 610 Review)

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 44716; 49 U.S.C. 44717; 49 U.S.C. 44722; 49 U.S.C. 46105

*CFR Citation:* 14 CFR 121.

*Legal Deadline:* NPRM, Statutory, October 29, 2010.

Final, Statutory, July 30, 2012, Final Rule.

Congress passed Public Law 111–216 that instructs FAA to conduct a rulemaking to require all part 121 air carriers to implement a Safety Management System (SMS). This act further states that FAA shall consider at a minimum each of the following as part of the SMS rulemaking: (1) An Aviation Safety Action Program (ASAP); (2) a Flight Operations Quality Assurance Program (FOQA); (3) a Line Operations Safety Audit (LOSA); and (4) an Advance Qualifications Program.

*Abstract:* This rulemaking would require each certificate holder operating under 14 CFR part 121 to develop and implement a Safety Management System (SMS) to improve the safety of its aviation related activities. A SMS is a comprehensive, process-oriented approach to managing safety throughout an organization. An SMS includes an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk and safety performance; and promotion of a safety culture. SMS stresses not only compliance with technical standards but increased emphasis on the overall safety performance of the organization.

*Statement of Need:* Passage of the Airline Safety and FAA Extension Act of 2010 (Pub. L. 111–216), section 215 ''Safety Management System'' directs the Administrator to conduct a rulemaking to require all part 121 air carriers to implement a safety management system (SMS). The Act requires an NPRM within 90 days and a final rule not later than 24 months from enactment of Public Law 111–216.

*Summary of Legal Basis:* Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216), section 215, signed by President on August 1, 2010.

*Alternatives:* The Rulemaking Team considered including parts 135 (air carriers) and 145 (repair stations) to the rule but did not because of time restraints.

*Anticipated Cost and Benefits:* Costs and benefits of this final rule are still in development. An initial cost estimate for SMS implementation over 3 years is $270,000 (small carrier), $373,950

(medium carrier), and $1,135,500 (large carrier) with total cost for 90 part 121 carriers of $52,276,200. However, given the flexibility of SMS, and expected safety improvements, benefits are expected to exceed costs.

*Risks:* Commercial air carrier accident rate in the U.S. has remained relatively constant over the past 10 years. However, the recent trend of hazards include many that could have been mitigated or eliminated had a structured, organization-wide approach to managing air carriers' operations been in place.

SMS is a comprehensive, process-oriented approach to managing safety throughout an organization, and stresses not only compliance with technical standards but increased emphasis on the overall safety performance of the organization.

The potential reduction of risks would be averted causalities, aircraft damage, and accident investigation costs by identifying safety issues and spotting trends before they result in a near-miss, incident, or accident.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/05/10 | 75 FR 68224 |
| NPRM Comment Period Extended. | 01/31/11 | 76 FR 5296 |
| NPRM Comment Period End. | 02/03/11 | |
| Extended NPRM Comment Period End. | 03/07/11 | |
| Final Rule ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Scott VanBuren, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 494–8417, *Email: scott.vanburen@faa.gov.*

*Related RIN:* Split from 2120–AJ15.

*RIN:* 2120–AJ86

## DOT—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)

*Proposed Rule Stage*

### 110. + Carrier Safety Fitness Determination

*Priority:* Economically Significant. Major under 5 U.S.C. 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). CSA 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, 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 from crashes, inspections, and violation history rather than just 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 Safety Fitness Determination (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 has estimated the crash-reduction benefit from the change to the proposed safety fitness determination process to be about $441 million annually. The total cost is estimated at $13 million annually. Net benefits are about $428 million annually.

*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 ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* David Miller, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE.,

Washington, DC 20590, *Phone:* 202 366–5370, *Email: fmcsaregs@dot.gov.*

*RIN:* 2126–AB11

## DOT—FMCSA

*Final Rule Stage*

### 111. + National Registry of Certified Medical Examiners

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* Pub. L. 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 (CMV) 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 (SAFETEA–LU).

*Statement of Need:* In enacting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 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 National Registry 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:* We estimated 10-year costs (discounted at 7 percent) at $700,783 million, total benefits at $1,144,961 million, and net benefits over 10 years at $444,177 million.

*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 ..... | 02/00/12 | |

*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.*

*Agency Contact:* Dr. Mary D. Gunnels, Director, Office of Medical Programs, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–4001, *Email: maggi.gunnels@dot.gov.*

*RIN:* 2126–AA97

## DOT—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

*Proposed Rule Stage*

### 112. + Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYS 2017 and Beyond

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 49 U.S.C. 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 to conduct joint rulemaking, with NHTSA regulating fuel economy and EPA regulating greenhouse gas emissions.

*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 pounds but increases the fatality rate for light trucks less than 3,870 pounds 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 | 12/08/10 | 75 FR 76337 |
| NPRM ..... | 12/01/11 | 76 FR 74854 |
| NPRM Comment Period End. | 01/30/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*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.*

*Agency Contact:* James Tamm, Fuel Economy Division Chief, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 493–0515, *Email: james.tamm@dot.gov.*

*Related RIN:* Duplicate of 2060–AQ54.

*RIN:* 2127–AK79

## DOT—NHTSA

### 113. • + Sound for Hybrid and Electric Vehicles

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; Delegation of Authority at 49 CFR 1.50

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* NPRM, Statutory, July 5, 2012, Initiate rulemaking.

Final, Statutory, January 3, 2014.

Legislation requires the Secretary of Transportation to initiate rulemaking by July 2012 and issue a final rule not later than January 2014.

*Abstract:* This rulemaking would respond to The Pedestrian Safety Enhancement Act of 2010, which directs the Secretary of Transportation to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation. NHTSA is conducting research in this area and has not yet developed an estimate for the potential costs and benefits associated with this rulemaking action.

*Statement of Need:* The Pedestrian Safety Enhancement Act of 2010, signed into law on January 4, 2011, directs the Secretary to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation. Prior to that, in June 2008, NHTSA held a public meeting to provide a forum for interested parties to discuss the issue of quieter cars and established a docket (Docket No. NHTSA–2008–0108) to collect information on the issue. Subsequently, the Agency developed and initiated a research plan to identify the critical safety scenarios in which quieter vehicles may pose a hazard to blind and other pedestrians; identify and evaluate various countermeasures to address the safety problem; and support the development of a specification for an artificial vehicle sound.

*Summary of Legal Basis:* Section 30111, title 49 of the U.S.C. states that the Secretary shall prescribe motor vehicle safety standards.

*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:* The Agency believes that there are no significant risks associated with this rulemaking and that only beneficial outcomes will occur.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |

*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.

*URL for More Information: www.regulations.gov.*

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Marisol Medri, Safety Engineer, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–6987, *Email: marisol.medri@dot.gov.*

*RIN:* 2127–AK93

## DOT—NHTSA

### 114. • + Motorcoach Rollover Structural Integrity

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; Delegation of Authority at 49 CFR 1.50

*CFR Citation:* 49 CFR 571.

*Legal Deadline:* None.

*Abstract:* This rulemaking would promulgate a new FMVSS for rollover structural integrity requirements for motorcoaches. In August 2007, NHTSA published a motorcoach safety plan identifying four specific priority items: Seat belts on motorcoaches, rollover structural integrity, emergency evacuation, and fire safety. The DOT published a comprehensive motorcoach safety action plan in November 2009 that reiterated NHTSA's motorcoach safety priorities. This rulemaking also addresses six recommendations issued by the NTSB on motorcoach roof strength and structural integrity.

*Statement of Need:* Over the 10-year period between 1999 and 2008, there were 54 fatal motorcoach crashes resulting in 186 fatalities. During this period, on average, 16 fatalities have occurred annually to occupants of motorcoaches in crash and rollover events, with about 2 of these fatalities being drivers and 14 being passengers. However, while motorcoach transportation overall is safe, when serious crashes of this vehicle type do occur, they can cause a significant number of fatal or serious injuries

during a single event, particularly when occupants are ejected. This action is consistent with our detailed plans for improving motorcoach passenger protection, laid out in NHTSA's Approach to Motorcoach Safety 2007 and the Department of Transportation 2009 Motorcoach Action Plan (Docket No. NHTSA–2007–28793), as well as the Agency's Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan 2011 to 2013 (Docket No. NHTSA–2009–0108), and is responsive to six recommendations issued by the National Transportation Safety Board.

*Summary of Legal Basis:* Section 30111, title 49 of the U.S.C. states that the Secretary shall prescribe motor vehicle safety standards.

*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:* The Agency believes that there are no significant risks associated with this rulemaking and that only beneficial outcomes will occur.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*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.*

*Agency Contact:* Shashi Kuppa, Chief, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–3827, *Fax:* 202 493–7002, *Email:* *shashi.kuppa@dot.gov.*

*RIN:* 2127–AK96

## DOT—NHTSA

### 115. • + Electronic Stability Control Systems for Heavy Vehicles

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; Delegation of Authority at 49 CFR 1.50

*CFR Citation:* 49 CFR 571.

*Legal Deadline:* None.

*Abstract:* This rulemaking would promulgate a new Federal standard that would require stability control systems on truck tractors and motorcoaches that address both rollover and loss of control crashes, after an extensive research program to evaluate the available technologies, an evaluation of the costs and benefits, and a review of manufacturer's product plans. Rollover and loss of control crashes involving heavy vehicles is a serious safety issue that is responsible for 304 fatalities and 2,738 injuries annually. They are also a major cause of traffic tie-ups, resulting in millions of dollars of lost productivity and excess energy consumption each year. Suppliers and truck and motorcoach manufacturers have developed stability control technology for heavy vehicles to mitigate these types of crashes. Our preliminary estimate produces an effectiveness range of 37 to 56 percent against single-vehicle tractor-trailer rollover crashes and 3 to 14 percent against loss of control crashes that result from skidding on the road surface. With these effectiveness estimates, annually, we estimate 29 to 66 lives would be saved, 517 to 979 MAIS 1 to 5 injuries would be reduced, and 810 to 1,693 crashes that involved property damage only would be eliminated. Additionally, it would save $10 to $26 million in property damage and travel delays. Based on the technology unit costs and affected vehicles, we estimate technology costs would be $55 to $107 million, annually. However, the costs savings from reducing travel delay and property damage would produce net benefits of $128 to $372 million.

*Statement of Need:* Rollover and loss of control crashes involving heavy vehicles is a serious safety issue that is responsible for 304 fatalities and 2,738 injuries annually. They are also a major cause of traffic tie-ups, resulting in millions of dollars of lost productivity and excess energy consumption each year. This action is consistent with our detailed plans for improving motorcoach passenger protection, laid out in NHTSA's Approach to Motorcoach Safety 2007 and the Department of Transportation 2009 Motorcoach Action Plan (Docket No. NHTSA–2007–28793), as well as the Agency's Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan 2011 to 2013 (Docket No. NHTSA–2009–0108), and is responsive to two recommendations issued by the National Transportation Safety Board.

*Summary of Legal Basis:* Section 30111, title 49 of the U.S.C. states that the Secretary shall prescribe motor vehicle safety standards.

*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:* The Agency believes that there are no significant risks associated with this rulemaking and that only beneficial outcomes will occur.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*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.*

*Agency Contact:* George Soodoo, Chief, Vehicle Safety Dynamics Division (NVS–122), Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–2720, *Fax:* 202 366–4329, *Email:* *george.soodoo@dot.gov.*

*RIN:* 2127–AK97

## DOT—NHTSA

*Final Rule Stage*

### 116. + Require Installation of Seat Belts on Motorcoaches, FMVSS No. 208

*Priority:* Other Significant.

*Legal Authority:* 49 U.S.C. 30111; 49 U.S.C. 30115; 49 U.S.C. 30117; 49 U.S.C. 30166; 49 U.S.C. 322; Delegation of Authority at 49 CFR 1.50

*CFR Citation:* 49 CFR 571.208; 49 CFR 571.3.

*Legal Deadline:* None.

*Abstract:* This rulemaking would require the installation of lap/shoulder belts in newly manufactured motorcoaches. Specifically, this rulemaking would establish a new definition for motorcoaches in 49 CFR part 571.3. It would also amend Federal Motor Vehicle Safety Standard No. 208 ''Occupant Crash Protection'' to require the installation of lap/shoulder belts at all driver and passenger seating positions. It would also require the installation of lap/shoulder belts at driver seating positions of large school buses in FMVSS no. 208. This rulemaking responds, in part, to recommendations made by the National Transportation Safety Board for improving bus safety.

*Statement of Need:* Over the 10-year period between 1999 and 2008, there

were 54 fatal motorcoach crashes resulting in 186 fatalities. During this period, on average, 16 fatalities have occurred annually to occupants of motorcoaches in crash and rollover events, with about 2 of these fatalities being drivers and 14 being passengers. However, while motorcoach transportation overall is safe, when serious crashes of this vehicle type do occur, they can cause a significant number of fatal or serious injuries during a single event, particularly when occupants are ejected.

*Summary of Legal Basis:* Section 30111, title 49 of the U.S.C., states that the Secretary shall prescribe motor vehicle safety standards.

*Alternatives:* In addition to the proposed installation of lap/shoulder belts in all passenger seating positions on motorcoaches, the Agency is also pursuing improvements to motorcoach rollover structural integrity, fire safety, electronic stability control, and emergency egress to improve occupant protection. Our detailed plans for improving motorcoach passenger protection can be found in NHTSA's Approach to Motorcoach Safety 2007 and the Department of Transportation 2009 Motorcoach Action Plan (Docket No. NHTSA–2007–28793), as well as the Agency's Vehicle Safety and Fuel Economy Rulemaking and Research Priority Plan 2011 to 2013 (Docket No. NHTSA–2009–0108).

The Agency also alternatively evaluated proposing the installation of lap belts in all passenger seating positions on motorcoaches and is seeking comments on the issue of retrofitting older motorcoaches with seat belts.

*Anticipated Cost and Benefits:* The anticipated total costs are expected to be $25.8 million for the 2,000 new motorcoaches produced each year, plus added fuel costs. The Agency estimates the proposal has the potential to save 1 to 8 fatalities and 144 to 794 non-fatal injuries annually assuming a range of seat belt use between 15 and 83 percent. The cost per equivalent life saved at a 7 percent discount rate is estimated to range from $1.8 to $9.9 million, based on an assumed seat belt use rate between 83 percent and 15 percent, respectively.

*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 injuries of motorcoach occupants.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/18/10 | 75 FR 50958 |
| NPRM Comment Period End. | 10/18/10 | |
| Final Rule ..... | 07/00/12 | |

*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.*

*Agency Contact:* David Sutula, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–3273, *Fax:* 202 366–4329, *Email: david.sutula@dot.gov.*

*RIN:* 2127–AK56

## DOT—FEDERAL TRANSIT ADMINISTRATION (FTA)

*Proposed Rule Stage*

### 117. + Major Capital Investment Projects (RRR)

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 49 U.S.C. 5309

*CFR Citation:* 49 CFR 611.

*Legal Deadline:* Final, Statutory, April 7, 2006.

*Abstract:* This rulemaking would 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 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 ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

*URL for More Information:* *www.regulations.gov.*

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Christopher VanWyk, Attorney Advisor, Department of Transportation, Federal Transit

Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–1733, *Email: christopher.vanwyk@fta.dot.gov*.

*RIN:* 2132–AB02

## DOT—MARITIME ADMINISTRATION (MARAD)

*Proposed Rule Stage*

### 118. + Regulations To Be Followed by All Departments, Agencies, and Shippers Having Responsibility to Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

*Priority:* Other Significant.

*Legal Authority:* 49 CFR 1.66; 46 app U.S.C. 1101; 46 app U.S.C. 1241; 46 U.S.C. 2302 (e)(1); Pub. L. 91–469

*CFR Citation:* 46 CFR 381.

*Legal Deadline:* None.

*Abstract:* This rulemaking would revise and clarify the Cargo Preference rules that have not been revised substantially since 1971. Revisions would include an updated purpose and definitions section along with the removal of obsolete provisions. This rulemaking also would establish a new part 383 of the Cargo Preference regulations. This rulemaking would cover Public Law 110–417, section 3511, National Defense Authorization Act for FY 2009 changes to the cargo preference rules, which have not been substantially revised since 1971. The rulemaking also would include compromise, assessment, mitigation, settlement, and collection of civil penalties. Originally the agency had two separate rulemakings in process under RIN 2133–AB74 and 2133–AB75. RIN 2133–AB74 would have revised existing regulations and RIN 2133–AB75 would have established a new part 383: Guidance and Civil Penalties and implement Public Law 110–417, section 3511, National Defense Authorization Act for FY 2009. MARAD has decided it would be more efficient to merge both efforts under one; RIN 2133–AB75 has been merged with this action.

*Statement of Need:* On September 4, 2009, the USDA, MARAD, and USAID entered into a MOU regarding the proper implementation of the Cargo Preference Act. The MOU establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. With the help of OMB, these agencies are in the process of negotiating updates to the comprehensive cargo preference rule, which has not been significantly changed since 1971.

*Summary of Legal Basis:* The Cargo Preference Act requires that Federal agencies take necessary and practicable steps to ensure that privately owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs to the extent such vessels are available at fair and reasonable rates for commercial vessels of the U.S., in a manner that will ensure a fair and reasonable participation of commercial vessels of the U.S. in those cargoes by geographic areas. 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 U.S.C. 55314.

*Alternatives:* TBD.

*Anticipated Cost and Benefits:* TBD.

*Risks:* TBD.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*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.*

*Agency Contact:* Christine Gurland, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–5157, *Email: christine.gurland@dot.gov*.

*Related RIN:* Related to 2133–AB75.

*RIN:* 2133–AB74

BILLING CODE 4910–9X–P

## DEPARTMENT OF THE TREASURY

*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 applicable 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).

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 Orders 12866 and 13563 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.

*Office of Financial Stability*

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:

*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.

*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. A final rule was published on October 3, 2011.

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, 2011:

*Final Netting.* This final 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 proposed rule would make changes to the definition of ''affiliate'' to conform to the language in the statute.

*Civil Penalty.* This proposed rule would establish 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.

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*

The Homeland Security Act of 2002 (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 such regulations.

During the past fiscal year, among the customs-revenue function regulations issued was an interim rule (76 FR 692) on January 6, 2011, which implemented the preferential tariff treatment and other customs-related provisions of the United States-Oman Free Trade Agreement Implementation Act. CBP plans to finalize this rulemaking in the first half of FY 2012.

On March 17, 2011, CBP also issued a final rule (76 FR 14575) that adopted, with some changes, the interim amendments to the CBP regulations relating to the country of origin of textile and apparel products. These amendments were necessitated, 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. The primary regulatory change consisted of the elimination of the requirement that a textile declaration be submitted for every importation of textile and apparel products.

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 and consistent with the goals of Executive Orders 12866 and 13563, Treasury and CBP finalized on August 17, 2011 (76 FR 50883), the March 2010 proposal and pertaining to how CBP issues courtesy notices of liquidation to importers of record whose entry summaries are filed in the Automated Broker Interface (ABI). In an effort to streamline the notification process and reduce CBP's printing and mailing costs, the final rule provides that all ABI filers (importers of record and brokers who file as the agent of an importer of record) will receive electronic courtesy notices beginning September 30, 2011. Importers of record whose entries are not filed through the ABI will continue to receive paper courtesy notices of liquidation. In addition, every importer of record with an Automated Commercial Environment (ACE) Account can now monitor the liquidation of its entries by using the

reporting tool in the ACE Secure Data Portal Account.

On August 19, 2011, Treasury and CBP published a proposal (76 FR 51914) to amend the CBP regulations to extend the time period after the date of entry for an applicant to file the certification documentation required for duty-free treatment of certain visual and auditory material of an educational, scientific, or cultural character under chapter 98 of the Harmonized Tariff Schedule of the United States.

On September 2, 2011, Treasury and CBP adopted as a final rule (76 FR 54691) *only* the portion of its July 25, 2008, proposal for amending the country of origin rules codified in part 102 of the CBP regulations applicable to five specific product areas; namely, pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile and apparel products, but, in the light of the public comments received, it did *not* adopt the proposal to establish uniform rules governing CBP determinations of the country of origin of imported merchandise.

During fiscal year 2012, CBP and Treasury plan to give priority to the following regulatory matters involving the customs revenue functions:

*Trade Act of 2002's preferential trade benefit provisions.* Treasury and CBP plan to make permanent several interim regulations that implement the trade benefit provisions of the Trade Act of 2002.

*Free Trade Agreements.* Treasury and CBP also plan to issue interim regulations this fiscal year to implement the preferential trade benefit provisions of the United States-Singapore Free Trade Agreement Implementation Act. Treasury and CBP also expect to issue interim regulations implementing the preferential trade benefit provisions of the United States-Australia Free Trade Agreement Implementation Act and the United States-Peru Free Trade Agreement Implementation Act.

*Customs and Border Protection's Bond Program.* Treasury and CBP plan to publish a final rule amending the regulations to reflect the centralization of the continuous bond program at CBP's Revenue Division. The changes proposed would 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.

*Use of Sampling Methods and Offsetting of Overpayments and Over-Declarations in CBP Audits.* Treasury and CBP plan to publish a final rule amending the regulations to add provisions for using sampling methods in CBP audits and for the offsetting of overpayments and over-declarations when an audit involves a calculation of lost duties, taxes, or fees or monetary penalties under 19 U.S.C. 1592.

*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 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. The BSA also authorizes requiring 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 2011, FinCEN issued the following regulatory actions:

*Reorganization of BSA Rules.* On October 26, 2010, FinCEN issued a final rule re-designating and reorganizing the BSA regulations in a new chapter, chapter X, within the Code of Federal Regulations. The regulations are now organized in a more consistent and intuitive structure that more easily allows financial institutions to identify their specific regulatory requirements under the BSA. In reorganizing the regulations, FinCEN has made BSA rules more accessible, easier to research, and easier to understand. The change promotes the goals of the BSA to protect the financial system from criminal abuse by facilitating compliance by regulated financial institutions.

*Confidentiality of Suspicious Activity Reports.* On November 23, 2010, FinCEN issued a final rule clarifying the non-disclosure provisions with respect to the regulations pertaining to the confidentiality of suspicious activity reports (SARs). In conjunction with this notice, FinCEN finalized two pieces of guidance (SAR Sharing with Affiliates for depository institutions and SAR Sharing with Affiliates for securities and futures industry entities), which permit certain financial institutions to share SARs with their U.S. affiliates that are also subject to SAR reporting requirements. The regulations and the guidance pieces promote the protection of SAR information while seeking to ensure that all appropriate parties have access to SARs. Allowing information sharing among affiliates also will help financial institutions protect themselves from abuses of financial crime, support overarching industry efforts to strengthen enterprise-wide risk management, and promote the reporting of even more useful information to FinCEN and law enforcement investigators.

*Non-Bank Residential Mortgage Lenders and Originators.* On December 9, 2010, FinCEN issued a Notice of Proposed Rulemaking (NPRM) to solicit public comment on the application of anti-money laundering (AML) program and SAR regulations to a specific sub-set of loan and finance companies; *i.e.,* non-bank residential mortgage lenders and originators. The proposed regulations would close a regulatory gap that allows other originators, such as mortgage brokers and mortgage lenders not affiliated with banks, to avoid having AML and SAR obligations. Based on its ongoing work supporting criminal investigators and prosecutors in combating mortgage fraud, FinCEN believes that this regulatory measure will help mitigate some of the

vulnerabilities that criminals have exploited. This NPRM was informed by comments received following an Advance Notice of Proposed Rulemaking issued in July 2009. FinCEN has a final rule to implement the proposed regulations in clearance and hopes to issue it prior to the end of FY 2011.

*Imposition of Special Measure Against Lebanese Canadian Bank SAL as a Financial Institution of Primary Money Laundering Concern.* On February 10, 2011, FinCEN issued a finding that the Lebanese Canadian Bank SAL is a financial institution of primary money laundering concern under section 311 of the USA PATRIOT Act for the bank's role in facilitating the money laundering activities of an international narcotics trafficking and money laundering network. Concurrently, FinCEN issued a Notice of Proposed Rulemaking to impose the fifth special measure against the bank. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for the designated institution by U.S. financial institutions. These actions are intended to protect the U.S. financial system from the illicit proceeds flowing through the bank and to deprive this international narcotics trafficking and money laundering network of its preferred access point into the formal financial system.

*FBAR Requirements.* On February 24, 2011, working with the Department of Treasury, Office of Tax Policy, and the Internal Revenue Service, FinCEN, issued a final rule that amended the BSA implementing regulations regarding the filing of Reports of Foreign Bank and Financial Accounts (FBARs). The FBAR form is used to report a financial interest in, or signature or other authority over, one or more financial accounts in foreign countries. With slight modifications, the final rule adopted the proposed changes contained in the February 26, 2010, NPRM. FBARs are used in conjunction with SARs, CTRs, and other BSA reports to provide law enforcement and regulatory investigators with valuable information to fight fraud, money laundering, tax evasion, and other financial crime.

*Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 Reporting Requirements Under Section 104(e).* As a result of a congressional mandate to prescribe regulations under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), on May 2, 2011, FinCEN issued an NPRM to impose a reporting requirement that would be invoked, as necessary, to elicit information valuable in the implementation of CISADA and would work in tandem with other financial provisions of CISADA to isolate Iran's Islamic Revolutionary Guard Corps and financial institutions designated by the U.S. Government in connection with Iran's proliferation of weapons of mass destruction (WMD) or WMD delivery systems or in connection with its support for international terrorism. FinCEN published a final rule to implement the proposed regulations on October 11, 2011.

*Money Services Businesses—Definitions and Other Regulations.* On July 21, 2011, FinCEN issued a final rule revising the definitions for money services businesses (MSBs) to delineate more clearly the scope of entities regulated as MSBs, incorporating previously issued administrative rulings 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. The rule enables entities to determine in a more predictable and straightforward way whether they are operating as MSBs subject to BSA regulations. In clarifying that foreign entities conducting MSB activities in the United State are required to register, FinCEN recognizes that the Internet and other technological advances make it increasingly possible for persons to offer MSB services in the United States from foreign locations and seeks to ensure that the BSA rules apply to all persons engaging in MSB activities within the United States, regardless of their physical location.

*Withdrawal of the Finding of Primary Money Laundering Concern and the Final Rule Against VEF Banka.* On July 26, 2011, FinCEN withdrew its April 2005 final rule and finding under section 311 of the USA PATRIOT Act. FinCEN withdrew its finding that VEF Banka was a financial institution of primary money laundering concern. FinCEN also withdrew the final rule against VEF Banka that imposed a special measure prohibiting U.S. financial institutions from, directly or indirectly, opening or maintaining correspondent accounts in the United States for VEF Banks.

*Prepaid Access—Regulatory Framework for Activity Previously Referred to as Stored Value.* On July 29, 2011, FinCEN issued a final rule establishing a more comprehensive regulatory framework for non-bank prepaid access. The rule puts in place suspicious activity reporting, and customer and transactional information collection requirements on providers and sellers of certain types of prepaid access similar to other categories of MSBs. It addresses regulatory gaps that have resulted from the proliferation of prepaid access innovations over the last 12 years and their increasing use as an accepted payment method. The regulations also provide a balance to provide law enforcement with the information needed to attack money laundering, terrorist financing, and other illicit transactions through the financial system, without hindering innovation and the many legitimate uses and societal benefits prepaid access offers.

*Renewal of Existing Rules.* FinCEN renewed without change a number of information collections associated with the following existing requirements: Additional records to be made and retained by banks (31 CFR 1020.410 and 1010.430); records to be made and retained by financial institutions (31 CFR 1010.410 and 1010.430); purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 1010.415 and 1010.430); reports of certain domestic coin and currency transactions (31 CFR 1010.370 and 1010.410(d)); reports of transactions with foreign financial agencies (31 CFR 1010.360); additional records to be made and retained by casinos (31 CFR 1021.410 and 1010.430); additional records to be made and retained by brokers or dealers in securities (31 CFR 1023.410 and 1010.430); additional records to be made and retained by currency dealers or exchangers (31 CFR 1022.410 and 1010.430); special rules for casinos (31 CFR 1021.210, 1021.410(b) and 1010.430); and correspondent accounts for foreign shell banks and recordkeeping and termination of correspondent accounts (31 CFR 1010.630 and 1010.670).

*Administrative Rulings and Written Guidance.* FinCEN published 6 administrative rulings and written guidance pieces, and provided 39 responses to written inquiries/correspondence (as of August 2011) interpreting the BSA and providing clarity to regulated industries. FinCEN anticipates issuing an additional 10 pieces by the end of FY 2011.

FinCEN's regulatory priorities for fiscal year 2012 include finalizing any initiatives mentioned above that are not finalized by fiscal year end, as well as the following projects:

*Amendment to the BSA Regulations—Definition of Monetary Instrument.* On October 17, 2011, FinCEN published an NPRM to address the mandate in the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, which authorizes regulations

regarding international transport of prepaid access devices because of the potential to substitute prepaid access for cash and other monetary instruments as a means to smuggle the proceeds of illegal activity into and out of the United States.

*Anti-Money Laundering Program and SAR Requirements for Housing Government-Sponsored Enterprises.* FinCEN plans to issue an NPRM that would define certain housing government-sponsored enterprises as financial institutions for the purpose of requiring them to establish anti-money laundering programs and report suspicious activity to FinCEN pursuant to the BSA.

*Anti-Money Laundering Program and SAR Requirements for Investment Advisers.* FinCEN is researching and developing an NPRM that would prescribe minimum standards for anti-money laundering programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN.

*Customer Due Diligence Requirements.* FinCEN is developing an advance notice of proposed rulemaking to solicit public comment on a wide range of questions pertaining to the development of a customer due diligence (CDD) regulation that would clarify, consolidate, and strengthen existing CDD obligations for financial institutions and also incorporate the collection of beneficial ownership information into the CDD framework.

*Anti-Money Laundering Program for State-Chartered Credit Unions and Other Depository Institutions without a Federal Functional Regulator.* 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.

*Cross Border Electronic Transmittal of Funds.* On September 27, 2010, FinCEN issued 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. As FinCEN continues to develop the system to receive, store, and use this data, FinCEN may publish another NPRM prior to issuing a final rule.

*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 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 2012, 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.

*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 (REITs), and real estate mortgage investment conduits. During fiscal year 2011, Treasury and the IRS have addressed some of these issues through published guidance, including (1) a revenue procedure providing relief for certain modifications of distressed mortgage loans held by a REIT and (2) final 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. On August 13, 2010, Treasury and the IRS published temporary and proposed regulations (TD 9497 and TD 9498) in the **Federal Register**. 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 finalize those 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 in 2010 final regulations: 1) 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 and 2) setting the user fee for obtaining a PTIN at $50 plus a third-party vendor's fee. On June 3, 2011, Treasury and IRS published final regulations amending Circular 230, which established registered tax return preparers as a new category of tax practitioner and extended the ethical rules for tax practitioners to any individual who is a tax return preparer. Treasury and the IRS intend to publish additional guidance in 2011 and 2012 to specifically support the tax return preparer program and operations, including regulations that establish user fees for the return preparer competency examination and regulations that provide additional rules with respect to the PTIN. Treasury and the IRS also intend to publish regulations under Circular 230, which will include amendments to the opinion requirements.

*Penalties.* Congress amended several penalty provisions in the Internal Revenue Code in the past several years and Treasury and the IRS intend to publish a number of guidance projects in 2011 addressing these new or amended penalty provisions. Specifically, Treasury and the IRS intend to publish in 2011 proposed regulations under sections 6662, 6662A, and 6664, to provide further guidance on the circumstances under which a taxpayer could be subject to the accuracy-related penalty on underpayments or reportable transaction understatements and the reasonable cause exception, including clarifying that a taxpayer may not rely upon written advice to establish a reasonable cause and good faith defense if the advice states that it cannot be used for the purpose of avoiding penalties. Treasury and the IRS also intend to publish: (1) Proposed regulations under section 6676 regarding the penalty related to an erroneous claim for refund or credit; (2) final regulations under section 6707A addressing whether the penalty for failure to disclose reportable transactions applies, before the temporary regulations expire in September 2011; and (3) temporary and proposed regulations under section 6707A addressing statutory changes to the method of computing the section 6707A penalty, which occurred after existing temporary regulations were published.

*Basis Reporting.* Section 403 of the Energy Improvement and Extension Act of 2008 (Pub. L. 110–343), enacted on October 3, 2008, added sections 6045(g), 6045h, 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 6045(h) extends the basis reporting requirement in section 6045(g) and the gross proceeds reporting requirement in section 6045(a) to options that are granted or acquired on or after January 1, 2013. Section 6045A provides that 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. Section 6045B requires issuers of specified securities to make a return relating to organizational actions that affect the basis of the security. Final regulations implementing these provisions for sales of stock were published on October 18, 2010. Treasury and the IRS plan to issue proposed regulations implementing these provisions for options and sales or exchanges of debt instruments.

*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, Notice 2011–34, and Notice 2011–53, 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 on these notices with regulations and a model FFI Agreement in this fiscal year. These regulations 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 sec. 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 Federal tax purposes. 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.

*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, including 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 incomes 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 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. Since enactment of the ACA, 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 the past year, Treasury and IRS also have issued temporary and proposed regulations addressing the fee on branded prescription drug sales under section 9008 of the ACA and proposed regulations on the premium assistance tax credit under section 36B of the Code. In addition, Treasury and the IRS have issued guidance on specific ACA provisions, including guidance on the treatment of certain nonprofit health insurers (section 833 of the Code), the credit for small employers that provide health insurance coverage (section 45R of the Code), the adoption credit (section 36C of the Code), information reporting to employees of the cost of employer sponsored health coverage (section 6051(a)(14) of the Code), and additional requirements for tax-exempt hospitals (section 501(r) of the Code). 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 (Including Former Office of Thrift Supervision)*

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.

Pursuant to title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, all functions of the Office of Thrift Supervision (OTS) relating to Federal savings associations, including rulemaking authority, were transferred to the OCC on July 21, 2011.

The OCC seeks to assure a banking system in which national banks and Federal savings associations 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.

Significant rules issued during fiscal year 2011 include:

*Incentive-Based Compensation Arrangements:* 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 (FHFA), 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. The agencies issued an NPRM on April 14, 2011. 76 FR 21170. Work on a final rule is underway.

*Retail Foreign Exchange Transactions:* The OCC adopted a final rule authorizing national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries to engage in off-exchange transactions in foreign currency with retail customers. It describes various requirements with which national banks, Federal branches and agencies of foreign banks, and their operating subsidiaries must comply to conduct such transactions. It is necessary pursuant to amendments by the Dodd-Frank Act to the Commodity Exchange Act (CEA) that provide that a United States financial institution for which there is a Federal regulatory agency shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe a retail forex rule. This final rule was issued on July 14, 2011. 76 FR 41375. Work on an interim final rule to cover savings associations is underway.

*Credit Risk Retention.* The banking agencies, Securities and Exchange Commission, Federal Housing Finance Agency, and the Department of Housing and Urban Development proposed rules to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15. U.S.C. section 78o-11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the

credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as ''qualified residential mortgages,'' as such term is defined by the Agencies by rule. This NPRM was published on April 29, 2011. 76 FR 24090. Work on a final rule is underway.

*Margin and Capital Requirements for Covered Swap Entities.* The banking agencies, Farm Credit Administration, and the Federal Housing Finance Agency issued a proposed rule to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This proposed rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared. This NPRM was published on May 11, 2011. 76 FR 27564. Work on a final rule is underway.

*OTS Integration; Dodd-Frank Implementation.* The OCC adopted amendments to its regulations governing organization and functions, availability and release of information, post-employment restrictions for senior examiners, and assessment of fees to incorporate the transfer of certain functions of the Office of Thrift Supervision (OTS) to the OCC pursuant to title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The OCC also amended its rules pertaining to preemption and visitorial powers to implement various sections of the Act; change in control of credit card banks and trust banks to implement section 603 of the Act; and deposit-taking by uninsured Federal branches to implement section 335 of the Act. This final rule was effective and published on July 21, 2011. 76 FR 43549.

*Republication of Regulations in Connection with OTS Integration Pursuant to Dodd-Frank.* Pursuant to title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, all functions of the Office of Thrift Supervision relating to Federal savings associations and rulemaking authority of the OTS relating to all savings associations were transferred to the OCC on July 21, 2011 (transfer date). In order to facilitate the OCC's enforcement and administration of former OTS rules and to make appropriate changes to these rules to reflect OCC supervision of Federal savings associations as of the transfer date, the OCC republished, with nomenclature and other technical changes, those OTS regulations currently found at 12 CFR chapter V for which the OCC has authority to promulgate and will enforce as of the transfer date. The republished regulations are recodified with the OCC's regulations in chapter I at 12 CFR 100 *et seq.,* effective on the transfer date. The republished regulations will supersede the OTS regulations in chapter V for purposes of OCC supervision and regulation of Federal savings associations, and for certain rules for purposes of the FDIC's supervision of State savings associations. This interim final rule was published on August 9, 2011. 76 FR 48950.

*Prohibition and Restrictions on Proprietary Trading and Certain Interests In, and Relationships with, Hedge Funds and Private Equity Funds.* The banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, issued a proposed rule that would implement section 619 of Dodd-Frank, which contains certain prohibitions and restrictions on the ability of banking entities and nonbank financial companies supervised by the Federal Reserve Board to engage in proprietary trading and have certain investments in, or relationships with, hedge funds or private equity funds. Section 619 is commonly referred to as the ''Volcker Rule.''

*Community Reinvestment Act Regulations (12 CFR part 25).* The banking agencies issued final 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 final rule was published on December 20, 2010 (75 FR 79278).

*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 to implement section 1031 of the HEOA. In addition, the rule incorporates 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. A final rule was published on October 10, 2010 (75 FR 61035).

*Standards Governing the Release of a Suspicious Activity Report (12 CFR part 4). Confidentiality of Suspicious Activity Reports (12 CFR part 21).* The OCC and OTS separately issued final regulations governing the release of non-public OCC or OTS information set forth in 12 CFR part 4, subpart C, and section 510.5. These final rules clarify that the decision to release a suspicious activity report (SAR) will be governed by the standards set forth in amendments to the SAR regulations, that are part of separate, but simultaneously issued, final rulemakings discussed below. These final rules were published on December 3, 2010. 75 FR 75574, 75583. The OCC's and OTS's final regulations implementing the Bank Secrecy Act governing the confidentiality of a suspicious activity report (SAR): Clarify the scope of the statutory prohibition on the disclosure by an institution of a SAR; address the statutory prohibition on the disclosure by the government of a SAR as that prohibition applies to the OCC's or OTS'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 or OTS, 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. These final rules are based upon a similar rule prepared by the Financial Crimes Enforcement

Network (FinCEN). These final rules were issued on December 3, 2010. 75 FR 75576, 75586.

*Risk-Based Capital Guidelines; Revising Transitional Floors for Advanced Approaches Rule (12 CFR part 3).* The Federal banking agencies issued a notice of proposed rulemaking and final rule to revise the transitional floors in the advanced approaches risk-based capital rule to preclude a decline in a banking organization's risk-based capital requirements during the transition period. Under the revisions, the capital floors used by a banking organization subject to the advanced approaches during its first, second, and third transitional floor periods are 100 percent of the bank's tier 1 and total risk-based capital requirements computed under the agencies' general risk-based capital rules. The NPRM was published on December 30, 2010. 75 FR 82317. The final rule was issued on June 28, 2011. 76 FR 37620. OTS issued a parallel proposal on March 8, 2011, but did not issue a final rule. 76 FR 12611.

Regulatory priorities for fiscal year 2012 include, in addition to those listed above that have not yet been finalized, the following:

*Strengthening Tier 1 Capital Other Capital Enhancements, Standardized Approach (Basel III). (12 CFR part 3).* 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).* The Federal banking agencies plan to amend their current capital rules, including revisions to the definition of Tier 1 capital and the leverage capital ratio. This rule would implement a comprehensive set of revisions issued by the Basel Committee in December 2010 to amend the Basel II Capital Framework. Key components of the rule include: Revisions to the definition of Tier 1, the addition of a capital conservation buffer, the addition of a countercyclical buffer, revisions to counterparty credit risk requirements (includes central counterparties), a new international leverage ratio, and new liquidity ratio requirements. In addition, this rule includes the rule entitled *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 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. The agencies issued an ANPRM describing the areas in their risk-based capital standards 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 and requested comment on potential alternatives to the use of credit ratings. The ANPRM was published on August 25, 2010 (75 FR 52283).

*Risk-Based Capital Standards: Market Risk:* The banking agencies issued a notice of proposed rulemaking to revise their market risk capital rules to modify their scope to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality in market risk capital requirements, enhance the rules' sensitivity to risks that are not adequately captured under current regulatory measurement methodologies; and increase transparency through enhanced disclosures. This NPRM was published on January 11, 2011. 76 FR 1890. Work on a final rule is underway.

*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 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 (ANPRM), the OCC sought to gather information as it begins to review its regulations pursuant to the Dodd-Frank Act. It described 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. Work on an NPRM is underway. The ANPRM was published on August 13, 2010 (75 FR 49423). OTS published a parallel ANPRM on October 14, 2010 (75 FR 63107).

*Recordkeeping Requirements for Securities Activities:* The Gramm-Leach-Bliley Act 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. Work on an NPRM is underway.

*Integration of Savings Association Supervision.* Pursuant to the transfer of OTS functions relating to Federal savings associations to the OCC, the OCC plans to issue one or more rulemakings resulting from our review of OCC rules applicable to banks and/or savings associations that will consolidate our rules and establish, to the extent practicable, consistent regulations for national banks and federal savings associations.

*Lending Limits for Derivative Transactions.* Section 610 of the Dodd-Frank Act amends the lending limit, 12 U.S.C. section 84, to apply it to any credit exposure to a person arising from a derivative transaction and certain other transactions between the bank and the person. The amendment is effective 1 year after the transfer date, July 21, 2012. The OCC plans to issue a rule that will amend our lending limit regulation set forth at 12 CFR part 32 to conform to this new requirement.

*Annual Stress Test (12 CFR part 46).* This regulation will implement 12 U.S.C. 5365(i) that requires annual stress testing to be conducted by financial companies with total consolidated assets of more than $10 billion and establishes a definition of stress test, methodologies for conducting stress tests, and reporting and disclosure requirements.

*Collective Investment Funds.* This notice of proposed rulemaking will update the regulation of short-term investment funds (STIFs), a type of collective investment fund permissible under OCC regulations, through the addition of STIF eligibility requirements to ensure the safety of STIFs and to mitigate financial systemic risks.

### *Alcohol and Tobacco Tax and Trade Bureau*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce Federal laws relating to alcohol, tobacco, firearms, and ammunition taxes and relating to commerce involving alcohol beverages and industrial alcohol. 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.

The Federal Alcohol Administration Act and the Internal Revenue Code authorize regulations for the labeling of wine, distilled spirits, and malt beverages, which should, among other things, ensure that labels provide the consumer with adequate information as to the identity and quality of the product. In July 2007, in response to a petition for rulemaking from a consumer advocacy group and comments received in response to a 2005 advance notice of proposed rulemaking, TTB published a proposed rule concerning the inclusion of a statement of calories, carbohydrates, fat, and protein per serving in a serving facts panel on wine, beer, and distilled spirits labels. The proposed rule also invited public comments on the extension of alcohol content labeling requirements to all alcohol beverages, which currently apply only to some alcohol beverages. TTB is continuing to evaluate the cost burden to industry and benefits to consumers.

In addition to the regulatory action described above, in FY 2012, TTB plans to give priority to the following regulatory matters:

*As described in greater detail below, in FY 2012 TTB plans to continue its Regulations Modernization Project concerning its Specially Denatured and Completely Denatured Alcohol regulations, Labeling Requirement regulations, Export regulations, and Beer regulations.*

*Revision to Specially Denatured and Completely Denatured Alcohol Regulations:* TTB plans to propose changes to regulations for specially denatured alcohol (SDA) and completely denatured alcohol (CDA) that would result in cost savings for both TTB and regulated industry members. Under the authority of the Internal Revenue Code of 1986, TTB regulates denatured alcohol that is unfit for beverage use, and which may be removed from a regulated distilled spirits plant without payment of tax. SDA and CDA are widely used in the American fuel, medical, and manufacturing sectors. The industrial alcohol industry far exceeds the beverage alcohol industry in size and scope, and it is a rapidly growing industry in the United States. Some concerns have been raised that the current regulations may create significant roadblocks for industry members in getting products to the marketplace quickly and efficiently. TTB is proposing to reclassify certain SDA formulas as CDA and to issue new general-use formulas for articles made with SDA so that industry members would less frequently need to seek formula approval from TTB and fewer TTB resources would need to be devoted to formula review. TTB estimates that these proposed changes would result in an 80 percent reduction in the formula approval submissions currently required from industry members and would reduce total annual paperwork burden hours on affected industry members from 2,415 to 517 hours. The reduction in formula submissions will enable TTB to redirect its resources to address backlogs that exist in other areas of TTB's mission activities, such as analyzing compliance samples for industrial/fuel alcohol to protect the revenue and working with industry to test and approve new and more environmentally friendly denaturants. Other proposed changes would remove unnecessary regulatory burdens and update the regulations to align them with current industry practice.

*CHIPRA Final Rule:* TTB will make final a temporary rule to amend regulations promulgated under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The Act provides enforcement mechanisms to assist in preventing the diversion of tobacco materials to illegal manufacturers, and the regulations implement these enforcement mechanisms. A 3-year temporary rule was published in June of 2009 to continue the implementation of these CHIPRA provisions, a final rule must be published by June 2012 to meet the requirements of 26 U.S.C. 7805 regarding the expiration of temporary rules.

*Revisions to the Labeling Requirements (parts 4 (Wine), 5 (Distilled Spirits), and 7 (Malt Beverages)):* The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate or foreign commerce have a label issued and approved under regulations prescribed by the Secretary of the Treasury. In connection with E.O. 13563, TTB has near-term plans to revise the regulations concerning the approval of labels for distilled spirits, wine, and malt beverages to reduce the cost to TTB of reviewing and approving an ever increasing number of applications for label approval (well over 130,000 per year). Currently, the review and approval process requires a staff of at least 13 people for the pre-approval of labels in addition to management review. These regulatory changes, to be developed with industry input, also are intended to accelerate the approval process, which shall result in the regulated industries being able to bring products to market faster.

*Selected Revisions of Export Regulations (part 28):* TTB has identified selected sections of its export regulations (part 28) that should be amended to assist industry members in complying with the regulations. Current regulations require industry members to obtain documents and follow procedures that are outdated and not entirely consistent with current industry practices regarding exportation. Under its regulatory authority, TTB routinely provides exceptions to these regulatory provisions. Revising these regulations will provide industry members with clear and up-to-date procedures for removal of alcohol for exportation without having to pay excise taxes (under the Internal Revenue Code, beverage alcohol may be removed from the premises of a distilled spirits plant for exportation without payment of tax), thus increasing their willingness and ability to export their products.

*Revisions to the Alcohol Fuel Plant Regulations:* TTB's alcohol fuel plant regulations (within part 19) need to be revised to reflect the current state of the alcohol fuel industry. Alcohol produced at a TTB-approved alcohol fuel plant may be removed from the plant without payment of tax if properly denatured and used only for fuel. Primarily focused on the development of smaller capacity plants, the alcohol fuel plant regulations were initially drafted to promote growth in the industry and to provide minimal permitting, recordkeeping, reporting, and bonding requirements. In the United States, there are currently over 1,400 permitted ethanol fuel plants that produced over 9 billion gallons of ethanol for fuel use in 2010. Fewer than 200 of the largest fuel ethanol plants produce 8 billion gallons of fuel ethanol. The significant growth of the industry, especially the largest capacity plants, since the previous issuance of the applicable regulations has resulted in potential risks to the revenue not currently addressed in the regulations. If just 1 percent of this alcohol were diverted for beverage use, the tax loss would approximate $2.4 billion. Current reporting requirements for certain plants are not sufficient to provide adequate information to TTB to monitor industry compliance and to identify removals of

alcohol that should be subject to tax; alcohol removed for beverage purposes or without proper denaturation may go unnoticed. TTB is also considering other changes, such as the addition of provisions regarding the disposition of by-products of the production process, which would update the regulations to reflect current industry practice.

*Revision of the Part 17 Regulations, ''Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products,'' To Allow Self-Certification of Nonbeverage Product Formulas:* TTB is considering revisions to the part 17 regulations governing nonbeverage products made with taxpaid distilled spirits. These nonbeverage products include foods, medicines, and flavors. The revisions would practically eliminate the need for TTB to formally approve nonbeverage product formulas by proposing to allow for self-certification of such formulas. The changes would result in significant cost savings for an important industry which currently must obtain formula approval from TTB, and some savings for TTB, which must review and take action to approve or disapprove each formula. Estimating the specific savings to TTB is premature as this rulemaking project is in the early stages of internal deliberation.

*Revisions to the Beer Regulations (part 25):* Under the Internal Revenue Code, TTB regulates activities at breweries. The regulations of title 27 of the Code of Federal Regulations, part 25, address the qualification of breweries, bonds and taxation, removals without payment of tax, and records and reporting. The brewery regulations were last revised in 1986 and need to be updated to reflect changes to the industry, including the increased number of small (''craft'') brewers. TTB plans to issue an advance notice of proposed rulemaking soliciting comments regarding potential ways to decrease the regulatory burden on industry members (*e.g.,* streamlining and/or reducing the reporting and recordkeeping requirements for the industry, which includes many small businesses) and increase efficiency for both the industry and TTB. TTB intends to develop and propose specific regulatory changes after consideration of comments received.

*Revisions to Distilled Spirits Plant Reporting Requirements:* TTB will propose to revise regulations in part 19 and replace the current four report forms used by distilled spirits plants to report their operations on a monthly basis with two new report forms that would be submitted on a monthly basis (plants that qualify to file taxes on a quarterly basis would submit the new reports on a quarterly basis). This project, which was included in the President's FY 2012 budget for TTB as a cost saving item, would address numerous concerns and desires for improved reporting by the distilled spirits industry and result in cost savings to the industry and TTB by significantly reducing the number of monthly plant operations reports that must be completed and filed by industry members and processed by TTB. TTB preliminarily estimates that this project would result in an annual savings of approximately 23,218 paperwork burden hours (or 11.6 staff years) for industry members and 629 processing hours (or 0.3 staff years) and $12,442 per year for TTB in contractor time. In addition, TTB estimates that this project would save staff time (approximately 3 staff years) costing $300, as a result of more efficient and effective processing of reports and the use of report data to reconcile industry member tax accounts.

*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 2012, BPD will accord priority to the following regulatory projects:

*Over-the-Counter Savings Bonds.* In December 2011, BPD anticipates issuing a rule ending the sale of definitive (paper) savings bonds.

*Savings Bond Paying Agent Regulations.* BPD plans to issue a final rule amending the savings bond paying agent regulations (31 CFR parts 321, 330) to provide for the conversion from use of the EZ Clear system to Check 21 in processing savings bonds redeemed at financial institutions.

*Eliminating Credit Rating References.* In compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, BPD, on behalf of Treasury (Financial Markets), plans to amend the Government Securities Act regulations (17 CFR chapter IV) to eliminate references to credit ratings from Treasury's liquid capital rule.

*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 2012, FMS's regulatory plan includes the following priorities:

*Debt Collection Authorities Under the Debt Collection Improvement Act.* The Debt Collection Improvement Act of 1996 authorizes Federal agencies to publish or otherwise publicly disseminate information regarding the identity of persons owing delinquent nontax debts to the United States for the purpose of collecting the debts, provided certain criteria are met. FMS is proposing to amend its regulation to establish the procedures Federal agencies must follow before publishing information about delinquent debtors and the standards for determining when use of this debt collection remedy is appropriate.

*Federal Government Participation in the Automated Clearing House.* FMS recently amended its regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. The amendments adopt, with some exceptions, the 2009 ACH Rules published by NACHA—The Electronic Payments Association (NACHA), as the rules governing the use of the ACH Network by Federal agencies. FMS issued this rule to address changes that NACHA 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 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. The amendments also allow Federal payments to be delivered to pooled or master accounts established by nursing facilities for residents of those facilities or held by religious orders whose members have taken vows of poverty.

*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, Treasury has the authority to direct Federal Reserve Banks 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 continue to have the right to file a protest with FMS if they believe a proposed reclamation is in error.

*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 February 23, 2011, the Treasury published an interim final rule and request for public comment with the Office of Personnel Management, the Railroad Retirement Board, the Social Security Administration, and Veterans Affairs. Treasury plans to promulgate a final rule, with the Federal benefit agencies, in the next several months 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 final 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. The rule will provide financial institutions with specific administrative instructions to carry out upon receipt of a garnishment order. The final 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 non-compliance by means of their general authorities.

*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), the Capital Magnet Fund (CMF), and the CDFI Bond Guarantee Program (BGP).

In fiscal year (FY) 2012, the CDFI Fund will publish Interim regulations implementing the CDFI Bond Guarantee Program (BGP). The BGP was established through the Small Business Jobs Act of 2010 and authorizes the Secretary of the Treasury (through the CDFI Fund) to guarantee the full amount of notes or bonds, including the principal, interest, and call premiums, issued to finance or refinance loans to certified CDFIs for eligible community or economic development purposes for a period not to exceed 30 years. The bonds or notes will support CDFI lending and investment by providing a source of long-term, patient capital to CDFIs. In accordance with Federal credit policy, the Federal Financing Bank (FFB), a body corporate and instrumentality of the United States Government under the general supervision and direction of the Secretary of the Treasury, will finance obligations that are 100 percent guaranteed by the United States, such as the bonds or notes to be issued by Qualified Issuers under the BGP.

In FY 2012, subject to funding availability, the Fund will provide awards through the following programs:

*Community Development Financial Institutions (CDFI) Program.* Through the CDFI Program, the CDFI Fund will provide technical assistance grants and financial assistance awards to financial institutions serving distressed communities.

*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.

*CDFI Bond Guarantee Program (BGP).* Through the BGP, the CDFI Fund will select Qualified Issuers of federally guaranteed bonds, the bond proceeds will be used to make or refinance loans to certified CDFIs. The bonds must be a minimum of $100 million and may have terms of up to 30 years. The CDFI Fund is authorized to award up to $1 billion in guarantees per fiscal year through FY 2014.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in ''The Regulatory Plan.'' However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. Treasury's final plan can be found at: *www.treasury.gov/open.*

| RIN | Title |
|---|---|
| 1545–BF40 | Definitions and Special Rules Regarding Accuracy-Related Penalties on Underpayments and Reportable Transaction Understatements and the Reasonable Cause Exception. |
| 1513–AB07 | Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages. |
| 1513–AB39 | Revision of American Viticultural Area Regulations. |
| 1513–AA23 | Revision of Distilled Spirits Plant Regulations. |
| 1513–AB59 | Proposed Revisions to SDA and CDA Formulas Regulations. |
| 1513–AB72 | Implementation of Statutory Amendments Requiring the Qualification of Manufacturers and Importers of Processed Tobacco and Other Amendments. |
| 1513–AA00 | Exportation of Alcohol. |
| 1513–AB62 | Proposed Revisions to Distilled Spirits for Fuel Use and Alcohol Fuel Plant Regulations. |
| 1513–AB35 | Self-Certification of Nonbeverage Product Formulas. |
| 1513–AB35 | Self-Certification of Nonbeverage Product Formulas. |
| 1513–AB05 | Proposed Revisions to Beer Regulations. |
| 1513–AB89 | Revisions to Distilled Spirits Plant Operations Reports and Regulations. |
| 1515–AD67 | Courtesy Notice of Liquidation. |
| 1505–AC05 | TARP Conflicts of Interest. |

BILLING CODE 4810–25–P

## 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 Regulatory Priorities*

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.

A second VA regulatory priority includes a new caregiver benefits program provided by VA. This rule implements title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, which was signed into law on May 5, 2010. The purpose of the new caregiver benefits program is to provide certain medical, travel, training, and financial benefits to caregivers of certain veterans and servicemembers who were seriously injured in the line of duty on or after September 11, 2001.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.va.gov/ORPM/docs/RegMgmt_VA_EO13563_RegRevPlan20110810.docx*.

| RIN | Title | Significantly reduce burdens on small businesses |
|---|---|---|
| 2900–AO13* | VA Compensation and Pension Regulation Rewrite Project | No. |

*Consolidating Proposed Rules: 2900–AL67, AL70, AL71, AL72, AL74, AL76, AL82, AL83, AL84, AL87, AL88, AL89, AL94, AL95, AM01, AM04, AM05, AM06, AM07, AM16.

## VA

*Proposed Rule Stage*

**119. • VA Compensation and Pension Regulation Rewrite Project**

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 38 U.S.C. 501

*CFR Citation:* 38 CFR 3; 38 CFR 5.

*Legal Deadline:* None.

*Abstract:* Since 2004, the Department of Veterans Affairs (V) has published 20 Notices of Proposed Rulemaking to reorganize and rewrite its compensation and pension regulations in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions was to assist claimants, beneficiaries, and VA personnel in locating and understanding these regulations. Several veterans service organizations have requested that VA republish all these regulations together to allow the public another opportunity to comment. This proposed rule would provide that opportunity.

*Statement of Need:* Many current VA regulations on compensation and pension benefits are disorganized and confusing. This rulemaking will make these regulations much easier to find, read, understand, and apply.

*Summary of Legal Basis:* 38 CFR 501(a).

*Alternatives:* The only alternative would be for VA to amend the regulations in part 3 on a piecemeal basis.

Anticipated Cost and Benefits: The cost of publishing the new regulations in the **Federal Register** as a proposed and then as a final rule, plus the cost of publishing the regulations in the Code of Federal Regulations, is anticipated to be $281,316. There will be administrative costs to update VA publications with the new regulation citations, and the cost of a short training program for VA adjudication employees regarding the new regulations. These costs should be more than offset by improved efficiency resulting from the use of part 5 and by the benefits inherent in providing both VA employees and veterans with regulations they can more readily understand.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* William F. Russo, Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, *Phone:* 202 461–4902, *Email: bill.russo@va.gov.*

*Related RIN:* Related to 2900–AL67, Related to 2900–AL70, Related to 2900–AL71, Related to 2900–AL72, Related to 2900–AL74, Related to 2900–AL76, Related to 2900–AL82, Related to 2900–AL83, Related to 2900–AL84, Related to 2900–AL87, Related to 2900–AL88, Related to 2900–AL89, Related to 2900–AL94, Related to 2900–AL95, Related to 2900–AM01, Related to 2900–AM04, Related to 2900–AM05, Related to 2900–AM06, Related to 2900–AM07, Related to 2900–AM16.

*RIN:* 2900–AO13

## VA

*Final Rule Stage*

**120. Caregivers Program**

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 38 U.S.C. 501; 38 U.S.C. 1720G

*CFR Citation:* 38 CFR 17.38; 38 CFR 71.

*Legal Deadline:* None.

*Abstract:* This document promulgates Department of Veterans Affairs (VA) interim final regulations concerning a new caregivers benefits program provided by VA. This rule implements title I of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163, which was signed into law on May 5, 2010. The purpose of the caregivers benefits program is to provide certain medical, travel, training, and financial benefits to caregivers of veterans and certain servicemembers who were seriously injured in the line of duty on or after September 11, 2001.

*Statement of Need:* This document adopts as final Department of Veterans Affairs (VA) interim final regulations concerning Caregiver benefits provided by VA. The rule implements title I of the Caregivers and Veterans Omnibus Health Services Act of 2010 (Caregivers Act), which was signed into law on May 5, 2010. The purpose of the Caregiver benefits program is to provide certain medical, travel, training, and financial benefits to Caregivers of certain Veterans and Servicemembers who were seriously injured during service on or after September 11, 2001.

*Summary of Legal Basis:* 38 U.S.C. 111(e) and 1720G.

*Alternatives:* There is no alternative; VA is required to implement the Caregivers Act.

*Anticipated Cost and Benefits:* The costs are described in detail in the Impact Analysis. The estimated costs associated with this regulation are $69,044,469.40 for FY 2011 and $777,060,923.18 over a 5-year period. These include costs associated with the implementation and development of the Caregiver Support Program. The benefit is that by enabling and encouraging family members to serve as Caregivers, we hope to prevent the need to place these Veterans and Servicemembers in higher complexity treatment settings, and instead ensure that those who wish to, may continue to live in their homes with their families and loved ones.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR cite |
|---|---|---|
| Interim Final Rule | 05/05/11 | 76 FR 26148 |
| Interim Final Rule Effective. | 05/05/11 | |
| Interim Final Rule Comment Period End. | 07/05/11 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Ethan Kalett, Director, VHA Regulations, Department of Veterans Affairs, 810 Vermont Avenue NW., Room 675Q, Washington, DC 20420, *Phone:* 202 461–7633, *Email: ethan.kalett@va.gov.*

*RIN:* 2900–AN94

BILLING CODE 8320–01–P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

*Statement of Regulatory and Deregulatory Priorities*

The Architectural and Transportation Barriers Compliance Board (Access Board) is an Independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792). The Access Board is responsible for developing accessibility guidelines and standards under various laws to ensure that individuals with disabilities have access to and use of buildings and facilities, transportation vehicles, and information and communication technology. Other Federal agencies adopt the accessibility guidelines and

standards issued by the Access Board as mandatory requirements for entities under their jurisdiction.

The item in this regulatory plan is entitled ''Accessibility Standards for Medical Diagnostic Equipment.'' Section 4203 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 570) amended title V of the Rehabilitation Act, which establishes rights and protections for individuals with disabilities, by adding section 510. Section 510 of the Rehabilitation Act (29 U.S.C. 794f) requires the Access Board, in consultation with the Commissioner of the Food and Drug Administration, to issue standards that contain minimum technical criteria to ensure that medical diagnostic equipment, used in or in conjunction with medical settings such as physicians' offices, clinics, emergency rooms, and hospitals, are accessible to and usable by individuals with disabilities. The statute provides that the standards must allow for independent access to and use of the equipment by individuals with disabilities to the maximum extent possible. The statute lists examination tables, examination chairs, weight scales, mammography equipment, and other imaging equipment as examples of equipment to which the standards will apply. However, this list is not exclusive and the statute covers any equipment commonly used by health professionals for diagnostic purposes. The statute does not cover medical devices used for monitoring or treating medical conditions such as glucometers and infusion pumps.

Section 510 of the Rehabilitation Act requires the standards to be issued not later than 24 months after the enactment of the Patient Protection and Affordable Care Act. The Patient Protection and Affordable Care Act was enacted on March 23, 2010. Accordingly, the statutory deadline for issuing the standards is March 23, 2012.

The Access Board has considered alternatives proposed by stakeholders at public hearings and identified in research. In addition, the Access Board has consulted closely with the Department of Justice and the Food and Drug Administration in the development of these draft standards. The Access Board has also considered approaches contained in the Association for the Advancement of Medical Instrumentation's ANSI/AAMI HE 75:2009, ''Human factors engineering—Design of medical devices'' in developing the proposed standards. ANSI/AAMI HE 75 is a recommended practice that provides guidance on human factors design principles for medical devices. Chapter 16 of ANSI/AAMI HE 75 provides guidance on accessibility for patients and health care professionals with disabilities. Chapter 16 of ANSI/AAMI HE 75 is available at: *http://www.aami.org/he75/.* The proposed standards do not reference the guidance in chapter 16 of ANSI/AAMI HE 75 because the guidance is not mandatory. The Access Board seeks to promote harmonization of its standards and guidelines with voluntary consensus standards and plans to participate in future revisions to ANSI/AAMI HE 75.

The Access Board is seeking input from the public on costs and benefits associated with these standards. Section 510 of the Rehabilitation Act does not address who is required to comply with the standards. Compliance with the standards is not mandatory unless other agencies adopt the standards as mandatory requirements for entities under their jurisdiction. In July 2010, the Department of Justice issued an advance notice of proposed rulemaking (ANPRM) announcing that it was considering amending its Americans With Disabilities Act (ADA) regulations to ensure that equipment and furniture are accessible to individuals with disabilities. See 75 FR 43452 (July 26, 2010). The ANPRM noted that the ADA has always required the provision of accessible equipment and furniture, and that the Department has entered into settlement agreements with medical care providers requiring them to provide accessible medical equipment. The ANPRM stated that when the Access Board has issued accessibility standards for medical diagnostic equipment, the Department would consider adopting the standards in its ADA regulations. The ANPRM also stated that if the Department adopts the Access Board's accessibility standards for medical diagnostic equipment, it would develop scoping requirements that specify the minimum number of accessible types of equipment required for different medical settings.

The rule is intended to reduce health and safety risks to individuals with disabilities by making medical diagnostic equipment accessible.

## ATBCB

*Proposed Rule Stage*

### 121. Accessibility Standards for Medical Diagnostic Equipment

*Priority:* Other Significant.

*Legal Authority:* 29 U.S.C. 794(f)

*CFR Citation:* 30 CFR 1197 (New).

*Legal Deadline:* Final, Statutory, March 22, 2012, 29 U.S.C. 794(f).

*Abstract:* This regulation will establish minimum technical criteria to ensure that medical equipment used for diagnostic purposes by health professionals in (or in conjunction with) physician's offices, clinics, emergency rooms, hospitals, and other medical settings is accessible to and usable by individuals with disabilities.

*Statement of Need:* The Access Board is required to issue accessibility standards for medical diagnostic equipment by section 510 of the Rehabilitation Act. The standards will reduce health and safety risks to individuals with disabilities by making medical diagnostic equipment accessible.

*Summary of Legal Basis:* Section 4203 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 570) amended title V of the Rehabilitation Act, which establishes rights and protections for individuals with disabilities by adding section 510. Section 510 of the Rehabilitation Act (29 U.S.C. 794f) requires the Access Board, in consultation with the Commissioner of the Food and Drug Administration, to issue standards that contain minimum technical criteria to ensure that medical diagnostic equipment used in or in conjunction with medical settings such as physicians' offices, clinics, emergency rooms, and hospitals are accessible to and usable by individuals with disabilities. The statute provides that the standards must allow for independent access to and use of the equipment by individuals with disabilities to the maximum extent possible. The statute lists examination tables, examination chairs, weight scales, mammography equipment, and other imaging equipment as examples of equipment to which the standards will apply. However, this list is not exclusive and the statute covers any equipment commonly used by health professionals for diagnostic purposes. The statute does not cover medical devices used for monitoring or treating medical conditions such as glucometers and infusion pumps.

*Alternatives:* The Access Board has considered alternatives proposed by stakeholders at public hearings and identified in research. In addition, the Access Board has consulted closely with the Department of Justice and the Food and Drug Administration in the development of these draft standards. The Access Board has also considered approaches contained in the Association for the Advancement of Medical Instrumentation's ANSI/AAMI HE 75:2009, ''Human factors engineering—

Design of medical devices'' in developing the proposed standards. ANSI/AAMI HE 75 is a recommended practice that provides guidance on human factors design principles for medical devices. Chapter 16 of ANSI/AAMI HE 75 provides guidance on accessibility for patients and health care professionals with disabilities. Chapter 16 of ANSI/AAMI HE 75 is available at: *http://www.aami.org/he75/.* The proposed standards do not reference the guidance in chapter 16 of ANSI/AAMI HE 75 because the guidance is not mandatory. The Access Board seeks to promote harmonization of its standards and guidelines with voluntary consensus standards and plans to participate in future revisions to ANSI/AAMI HE 75.

*Anticipated Cost and Benefits:* The Access Board is seeking input from the public on costs and benefits associated with these standards. Section 510 of the Rehabilitation Act does not address who is required to comply with the standards. Compliance with the standards is not mandatory unless other agencies adopt the standards as mandatory requirements for entities under their jurisdiction. In July 2010, the Department of Justice issued an advance notice of proposed rulemaking (ANPRM) announcing that it was considering amending its ADA regulations to ensure that equipment and furniture are accessible to individuals with disabilities. See 75 FR 43452 (Jul. 26, 2010). The ANPRM noted that the ADA has always required the provision of accessible equipment and furniture, and that the Department has entered into settlement agreements with medical care providers requiring them to provide accessible medical equipment. The ANPRM stated that when the Access Board has issued accessibility standards for medical diagnostic equipment, the Department would consider adopting the standards in its ADA regulations. The ANPRM also stated that, if the Department adopts the Access Board's accessibility standards for medical diagnostic equipment, it would develop scoping requirements that specify the minimum number of accessible types of equipment required for different medical settings.

*Risks:* The rule is intended to reduce health and safety risks to individuals with disabilities by making medical diagnostic equipment accessible.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Public Information Meeting. | 06/22/10 | 75 FR 35439 |
| NPRM ..... | 02/00/12 | |
| NPRM Comment Period End. | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*URL for More Information: www.access-board.gov/medical-equipment.htm.*

*URL for Public Comments: www.regulations.gov.*

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*RIN:* 3014–AA40

BILLING CODE 8150–01–P

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Statement of Priorities*

Overview

The U.S. Environmental Protection Agency (EPA) was created on December 2, 1970, when Americans across the Nation took up a call for cleaner air, safer water, and unpolluted land. For the past 4 decades, EPA has confronted health and environmental challenges, fostered innovations, and cleaned up pollution in the places where people live, work, play, and learn.

The EPA remains strongly committed to protecting health and the environment through:

- Taking action on climate change;
- Improving air quality;
- Assuring the safety of chemicals;
- Cleaning up our communities;
- Protecting America's waters;
- Expanding the conversation on environmentalism and working for environmental justice; and
- Building strong State and tribal partnerships.

EPA and its Federal, State, local, and community partners have made enormous progress in protecting the Nation's health and environment. From reducing mercury and other toxic air pollution from power plants to doubling the fuel economy of our cars and trucks, the Agency is working to save tens of thousands of lives each year. Further, EPA has removed over a billion tons of pollution from the air and produced hundreds of billions of dollars in benefits for the American people. For example:

- The number of Americans receiving water that meets health standards has gone from 79 percent in 1993 to 92 percent in 2008.
- EPA has also helped realize a 60 percent reduction in 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 have gone 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*

EPA's 40 years of environmental and health protection demonstrate our Nation's ability to create jobs while we clean our air, water, and land. Clean air, clean water, and healthy workers are all essential to American businesses. Moreover, innovations in clean technology are creating new jobs right now. Addressing climate change calls for coordinated national and global efforts to research alternative fuels and other emission reduction technologies and requires strong partnerships across economic sectors and around the world. Similarly, energy consumption and higher costs underscore the need to promote alternative energy sources and invest in new technologies.

Seven Guiding Priorities

The EPA's success depends on supporting innovation and creativity in both what we do and how we do it. To guide the Agency's efforts, Administrator Lisa P. Jackson has established seven guiding priorities. These priorities are enumerated in the list that follows, along with recent progress and future objectives for each.

1. Taking Action on Climate Change

While the 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 continue to

develop greenhouse gas standards for both mobile and stationary sources.

Greenhouse Gas Emission Standards for Automobiles and Trucks. Last year, EPA issued joint regulations with the National Highway Traffic Safety Administration that will improve fuel economy and reduce GHG emissions from light-duty vehicles for the 2012 to 2016 model years and from heavy-duty engines and vehicles. Building on that success, the two agencies are now developing a rule that will require further improvements in light-duty vehicles for the model years 2017 to 2025.

Greenhouse Gas Emission Standards for Power Plants. In 2012, EPA will also continue to develop common-sense solutions for reducing greenhouse gas emissions from large stationary sources like power plants.

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. Long-term exposure to air pollution can cause cancer and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems.

Reviewing and Implementing 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 particulates.

Tier 3 Vehicle and Fuel Standards. EPA plans to propose new vehicle emission and fuel standards to further reduce $NO_X$, PM, and air toxics. These standards will address the Energy Independence and Security Act (EISA) ''anti-backsliding'' provision, which requires the Agency to assess the air quality impacts of renewable fuel mandates and take steps to mitigate them. These standards will also help states to achieve air quality standards.

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.

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. Using sound science as a compass, EPA protects individuals, families, and the environment from potential risks of pesticides and other chemicals.

Enhancing EPA's Current Chemicals Management Program Under the Toxic Substances Control Act. EPA continues to target priority chemicals for action and to identify both concerns that the chemicals may present and actions the Agency will take to address those concerns. EPA is undertaking a range of actions to address potential risks, including establishing for the first time criteria for the use of TSCA's section 5(b)(4) authority and proposing actions under TSCA to gather additional information on nanoscale chemical materials.

Enhancing Agricultural Worker Protection and Strengthening Pesticide Applicator Safety. EPA is developing a proposal to strengthen the existing agricultural worker protection regulation, which is designed to protect agricultural farm workers and pesticide handlers by improving pesticide safety training for workers and protections from exposure during work activities. This proposal will also address key environmental justice concerns for a population that is disproportionately affected by pesticide exposure. In addition, EPA expects to propose changes to the existing regulations for certifying the competency of pesticide applicators to apply pesticides safely. Both of these rules also aim to protect child and adolescent agricultural workers.

4. Cleaning Up Communities

EPA supports urban, suburban, and rural community goals of improving environmental, human health, and quality-of-life outcomes through partnerships that also promote economic opportunities, energy efficiency, and revitalized neighborhoods. Sustainable communities balance their economic and natural assets so that the diverse needs of local residents can be met now and in the future with limited environmental impacts. EPA accomplishes these outcomes by working with communities, other Federal agencies, States, and national experts to develop and encourage development strategies that have better outcomes for air quality, water quality, and land preservation and revitalization.

5. Protecting America's Waters

We have made considerable progress in cleaning up many of America's waters, but water quality and enforcement programs face on-going challenges. These challenges demand both traditional and innovative strategies.

Clean Water Protection. After U.S. Supreme Court decisions in SWANCC and Rapanos, the scope of ''waters of the U.S.'' protected under all CWA programs has been an issue of considerable debate and uncertainty. The Act has a single definition for ''waters of the United States.'' As a result, these decisions affect the geographic scope of all CWA programs. SWANCC and Rapanos did not invalidate the current regulatory definition of ''waters of the United States.'' U.S. EPA and the U.S. Army Corps of Engineers are developing a proposed rule for determining whether a water is protected by the Clean Water Act.

Concentrated Animal Feeding Operations. EPA proposed a regulation that would collect information about concentrated animal feeding operations (CAFOs). CAFOs are a significant source of nutrient pollution and pathogens in U.S. watersheds. The information that would be collected under the proposed rule would allow EPA to increase water quality protection through better implementation of the NPDES permitting program for CAFOs. The proposed regulation would apply to all permitted and unpermitted CAFOs. EPA co-proposed a regulation that would only collect information from CAFOs in targeted areas, if EPA determined such collection was necessary based on specified factors, such as water quality concerns.

Streamlining. EPA intends to review the regulations that apply to the issuance of National Pollutant Discharge Elimination System (NPDES) permits, which are the wastewater permits that facility operators must obtain before they discharge pollutants to any water of the United States. EPA plans to update specific elements of the existing NPDES in order to better harmonize regulations and application forms, improve permit documentation and transparency, and provide clarifications to the existing regulations.

6. Expanding the Conversation on Environmentalism and Working for Environmental Justice

Environmental Justice in Rulemaking. EPA released ''Plan EJ 2014'' in September 2011. This Plan, which marks the 20th anniversary of the

signing of Executive Order 12898 on environmental justice, is EPA's overarching strategy for advancing environmental justice. It seeks to protect the environment and health in overburdened communities, empower communities to take action to improve their health and environment, and establish partnerships with local, State, tribal, and Federal governments, and organizations to achieve healthy and sustainable communities. The Plan 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 that have been disproportionately impacted by pollution.

Children's Health. EPA continues to lead efforts to protect children from environmental health risks, in accordance with Executive Order 13045. To accomplish this, EPA intends to use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect pregnant women, infants, children, and adolescents from environmental and human health hazards.

7. Building Strong State and Tribal Partnerships

EPA's success depends more than ever on working with increasingly capable and environmentally conscious partners. While the Agency works with the States and tribes on the day-to-day mission of environmental protection, declining tax revenues and fiscal challenges are pressuring State agencies and tribal governments to do more with fewer resources. EPA is supportive of State and tribal capacity to ensure that programs are consistently delivered nationwide. This provides EPA and its intergovernmental partners with an opportunity to further strengthen their working relationship and, thereby, more effectively pursue their shared goal of protecting the Nation's environment and public health.

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.

* * * * *

The priorities described above will guide EPA's work in the years ahead. They are built around the challenges and opportunities inherent in our mission to protect 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.

*Retrospective Review of Existing Regulations*

Just as today's economy is vastly different from that of 40 years before, EPA's regulatory program is evolving to recognize the progress that has already been made in environmental protection and to incorporate new technologies and approaches that allow us to accomplish our mission more efficiently and effectively. A central goal, consistent with January's Executive Order 13563, is to identify methods for reducing unjustified burdens and costs. In August, EPA released a plan for periodically reviewing EPA's existing regulations. The Agency intends to apply the principles and directives of EO 13563 to both retrospective reviews of existing regulations and the development of new regulations. As called for by Executive Order 13563, EPA intends to seek ways ''to determine whether * * * regulations should be modified, streamlined, expanded, or repealed so as to make the Agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

The EPA's Final Plan for Retrospective Reviews of Existing Regulations (Retrospective Review Plan) describes a large number of burden-reducing, cost-saving reforms, including 35 priority initiatives. Some of these have recently been completed; others are in process; still others are in their earliest stages. The potential economic savings are significant. For example, a recently proposed rule may eliminate redundant air pollution control requirements now imposed on gas stations; that rule would save $87 million annually. Taken as a whole, recent reforms, already finalized or formally proposed, are anticipated to save up to $1.5 billion over the next 5 years. Other reforms described in the Retrospective Review Plan, including efforts to streamline requirements and to move to electronic reporting, could save more.

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulation Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in EPA's final Retrospective Review Plan. Some of the entries on this list may be completed actions, which do not appear in *The Regulatory Plan.* However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for the Agency. These rulemakings can also be found on Regulations.gov. The final Agency plan can be found at: *http://www.epa.gov/regdarrt/retrospective/.*

| | |
|---|---|
| 2060–AQ86 | Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards. |
| 2060–AQ54 | Joint Rulemaking To Establish 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards. |
| 2060–AQ41 | Risk and Technology Review for National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry. |
| 2060–AO60 | New Source Performance Standards (NSPS) Review Under CAA Section 111(b)(1)(B). |
| 2060–AR00 | Uniform Standards for Equipment Leaks and Ancillary Systems, Closed Vent Systems and Control Devices, Storage Vessels and Transfer Operations, and Wastewater Operations. |
| 2070–AJ20 | Pesticides; Certification of Pesticide Applicators. |
| 2070–AJ63 | TSCA Reporting Requirements; Minor Revisions. |
| 2040–AF25 | National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule. |
| 2050–AG50 | Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments for Milk Containers. |
| 2060–AP64 | Clean Alternative Fuel Vehicle and Engine Conversions. |

*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 Regulatory Development and Retrospective Review Tracker (*http://www.epa.gov/regdarrt/*) at any time. This Plan includes a number of rules that may be of particular interest to small entities:

| | |
|---|---|
| 2060–AR13 | National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration. |
| 2060–AP52 | National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units. |
| 2060–AQ86 | Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards. |
| 2070–AJ56 | Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings. |
| 2070–AJ44 | Formaldehyde Emissions From Pressed Wood Products. |
| 2050–AG61 | Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry. |
| 2040–AF13 | Stormwater Regulations Revision To Address Discharges from Developed Sites. |

## EPA

*Proposed Rule Stage*

### 122. Risk and Technology Review for National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

*Priority:* Other Significant.

*Legal Authority:* Clean Air Act sec 112

*CFR Citation:* 40 CFR 63.440 to 63.459.

*Legal Deadline:* NPRM, Judicial, December 15, 2011, Consent decree deadline completed.

Final, Judicial, July 31, 2012, Consent decree deadline.

*Abstract:* Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to conduct risk assessments on each source category subject to maximum achievable control technology (MACT) standards and to determine if additional standards are needed to reduce residual risks, to be completed 8 years after promulgation. Section 112(d)(6) of the CAA requires EPA to review and revise the MACT standards as necessary, taking into account developments in practices, processes, and control technologies, to be done at least every 8 years. The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Pulp and Paper Industry (subpart S) was promulgated in 1998 and also has not been reviewed. This action will propose those amendments.

*Statement of Need:* The National Emission Standard for Hazardous Air Pollutants (NESHAP) in the Pulp and Paper Category was promulgated April 15, 1998 and codified as subpart S in 40 CFR parts 63.440 to 63.459. Section 112(f)(2) of the Clean Air Act (CAA) directs EPA to conduct risk assessments on each source category subject to maximum achievable control technology (MACT) standards, and to determine if additional standards are needed to reduce residual risks, to be completed 8 years after promulgation. Section 112(d)(6) of the CAA requires EPA to review and revise the MACT standards as necessary, taking into account developments in practices, processes and control technologies, to be done at least every 8 years.

*Summary of Legal Basis:* EPA has signed a consent agreement that directs it to propose a Risk and Technology Review rule (RTR) to address the requirements of Sections 112(f)(2) and (d)(6) by December 15, 2011 and promulgate a final RTR rule for this category by July 31, 2012.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits:* Not yet determined.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/27/11 | 76 FR 81328 |
| Final Action | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Local, State, Tribal.

*Additional Information:* Docket number EPA–HQ–OAR–2007–0544.

*Agency Contact:* Bill Schrock, Environmental Protection Agency, Air and Radiation, E143–03, Research Triangle Park, NC 27711, *Phone:* 919 541–5432, *Fax:* 919 541–3470, *Email: schrock.bill@epa.gov.*

Robin Dunkins, Environmental Protection Agency, Air and Radiation, E143–03, Research Triangle Park, NC 27711, *Phone:* 919 541–5335, *Fax:* 919 541–3470.

*RIN:* 2060–AQ41

## EPA

### 123. Joint Rulemaking To Establish 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Pub. L. 104–4.

*Legal Authority:* 42 U.S.C. 7401 to 7671q

*CFR Citation:* 40 CFR 86 and 600

*Legal Deadline:* None.

*Abstract:* The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA), on behalf of the Department of Transportation, have proposed a joint rulemaking on GHG and CAFE standards for model years 2017 to 2025 light-duty vehicles. This action represents a continuation of a coordinated National Program under the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act (EISA), to improve fuel efficiency and to reduce greenhouse gas (GHG) emissions of light-duty vehicles. On July 29, 2011, President Obama announced a historic agreement with 13 automakers and the State of California to pursue 2017 to 2025 standards. This announcement was accompanied by a joint Supplemental Notice of Intent, issued by EPA and NHTSA, which outlined the standards and other key program elements the agencies intend to propose in the upcoming rulemaking. EPA and NHTSA intend to propose that automobile manufacturers meet a model year 2025 $CO_2$ standard of 163 grams/mile, which is equivalent to 54.5 miles per gallon if the standard were achieved with fuel economy technologies alone. This latest notice followed a September 30, 2010, joint Notice of Intent that provided an initial assessment of potential levels of stringency for 2017 to

2025 standards, an Interim Joint Technical Assessment Report published jointly by EPA, NHTSA, and the California Resources Board in September 2010, and a November 30, 2010, Supplemental Notice summarizing key stakeholder comments.

*Statement of Need:* EPA has found that emissions of greenhouse gases (GHGs) from new motor vehicles cause or contribute to pollution that may reasonably be anticipated to endanger public health and welfare. Light-duty vehicles emit four GHGs—carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($NO_X$), and hydrofluorocarbons (HFCs)—and are responsible for nearly 60 percent of all mobile-source GHGs. On May 21, 2010, the President called on the EPA and NHTSA, in close coordination with California, to begin the next phase of the National Clean Car Program and propose new standards for model years 2017 to 2025, in response to the urgent and closely intertwined challenges faced by our Nation of dependence on oil, energy security, and global climate change. This rulemaking would provide significant additional reductions in GHGs from future light-duty vehicles and fuel efficiency improvements.

*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 emissions 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 light-duty vehicles. 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 December 2009, EPA published two findings (74 FR 66496) that emissions of GHGs from new motor vehicles and motor vehicle engines contribute to air pollution, and that the air pollution may reasonably be anticipated to endanger public health and welfare.

*Alternatives:* The rulemaking proposal includes an evaluation of regulatory alternatives that can be considered in addition to the Agency's primary proposal. In addition, the proposal includes tools such as averaging, banking, and trading of emissions credits and other flexibilities for alternative approaches for compliance with the proposed program.

*Anticipated Cost and Benefits:* The standards under consideration are projected to reduce GHGs by approximately 2 billion metric tons and save 4 billion barrels of oil over the lifetime of MY 2017 to 2025 vehicles. These standards would have significant benefits to American consumers by reducing the costs they would pay to fuel these more efficient vehicles.

*Risks:* The failure to set new GHG standards for light-duty vehicles would increase the risk of unacceptable climate change impacts.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 10/13/10 | 75 FR 62739 |
| Supplemental Notice of Intent. | 12/08/10 | 75 FR 76337 |
| 2nd Supplemental Notice of Intent. | 08/09/11 | 76 FR 48758 |
| NPRM ..... | 12/01/11 | 76 FR 74854 |
| Final Action ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal.

*Federalism:* This action may have federalism implications as defined in E.O. 13132.

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

*Additional Information:* EPA Docket information: EPA–HQ–OAR–2010–0799.

*Sectors Affected:* 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 811112 Automotive Exhaust System Repair; 811111 General Automotive Repair; 441120 Used Car Dealers.

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*RIN:* 2060–AQ54

## EPA

### 124. Petroleum Refinery Sector Risk and Technology Review And NSPS

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Clean Air Act secs 111 and 112

*CFR Citation:* 40 CFR 60 and 63.

*Legal Deadline:* NPRM, Judicial, December 10, 2011, Settlement Agreement. Final, Judicial, November 10, 2012, Settlement Agreement.

*Abstract:* This action is the Petroleum Refining Sector Rulemaking, which will address our obligation to perform Risk and Technology Reviews (RTR) for Petroleum Refinery MACT 1 and 2 source categories and will address issues related to the reconsideration of Petroleum Refinery New Source Performance Standards (NSPS) subpart Ja.

EPA entered into a settlement agreement with multiple litigants on December 23, 2010. The settlement agreement requires EPA to propose standards of performance for GHGs for affected facilities at refineries that are subject to NSPS subparts J and Ja (Petroleum Refineries, including flares, process heaters, fluid catalytic cracking units, fluid cokers, delayed cokers, and sulfur recovery plants), subpart Db (Industrial-Commercial-Institutional Steam Generating Units [Boilers]), subpart Dc (Small Industrial-Commercial-Institutional Steam Generating Units), subpart GGG (Equipment Leaks of VOC in Petroleum Refineries; *e.g.,* leaking equipment components such as pumps, valves, flanges), and subpart QQQ (VOC Emissions from Petroleum Refinery Wastewater Systems; *e.g.,* drain systems and oil water separators) and to propose emissions guidelines for GHGs from existing affected facilities at refineries in the source categories covered by those NSPS subparts. The settlement also requires EPA to propose to address remaining issues raised in a petition filed in response to the June 24, 2008, promulgation of amendments to the Refinery NSPS subpart J and new standards of performance for subpart Ja, and to propose standards, as necessary, to address the RTR review for the 2002 Refinery MACT II standards. The settlement requires EPA to issue final standards for the NSPS and RTR reviews by November 10, 2012. This settlement agreement is currently under negotiation.

In this action, we will also conduct RTR reviews for the two Petroleum Refinery MACT. We will use information obtained through a comprehensive information collection process to address The MACT and NSPS reviews. Uniform standards (for heat exchangers, equipment leaks, storage vessels and transfer operations; control devices and closed-vent systems) are being developed in separate actions and

will specify work practices, equipment standards, and monitoring, recordkeeping, and reporting requirements. The refinery sector MACT and NSPS are expected to reference the uniform standards. Later, chemical sector MACT and NSPS will also reference the uniform standards, which will ensure that requirements are consistent, to the extent appropriate, across the chemical sectors.

*Statement of Need:* Under the ''technology review'' provision of CAA section 112, EPA is required to review maximum achievable control technology (MACT) standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. Under the ''residual risk'' provision of CAA section 112, EPA must evaluate the MACT standards within 8 years after promulgation and promulgate standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. Section 111(b)(1)(B) of the CAA mandates that EPA review and, if appropriate, revise existing NSPS every 8 years.

*Summary of Legal Basis:* CAA sections 111 and 112.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits:* EPA is currently assessing the costs and benefits associated with this action.

*Risks:* EPA is currently assessing risks for this action.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, Local, State.

*Additional Information:* Action described in RIN 2060–AQ28 (NSPS reconsideration issues) will be included in this action. EPA Docket information: EPA–HQ–OAR–2010–0682.

*Sectors Affected:* 32411 Petroleum Refineries.

*URL for More Information: http://www.epa.gov/ttn/atw/petrefine/petrefpg.html.*

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*RIN:* 2060–AQ75

## EPA

### 125. Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Euel Standards

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* CAA 202(a) and 211(v)

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* This rule will establish new standards for light-duty vehicles and their fuels in order to reduce emissions of criteria and toxic pollutants and their impact on air quality and health. This action will set forth a comprehensive approach toward regulating motor vehicles for non-greenhouse gas pollutants, as requested by a May 2010 Presidential memorandum.

*Statement of Need:* States are working to attain National Ambient Air Quality Standards for ozone, PM, and $NO_X$. Light-duty vehicles are responsible for a significant portion of the precursors to these pollutants and are large contributors to ambient air toxic pollution. For example, without future controls, by 2014 light-duty vehicles are projected to contribute 25 percent of nationwide mobile-source $NO_X$, 40 percent of nationwide mobile-source VOC, and 10 percent nationwide mobile-source PM. Importantly, by 2020 mobile sources are expected to be as much as 50 percent of the inventories for some individual urban areas without future controls. Light-duty vehicles also contribute about half of the 2030 mobile source inventory of toxics; the 2002 National-Scale Air Toxics Assessment showed that mobile sources were responsible for over 50 percent of cancer risk and over 80 percent of noncancer hazard. Clearly, there is a need for tighter light-duty vehicle standards and fuel standards as part of a comprehensive approach to reducing pollution from motor vehicles. Renewable fuels are recognized to pose potential air quality concerns, and EPA has a mandate to address them under Clean Air Act section 211(q) and 211(v). Specifically, both EPAct of 2005 and EISA (2007) amended the CAA to require EPA to determine adverse air quality impacts of renewable fuels and to implement appropriate measures to mitigate these impacts to the greatest extent achievable.

*Summary of Legal Basis:* The Clean Air Act, section 202(a)(1), states ''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 class of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may be reasonably be anticipated to endanger public health or welfare.'' Section 202(a) covers all on-highway vehicles, including medium and heavy-duty trucks. EPA is also using its authority under section 211(c) of the Clean Air Act to address gasoline sulfur controls, section 211(h) to address Reid Vapor Pressure, and section 211(v), which requires that the Administrator promulgate fuel regulations to implement appropriate measures to mitigate, to the greatest extent achievable, and considering the results of the anti-backsliding study completed under section 211(v)(1), any adverse impacts on air quality as a results of the renewable volumes or make a determination that no such measures are necessary.

*Alternatives:* The rulemaking proposal will include an evaluation of regulatory alternatives that can be considered in addition to the Agency's primary proposal.

*Anticipated Cost and Benefits:* Detailed analysis of economy-wide cost impacts, emissions reductions, and societal benefits will be performed during the rulemaking process.

*Risks:* The failure to set new Tier 3 vehicle/fuel standards will adversely impact the population living in nonattainment areas, where reductions from the Tier 3 rule are needed to help attain and maintain the ozone and PM NAAQS (and to mitigate adverse effects of renewable fuels). Also, without the new Tier 3 vehicle/fuel standards, the sizeable population living, working, and going to school near roads will continue to be exposed to higher levels of air toxics, which is a current environmental justice and children's health concern.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |
| Final Action ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* EPA Docket information: EPA–HQ–OAR–2011–0135. Includes Retrospective Review under E.O. 13563.

*Sectors Affected:* 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 811112 Automotive Exhaust System Repair; 336311 Carburetor, Piston, Piston Ring, and Valve Manufacturing; 336312 Gasoline Engine and Engine Parts Manufacturing; 336120 Heavy Duty Truck Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 454312 Liquefied Petroleum Gas (Bottled Gas) Dealers; 541690 Other Scientific and Technical Consulting Services; 324110 Petroleum Refineries; 484220 Specialized Freight (except Used Goods) Trucking, Local; 484230 Specialized Freight (except Used Goods) Trucking, Long-Distance.

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*RIN:* 2060–AQ86

## EPA

### 126. Greenhouse Gas New Source Performance Standard for Electric Generating Units for New Sources

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* CAA 111

*CFR Citation:* 40 CFR 60.

*Legal Deadline:* NPRM, Judicial, September 30, 2011. Final, Judicial, May 25, 2012.

*Abstract:* This action will amend the electric generating units (EGUs) New Source Performance Standard and add a section 111(b) greenhouse gas (GHG) standard for new and modified facilities.

*Statement of Need:* EPA entered into settlement agreement with multiple State and environmental petitioners on December 21, 2010, to establish standards of performance for GHGs for new EGUs and emissions guidelines for GHGs from existing EGUs.

*Summary of Legal Basis:* Clean Air Act, section 111.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits:* Not yet determined.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Energy Effects:* Statement of Energy Effects planned as required by Executive Order 13211.

*Additional Information:* EPA Docket information: EPA–HQ–OAP–2011–0660.

*Sectors Affected:* 221 Utilities.

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*RIN:* 2060–AQ91

## EPA

### 127. • National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production Risk and Technology Review

*Priority:* Other Significant.

*Legal Authority:* Clean Air Act secs 111 and 112.

*CFR Citation:* 40 CFR 60 and 63.

*Legal Deadline:* NPRM, Judicial, November 30, 2011. Final, Judicial, November 30, 2012.

*Abstract:* In this action, EPA will perform risk and technology reviews for three National Emission Standards for Hazardous Air Pollutants (NESHAP). These NESHAP are under a deadline consent decree for proposal in November 2011 and promulgation in November 2012: Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production. Clean Air Act (CAA) sections 112(f)(2) and 112(d)(6) require EPA to conduct residual risk and technology reviews. Under the ''technology review'' provision of CAA section 112, EPA is required to review maximum achievable control technology (MACT) standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. Under the ''residual risk'' provision of CAA section 112, EPA must evaluate the MACT standards within 8 years after promulgation and promulgate standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. Section 111(b)(1)(B) of the CAA mandates that EPA review and, if appropriate, revise existing NSPS every 8 years. EPA will also remove startup, shutdown, and malfunction exemptions for these source categories, as required by recent court decisions.

*Statement of Need:* This action addresses EPA's statutory obligations to perform Risk and Technology Reviews (RTR) and NSPS reviews for chemical sector MACT. It will address Clean Air Act (CAA) section 112(f)(2) to conduct residual risk reviews, section 112(d)(6) to conduct technology reviews, and section 111(b)(1)(B) to conduct NSPS reviews for multiple chemical sector source categories. Under the ''technology review'' provision of CAA section 112, EPA is required to review maximum achievable control technology (MACT) standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. Under the ''residual risk'' provision of CAA section 112, EPA must evaluate the MACT standards within 8 years after promulgation and promulgate standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. Under the CAA section 111, EPA must evaluate NSPS requirements and, if appropriate, revise existing NSPS every 8 years.

*Summary of Legal Basis:* CAA sections 111 and 112.

*Alternatives:* Unavailable.

*Anticipated Cost and Benefits:* We are currently estimating the costs and benefits associated with this action.

*Risks:* We are currently assessing the risks associated with this action.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/09/12 | 77 FR 1268 |
| NPRM Comment Period End. | 03/09/12 | |
| Final Action ..... | 11/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Sectors Affected:* 325 Chemical Manufacturing.

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*RIN:* 2060–AR02

## EPA

### 128. • National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration

*Priority:* Other Significant. Major under 5 U.S.C. 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:* None.

*Abstract:* EPA estimates the total national capital cost for the proposed reconsideration rule to be approximately $5.4 billion in the year 2015, with a total national annual cost of $1.5 billion in the year 2015. 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: 1,000 to 3,600 pounds per year of mercury, 2,200 tpy of non-mercury metals, 37,000 tpy of HCl, 41,000 tpy of PM, 560,000 tpy of $SO_2$, and 4,700 tpy of volatile organic compounds. These emissions reductions would lead to the following annual health benefits. In 2015, this rule will protect public health by avoiding 3,100 to 8,000 premature deaths, 2,000 cases of chronic bronchitis, 4,900 nonfatal heart attacks, 5,350 hospital and emergency room visits, 4,600 cases of acute bronchitis, 390,000 days when people miss work, 51,000 cases of aggravated asthma, and 96,000 acute respiratory symptoms. The monetized value of the benefits ranges from $27 billion to $67 billion in 2015—outweighing the costs by at least $25 billion.

*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 tons per year (tpy) of non-mercury metals, 37,000 tpy of HCl, 50,000 tpy of PM, 340,000 tpy of $SO_2$, 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 | 12/23/11 | 76 FR 80598 |
| NPRM Comment Period End. | 02/21/12 | |
| Final Action | 04/00/12 | |

*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:* Split from RIN 2060–AQ25. Split from RIN 2060–AM44. This rulemaking combines the area source rulemaking for boilers and the rulemaking for reestablishing 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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*RIN:* 2060–AR13

## EPA

### 129. • National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Reconsideration and Proposed Rule Amendments

*Priority:* Other Significant.

*Legal Authority:* Clean Air Act sec 112

*CFR Citation:* 40 CFR 63.

*Legal Deadline:* Other, Statutory, April 30, 2012, Tentative date for promulgation of amendments to the rule.

*Abstract:* On March 21, 2011, EPA issued a final rule establishing standards for emissions of hazardous air pollutants from boilers located at area sources. EPA also issued on March 21, 2011, a Notice of Reconsideration listing four issues for which additional opportunity for public review and comment should be obtained. Subsequently, we received petitions to reconsider and clarify and amend certain applicability and implementation provisions of the final rule. This action will propose the amendments after we analyze the information submitted in the petitions.

*Statement of Need:* Section 307(d)(7)(B) of the CAA requires EPA to convene a proceeding for reconsideration of the rule if a person raising an objection to the rule can demonstrate to EPA that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment, and if such objection is of central relevance to the outcome of the rule.

*Summary of Legal Basis:* Clean Air Act, section 112.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits*: Cost and benefits numbers for the Boiler Area Source Rule (subpart JJJJJJ) are as follows.

Proposal: Total annualized costs = $1.0 billion. Total net monetized benefits = $0.5 billion to $1.9 billion (3% discount rate), $0.4 billion to $1.7 billion (7% discount rate). Non-monetized Benefits = 39,000 tons of carbon monoxide, 130 tons of HCl, 5 tons of HF, 0.75 tons of mercury, 250 tons of other metals, 470 grams of dioxins/furans. Additionally, health effects from $NO_2$ and $SO_2$ exposure diminish, as well as ecosystem effects and visibility impairment.

Final: Total annualized costs = $535 million. Total net monetized benefits = −$280 million to $30 million (3% discount rate), −$300 million to −$20 million (7% discount rate). Non-monetized Benefits = 1,100 tons of carbon monoxide, 340 tons of HCl, 8 tons of HF, 90 pounds of mercury, 320 tons of other metals, <1 gram of dioxins/furans (TEQ), health effects from $SO_2$ exposure, ecosystem effects, visibility impairment.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/23/11 | 76 FR 80532 |
| NPRM Comment Period End. | 02/21/12 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Additional Information:* Split from RIN 2060–AM44. 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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*RIN:* 2060–AR14

## EPA

### 130. • Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Reconsideration and Proposed Amendments

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 7401 *et seq.*

*CFR Citation:* 40 CFR 60; 40 CFR 62.

*Legal Deadline:* None.

*Abstract:* On March 21, 2011, EPA issued a final rule establishing new source performance standards and emission guidelines for commercial and industrial solid waste incineration units. EPA also issued on March 21, 2011, a Notice of Reconsideration listing issues for which additional opportunity for public review and comment should be obtained. Subsequently, we received more than 15 petitions to reconsider, clarify, and amend certain provisions of the final rule. This action will propose the amendments after we analyze the information submitted in the petitions.

*Statement of Need:* As a result of the vacatur of the CISWI definition and the remand of the CISWI rule, the Agency will develop another rulemaking under CAA section 129 that will reduce hazardous air pollutant (HAP) emissions from this source category. Recent court decisions on other rules will be considered in developing this regulation.

*Summary of Legal Basis:* Clean Air Act, section 129.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits:* EPA estimates the total national capital cost for the final rule to be approximately $706 million in the year 2013, with a total national annual cost of $280 million 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 commercial and industrial solid waste incineration units by: 5,700 tons per year (tpy) of acid gases (*i.e.,* hydrogen chloride and sulfur dioxide), 1,600 tpy of particulate matter, 23,000 tpy of carbon monoxide, 5,700 tpy of nitrogen oxides, and 5.5 tpy of metals (*i.e.,* lead, cadmium, and mercury) and dioxins/furans. These emissions reductions would lead to the following annual health benefits. In 2013, this rule will protect public health by avoiding 40 to 100 premature deaths, 27 cases of chronic bronchitis, 64 nonfatal heart attacks, 68 hospital and emergency room visits, 65 cases of acute bronchitis, 1,350 cases of respiratory symptoms, 5,300 days when people miss work or school, 700 cases of aggravated asthma, and 31,000 days when people must restrict their activities. The monetized value of the benefits ranges from $360 to $870 million in 2013—outweighing the costs by at least $80 million.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/23/11 | 76 FR 80452 |
| NPRM Comment Period End. | 02/21/12 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* Split from RIN 2060–AO12. EPA Docket information: EPA–HQ–OAR–2003–0119.

*Sectors Affected:* 325 Chemical Manufacturing; 334 Computer and Electronic Product Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 321 Wood Product Manufacturing.

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*RIN:* 2060–AR15

## EPA

### 131. NPDES Electronic Reporting Rule

*Priority:* Other Significant.

*Legal Authority:* CWA secs 304(i) and 501(a), 33 U.S.C. 1314(i) and 1361(a)

*CFR Citation:* 40 CFR 123, 403, and 501.

*Legal Deadline:* None.

*Abstract:* The 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 States' 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 would be sought 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.

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 sec. 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 stormwater 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 |
| Notice—Public Meeting 2. | 06/23/11 | 76 FR 36919 |
| NPRM | 12/00/11 | |
| Final Action | 09/00/12 | |

*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.

*URL for More Information: http://www.regulations.gov/exchange/topic/npdes*

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*RIN:* 2020–AA47

## EPA

### 132. Pesticides; Certification of Pesticide Applicators

*Priority:* Other Significant.

*Legal Authority:* 7 U.S.C. 136; 7 U.S.C. 136i; 7 U.S.C. 136w

*CFR Citation:* 40 CFR 171; 40 CFR 156.

*Legal Deadline:* None.

*Abstract:* EPA is proposing change to the Federal regulations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that guide the certified pesticide applicator program (40 CFR 171). Change is sought to strengthen the regulations to better protect pesticide applicators and the public and the environment from harm due to pesticide exposure. The possible need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the potential need for changes to the regulation.

*Statement of Need:* These regulations have been in place since 1972. Since then, many States have advanced the existing requirements to better protect applicators, the public, and the environment. The Agency is proposing revisions to establish a more protective national standard.

*Summary of Legal Basis:* 7 U.S.C. 136 through 7 U.S.C. 136y.

*Alternatives:* The Agency has developed mechanisms to improve applicator trainers and make training materials more accessible. The Agency has also developed nationally relevant training and certification materials to preserve State resources.

*Anticipated Cost and Benefits:* Costs and benefits from the proposed rule are being prepared.

*Risks:* Applicators are at risk from exposure to pesticides they handle for their work. The public and the environment may also be at risk from misapplication by non-competent applicators. Revisions to the regulations are expected to minimize these risks by ensuring the competency of certified applicators.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Additional Information:* EPA Docket information: EPA–HQ–OPP–2005–0561.

*Sectors Affected:* 9241 Administration of Environmental Quality Programs; 112 Animal Production; 111 Crop Production; 1132 Forest Nurseries and Gathering of Forest Products; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 5617 Services to Buildings and Dwellings; 115 Support Activities for Agriculture and Forestry.

*URL for More Information: http://www.epa.gov/pesticides/health/worker.htm.*

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*RIN:* 2070–AJ20

## EPA

### 133. Pesticides; Agricultural Worker Protection Standard Revisions

*Priority:* Other Significant.

*Legal Authority:* 7 U.S.C. 136; 7 U.S.C. 136w

*CFR Citation:* 40 CFR 170.

*Legal Deadline:* None.

*Abstract:* EPA is developing a proposal under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to revise the Federal regulations guiding agricultural worker protection (40 CFR 170). The changes under consideration are intended to improve agricultural workers' ability to protect themselves from potential exposure to pesticides and pesticide residues. In addition, EPA is proposing to make adjustments to improve and clarify current requirements and facilitate enforcement. Other changes sought are to bring hazard communication requirements more in line with OSHA requirements and make improvements to pesticide safety training, with improved worker safety the intended outcome. The potential need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country, during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations.

*Statement of Need:* Stakeholders have identified gaps in the protections in the current regulation. Revisions to the rule are necessary to better protect agricultural workers and pesticide handlers from unreasonable adverse effects of pesticide exposure.

*Summary of Legal Basis:* 7 U.S.C. 136 through 7 U.S.C. 136y.

*Alternatives:* Wherever deficiencies in the existing regulation could be adequately addressed through non-regulatory means, EPA has done so. For example, the Agency has developed improved training materials that are sector-specific and in multiple languages; improved capacity for outreach; a train-the-trainer program; health care practitioner (HCP) curricula to train HCPs on pesticide exposure identification and treatment; and a bilingual manual for HCPs to use in identifying pesticide poisonings. The Agency also provides financial support for pesticide safety training.

*Anticipated Cost and Benefits:* Incremental costs to agricultural employers are expected to increase as a result of revised requirements for training, notification, and other protections. Incremental costs to commercial pesticide handler employers are expected to decrease. Benefits will accrue to workers' and handlers' health, and improved protection of children is expected to be realized from the proposed revisions.

*Risks:* Agricultural workers and pesticide handlers are at risk from pesticide exposure through their work activities, and may put their families at risk of secondary exposure. In order to address exposure risks to workers, pesticide handlers, and their families, the Agency is proposing revisions identified by stakeholders and the public.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |
| Final Action ..... | To Be Determined | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, State, Tribal.

*Additional Information:* EPA Docket information: EPA–HQ–OPP–2005–0561.

*Sectors Affected:* 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 115 Support Activities for Agriculture and Forestry.

*URL for More Information: http://www.epa.gov/pesticides/health/worker.htm.*

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*RIN:* 2070–AJ22

## EPA

### 134. Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 15 U.S.C. 2697; TSCA sec 601

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Final, Statutory, January 1, 2013.

*Abstract:* In 2008, EPA initiated a proceeding under Toxics Substance and Control Act (TSCA) to investigate risks posed by formaldehyde emitted from pressed wood products. An advance notice of proposed rulemaking (ANPRM) sought to engage stakeholders to contribute to obtaining a better understanding of the available control technologies and approaches, industry practices, and the implementation of California's formaldehyde emission limits. Subsequently, EPA developed an industry survey to obtain more information on these ANPRM topics and continued to assess the hazards of and exposures to formaldehyde emissions from pressed wood products. On July 7, 2010, the Formaldehyde Standards for Composite Wood Products Act was enacted. This law amends TSCA to establish specific formaldehyde emission limits for hardwood plywood, particleboard, and medium-density fiberboard, which limits are identical to the California emission limits for these products. The law further requires EPA to promulgate implementing regulations

by January 1, 2013. This rulemaking covers the mandate for EPA to promulgate regulations to address requirements for accrediting bodies and third-party certifiers. A separate regulatory agenda entry (RIN 2070-tbd) covers the mandate for EPA to promulgate regulations to implement the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States.

*Statement of Need:* EPA is concerned about the human health risks that may be presented by exposure to formaldehyde emissions from composite wood products, because formaldehyde is a probable human carcinogen and an eye, nose, and throat irritant.

*Summary of Legal Basis:* TSCA title VI

*Alternatives:* TSCA title VI establishes national formaldehyde emission limits for hardwood plywood, particleboard, and medium-density fiberboard, and EPA has not been given the authority to change the limits. However, EPA will evaluate various implementation alternatives during the course of this rulemaking.

*Anticipated Cost and Benefits:* EPA is currently evaluating the costs and benefits of this action.

*Risks:* EPA is currently evaluating the risks presented by exposure to formaldehyde emissions in excess of the statutory limits.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/03/08 | 73 FR 73620 |
| ANPRM: Extension of Comment Period. | 01/30/09 | 74 FR 5632 |
| NPRM | 02/00/12 | |
| Final Action | 01/00/13 | |

*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.

*Additional Information:* EPA publication information: ANPRM—*http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064807cabb2;* EPA Docket information: ANPRM stage: EPA–HQ–OPPT–2008–0627; NPRM Stage: EPA–HQ–OPPT–2011–0380

*Sectors Affected:* 325199 All Other Basic Organic Chemical Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 4441 Building Material and Supplies Dealers; 42321 Furniture Merchant Wholesalers; 4421 Furniture Stores; 337 Furniture and Related Product Manufacturing; 42331 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers; 45393 Manufactured (Mobile) Home Dealers; 321991 Manufactured Home (Mobile Home) Manufacturing; 336213 Motor Home Manufacturing; 423390 Other Construction Material Merchant Wholesalers; 325211 Plastics Material and Resin Manufacturing; 321992 Prefabricated Wood Building Manufacturing; 441210 Recreational Vehicle Dealers; 336214 Travel Trailer and Camper Manufacturing; 3212 Veneer, Plywood, and Engineered Wood Product Manufacturing.

*URL for More Information: http://www.epa.gov/opptintr/chemtest/formaldehyde/index.html.*

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*RIN:* 2070–AJ44

## EPA

### 135. Mercury; Regulation of Use in Certain Products

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 15 U.S.C. 2605

*CFR Citation:* 40 CFR 750.

*Legal Deadline:* None.

*Abstract:* Elemental mercury is well documented as a toxic, environmentally persistent substance that is atmospherically transported on a local, regional, and global scale. In addition, mercury can be environmentally transformed into methylmercury, which bioaccumulates, biomagnifies, and is highly toxic. EPA conducted a preliminary analysis of the costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, and made a preliminary judgment that effective and economically feasible alternatives exist. These mercury-containing products include switches, relays/contactors, flame sensors, and button cell batteries. 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:* Elemental mercury is well documented as a toxic, environmentally persistent substance that is atmospherically transported on a local, regional, and global scale. In addition, mercury can be environmentally transformed into methylmercury, which bioaccumulates, biomagnifies, and is highly toxic. Human health risks associated with elemental mercury and methylmercury are well documented. Humans can be exposed to mercury in products directly through inhalation of elemental mercury vapor and indirectly through ingestion of fish contaminated with methylmercury. EPA conducted a preliminary analysis of the costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, and made a preliminary judgment that effective and economically feasible alternatives exist. In its initial analysis 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. EPA also considered 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 conducted a preliminary analysis of the costs, advantages, and disadvantages associated with mercury-free alternatives to certain mercury-containing products, and 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 ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*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.

*Sectors Affected:* 325188 All Other Basic Inorganic Chemical Manufacturing.

*URL for More Information: http://www.epa.gov/mercury/.*

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*RIN:* 2070–AJ46

## EPA

### 136. Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 15 U.S.C. 2682(c)(3)

*CFR Citation:* 40 CFR 745.

*Legal Deadline:* Other, Judicial, April 22, 2010, Advance Notice of Proposed Rulemaking, deadline from settlement agreement.

NPRM, Judicial, June 15, 2012, Deadline from settlement agreement and subsequent renegotiation with litigants.

Final, Judicial, February 15, 2014, Deadline from settlement agreement and subsequent renegotiation with litigants.

*Abstract:* Section 402(c)(3) of the Toxic Substances Control Act (TSCA) requires EPA to regulate renovation or remodeling activities in target housing (most pre-1978 housing), pre-1978 public buildings, and commercial buildings that create lead-based paint hazards. On April 22, 2008, EPA issued a final rule to address lead-based paint hazards created by these activities in target housing and child-occupied facilities built before 1978 (child-occupied facilities are a subset of public and commercial buildings or facilities where children under age 6 spend a great deal of time). The 2008 rule established requirements for 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. This new rulemaking will address renovation or remodeling activities in the remaining buildings described in TSCA section 402(c)(3): Public buildings built before 1978 and commercial buildings that are not child-occupied facilities. On May 6, 2010, EPA announced the commencement of proceedings to propose lead-safe work practices and other requirements for renovations on the exteriors of public and commercial buildings and to determine whether lead-based paint hazards are created by interior renovation, repair, and painting projects in public and commercial buildings. For those renovations in the interiors of public and commercial buildings that create lead-based paint hazards, EPA will propose regulations to address these hazards.

*Statement of Need:* This rulemaking is being undertaken in response to a settlement agreement and is designed to help insure that individuals and firms conducting renovation, repair, and painting activities in and on public and commercial buildings will do so in a way that safeguards the environment and protects the health of building occupants and nearby residents, especially children under 6 years old. Lead is known to cause deleterious health effects on multiple organ systems through diverse mechanisms of action in both adults and children. This array of health effects includes effects on heme biosynthesis and related functions, neurological development and function, reproduction and physical development, kidney function, cardiovascular function, and immune function. EPA has conducted several studies and reviewed additional information that indicates that the renovation of buildings containing lead-based paint can create health hazards in

the form of lead-based paint dust under typical industry work practices.

*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, public buildings built before 1978, and commercial buildings.

*Alternatives:* For those activities that EPA determines create lead-based paint hazards, EPA will evaluate options to address the hazards. These options are likely to include different combinations of work practices and worker training and certification.

*Anticipated Cost and Benefits:* Not yet determined.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/06/10 | 75 FR 24848 |
| ANPRM Comment Period End. | 07/06/10 | |
| NPRM | 06/00/12 | |
| Final Action | 02/00/14 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Additional Information:* EPA publication information: ANPRM—*http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ae7eb8;* EPA Docket information: EPA–HQ–OPPT–2010–0173.

*Sectors Affected:* 236 Construction of Buildings; 921 Executive, Legislative, and Other General Government Support; 561210 Facilities Support Services; 531 Real Estate; 238 Specialty Trade Contractors.

*URL for More Information: http://www.epa.gov/lead/pubs/renovation.htm.*

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*RIN:* 2070–AJ56

## EPA

### 137. Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C. 1321(d)(2); 33 U.S.C. 1321(b)(3); CWA 311(d)(2)

*CFR Citation:* 40 CFR 300; 40 CFR 110.

*Legal Deadline:* None.

*Abstract:* EPA is considering proposing revisions to subpart J of the National Contingency Plan (NCP). The Clean Water Act requires EPA to prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. Under subpart J, respondents wishing to add a product to the Product Schedule must submit technical product data to EPA. The Agency is considering revisions to subpart J to clarify and/or change the effectiveness and toxicity testing protocols required for adding a product to the Schedule. These changes, if finalized, will help ensure protection of the environment when these products are used to clean up and mitigate oil spills (1) into or upon navigable waters, adjoining shorelines, or the waters of the contiguous zone, or (2) which may affect natural resources belonging to or under the exclusive management authority of the United States. Further, the Agency is considering proposed changes to 40 CFR 110.4 regarding the use of dispersants.

*Statement of Need:* The unprecedented use of dispersants on the surface and in the subsea during the 2010 Deepwater Horizon oil spill in the Gulf of Mexico raised many questions about dispersant efficacy, toxicity, environmental fate, and monitoring. The public and officials working at local, State, and Federal levels expressed concerns regarding the effects of dispersant use on the ecosystem. These concerns require a review of the product toxicity and efficacy testing and application in the current subpart J regulatory requirements. Additionally, the large-scale submission of oil-mitigating technologies through the Interagency Alternative Technology Assessment Program (IATAP) as a result of this incident also highlights the need to re-evaluate the current subpart J regulations, particularly the technical data requirements.

*Summary of Legal Basis:* The Federal Water Pollution Control Act (FWPCA) requires the President to prepare and publish a National Contingency Plan (NCP) for the removal of oil and hazardous substances. In turn, the President delegated the authority to implement this section of the FWPCA to EPA through Executive Order 12777 (56 FR 54757; Oct. 22, 1991). Section 311(d)(2)(G)(i) of the FWPCA (a.k.a., Clean Water Act), as amended by the OPA, requires that the NCP include a schedule identifying ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out'' the NCP. Currently, the use of dispersants, other chemicals, and other oil spill mitigating devices and substances (*e.g.,* bioremediation agents) to respond to oil spills in U.S. waters is governed by subpart J of the NCP (40 CFR part 300 series 900).

*Alternatives:* To be determined.

*Anticipated Cost and Benefits:* To be determined.

*Risks:* To be determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/12 | |
| Final Action | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Additional Information:* Includes Retrospective Review under E.O.13563.

*Sectors Affected:* 3251 Basic Chemical Manufacturing; 325 Chemical Manufacturing; 3259 Other Chemical Product and Preparation Manufacturing; 54 Professional, Scientific, and Technical Services.

*URL for More Information: www.epa.gov/oilspill.*

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*RIN:* 2050–AE87

## EPA

### 138. Stormwater Regulations Revision To Address Discharges From Developed Sites

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 33 U.S.C. 1251 *et seq.*

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* NPRM, Judicial, December 15, 2011, Chesapeake Bay Settlement Agreement, May 10, 2010, *Fowler* v. *U.S. EPA,* No. 1:09–CV–00005–CKK (D. D.C) modified by agreement 10/04/2011. Final, Judicial, November 19, 2012, Chesapeake Bay Settlement Agreement, May 10, 2010, *Fowler* v. *U.S. EPA,* No. 1:09–CV–00005–CKK (D. D.C.).

*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. EPA may take other actions to implement improved control of stormwater pollution and more efficient rainwater use. The Phase I and Phase II MS4 regulations might also be combined and amended, and may include provisions for better managing existing discharges.

*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 | 01/00/12 | |
| Final Action | 11/00/12 | |

*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.

*URL for More Information:* *www.epa.gov/npdes/stormwater/rulemaking.*

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*RIN:* 2040–AF13

## EPA

### 139. Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 33 U.S.C. 1311; 33 U.S.C. 1314; 33 U.S.C. 1316; 33 U.S.C. 1317; 33 U.S.C. 1318; 33 U.S.C. 1342; 33 U.S.C. 1361

*CFR Citation:* 40 CFR 423 revision.

*Legal Deadline:* NPRM, Judicial, July 23, 2012, Consent Decree. Final, Judicial, January 31, 2014, Consent Decree.

*Abstract:* EPA establishes national technology-based regulations, called effluent guidelines, to reduce discharges of pollutants from industries to waters of the U.S. These requirements are incorporated into National Pollutant Discharge Elimination System (NPDES) discharge permits issued by EPA and States, and through the national pretreatment program. The steam electric effluent guidelines apply to steam electric power plants using nuclear or fossil fuels, such as coal, oil, and natural gas. There are about 1,200 nuclear- and fossil-fueled steam electric power plants nationwide; approximately 500 of these power plants are coal fired. In a study completed in 2009, EPA found that the current regulations, which were last updated in 1982, do not adequately address the pollutants being discharged and have not kept pace with changes that have occurred in the electric power industry over the last 3 decades. The rulemaking will address discharges from ash ponds and flue gas desulfurization (FGD) air pollution controls, as well as other power plant waste streams. Power plant discharges can have major impacts on water quality, including reduced organism abundance and species diversity, contamination of drinking water sources, and other effects. Pollutants of concern include metals (*e.g.,* mercury, arsenic and selenium), nutrients, and total dissolved solids.

*Statement of Need:* EPA's decision to proceed with a rulemaking was announced on September 15, 2009. EPA reviewed wastewater discharges from power plants and the treatment technologies available to reduce pollutant discharges, which demonstrated the need to update the current effluent guidelines (40 CFR 423). The current regulations, which were last updated in 1982, do not adequately address the pollutants being discharged and have not kept pace with changes that have occurred in the electric power industry over the last 3 decades. Steam electric power plants are responsible for a significant amount of the toxic pollutant loadings discharged to surface waters by point sources, and coal ash ponds and flue gas desulfurization (FGD) systems are the source of much of these pollutants.

*Summary of Legal Basis:* Section 301(b)(2) of the Clean Water Act requires EPA to promulgate effluent limitations for categories of point sources, using technology-based standards, that govern the sources' discharge of certain pollutants. 33 U.S.C. section 1311(b). Section 304(b) of the Act directs EPA to develop effluent limitations guidelines (ELGs) that identify certain technologies and control measures available to achieve effluent reductions for each point source category, specifying factors to be taken into account in identifying those technologies and control measures. 33 U.S.C. section 1314(b). Since the 1970s, EPA has formulated effluent limitations and ELGs in tandem through a single administrative process. *Am. Frozen Food Inst.* v. *Train,* 539 F.2d 107 (D.C. Cir. 1976). The CWA also requires EPA to perform an annual review of existing ELGs and to revise them, if appropriate. 33 U.S.C. section 1314(b); see also 33 U.S.C. section 1314(m)(1)(A). EPA originally established effluent limitations and guidelines for the steam electric generating industry in 1974 and last updated them in 1982. 47 FR 52290

(Nov. 19, 1982). As described above, EPA determined the existing regulations do not adequately address the pollutants being discharged and that revisions are appropriate.

*Alternatives:* To be determined.

*Anticipated Cost and Benefits*: To be determined.

*Risks:* To be determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/12 | |
| Final Action | 03/00/14 | |

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Additional Information:* EPA Docket information: EPA–HQ–OW–2009–0819.

*Sectors Affected:* 221112 Fossil Fuel Electric Power Generation; 221113 Nuclear Electric Power Generation.

*URL for More Information: http://water.epa.gov/scitech/wastetech/guide/steam_index.cfm.*

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*RIN:* 2040–AF14

## EPA

### 140. National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C. 1251(a); 33 U.S.C. 1311(a); 33 U.S.C. 1342; 33 U.S.C. 1362(14); 33 U.S.C. 1318(a); 33 U.S.C. 1319

*CFR Citation:* 40 CFR 122.

*Legal Deadline:* None.

*Abstract:* EPA proposed a regulation that would collect information about concentrated animal feeding operations (CAFOs). CAFOs are a significant source of nutrient pollution and pathogens in U.S. watersheds. The information that would be collected under the proposed rule would allow EPA to increase water quality protection through better implementation of the NPDES permitting program for CAFOs. The proposed regulation would apply to all permitted and unpermitted CAFOs. EPA co-proposed a regulation that would only collect information from CAFOs in targeted areas, if EPA determined such collection was necessary based on specified factors, such as water quality concerns.

*Statement of Need:* The proposed rule would collect facility-specific information about CAFOs to help inform watershed management activities. This will enhance EPA's ability to effectively implement the NPDES program.

*Summary of Legal Basis:* The proposed rule would collect facility-specific information about CAFOs to help inform watershed management activities. This will enhance EPA's ability to effectively implement the NPDES program and reduce pathogens from CAFOs.

*Alternatives:* EPA proposed a number of alternatives including relying on existing information to collect information from CAFOs.

*Anticipated Cost and Benefits:* Not yet determined.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/11 | 76 FR 65431 |
| NPRM Comment Period End. | 01/19/12 | |
| Final Action | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

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*RIN:* 2040–AF22

## EPA

### 141. National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C. 1251 *et seq.*

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* EPA plans to propose regulations that would update specific elements of the existing National Pollutant Discharge Elimination System (NPDES) in order to better harmonize regulations and application forms, improve permit documentation and transparency and provide clarifications to the existing regulations. In this effort, EPA plans to address application, permitting, monitoring, and reporting requirements that have become obsolete or outdated due to programmatic, technical, or other changes that have occurred over the past 35 years. Specifically, EPA plans to focus on revising the NPDES permit application forms to specifically include all final Agency data standards, improving the consistency between the application forms, and updating the applications to better reflect current program practices, and specifically to incorporate new program areas into the forms (*e.g.,* Clean Water Act section 316(b) requirements for cooling water intake structures). EPA also plans to address other program elements, including permit documentation, EPA State permit objection, and public participation procedures to improve the quality and transparency of permit development. As an example of a regulation which could be proposed to change to reduce burden, as well as improve transparency and public access to information, EPA is considering whether to revise the public notice requirements to allow a State to post notices of draft NPDES permits and other permit actions under the Clean Water Act on their State agency Web sites in lieu of traditional newspaper posting.

*Statement of Need:* Certain application, permitting, monitoring, and reporting requirements need to be updated to reflect programmatic and technical changes that have occurred over the past 35 years.

*Summary of Legal Basis:* 33 U.S.C. 1251 *et seq.*

*Alternatives:* Not yet determined.

Anticipated Cost and Benefits: Not yet determined.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/12 | |
| Final Action | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal, Local, State, Tribal.

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*RIN:* 2040–AF25

## EPA

*Final Rule Stage*

### 142. Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 7408; 42 U.S.C. 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 ($NO_2$). On May 22, 1996, EPA published a final decision that revisions of the primary and secondary NAAQS for sulfur dioxide ($SO_2$) 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 $NO_2$ air quality criteria with a call for information in the **Federal Register** (FR). On May 3, 2006, ORD initiated the current periodic review of $SO_2$ 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 $NO_2$ and $SO_2$. This decision derives from the fact that $NO_2$, $SO_2$, 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 $SO_2$ and $NO_2$ were reviewed separately. The ISA, REA, and PAD have been completed, and a notice of proposed rulemaking was signed on July 12, 2011. The court ordered date for the final rule to be signed is March 20, 2012.

*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 or ecosystem effects.

*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 developing the plan for conducting the cost and benefit analysis will generally start 1½ 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 ..... | 08/01/11 | 76 FR 46084 |
| Notice—Public Meeting. | 08/08/11 | 76 FR 48073 |
| Final Action ..... | 04/00/12 | |

*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/#!document Detail;D=EPA_FRDOC_0001–10843;* EPA Docket information: EPA–HQ–OAR–2007–1145.

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*RIN:* 2060–AO72

## EPA

### 143. National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect State, local or tribal governments and the private sector.

*Legal Authority:* Clean Air Act sec 112(d); Clean Air Act sec 111(b)

*CFR Citation:* 40 CFR 63; 40 CFR 60, subpart Da.

*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, December 16, 2011, No later than December 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. The rule was proposed on May 3, 2011 (76 FR 24976).

Under this action, EPA also proposed amendments to the criteria pollutant new source performance standards (NSPS) for utilities. On February 27, 2006, EPA promulgated amendments to the utility NSPS and was subsequently sued by multiple state attorney general offices and environmental organizations. On September 2, 2009, EPA was granted a voluntary remand without vacatur of the 2006 amendments. Combining the two rules in a single action provides interested parties the opportunity to provide comments on the combined requirements of the two rules. It also avoids double-counting either costs or environmental benefits of the separate rules.

*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:* EPA estimates that this final rule will yield annual monetized benefits (in 2007$) of between $37 to $90 billion using a 3 percent discount rate and $33 to $81 billion using a 7 percent discount rate. The great majority of the estimates are attributable to co-benefits from 4,200 to 11,000 fewer $PM_{2.5}$-related premature mortalities. The monetized benefits from reductions in mercury emissions, calculated only for children exposed to recreationally caught freshwater fish, are expected to be $0.004 to $0.006 billion in 2016 using a 3 percent discount rate and $0.0005 to $0.001 billion using a 7 percent discount rate. The annual social costs, approximated by the compliance costs, are $9.6 billion (2007$) and the annual monetized net benefits are $27 to $80 billion using 3 percent discount rate or $24 to $71 billion using a 7 percent discount rate. The benefits outweigh costs by between 3 to 1 or 9 to 1 depending on the benefit estimate and discount rate used.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Public Hearing Notice. | 04/28/11 | 76 FR 23768 |
| NPRM ..... | 05/03/11 | 76 FR 24976 |
| NPRM Comment Period Extended. | 07/01/11 | 76 FR 38590 |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Federal, Local, State, Tribal.

*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.

*Additional Information:* EPA publication information: NPRM—*http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2009-0234-2910;* EPA Docket information: EPA–HQ–OAR–2009–0234, EPA–HQ–OAR–2005–0031.

*Sectors Affected:* 221112 Fossil Fuel Electric Power Generation.

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*RIN:* 2060–AP52

## EPA

### 144. Oil and Natural Gas Sector—New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

*Priority:* Economically Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 7411; 42 U.S.C. 7412

*CFR Citation:* 40 CFR 60; 40 CFR 63.

*Legal Deadline:* NPRM, Judicial, July 28, 2011, Consent Decree entered 02/04/2010, 3-month extension granted 1/11/11, new 3-month extension granted on 4/18/2011. Final, Judicial, April 3, 2012, Consent Decree deadline.

*Abstract:* New Source Performance Standards (NSPS) regulate criteria pollutants from new stationary sources. Two NSPS (subparts KKK and LLL) for the oil and natural gas industry were promulgated in 1985. Section 111 of the Clean Air Act (CAA) requires that NSPS be reviewed every 8 years and revised as appropriate. National Emission Standards for Hazardous Air Pollutants (NESHAP) regulate hazardous air pollutants (HAP) from new and existing stationary sources. Two NESHAP (subparts HH and HHH) for the oil and natural gas industry were promulgated in 1999. Section 112 of the CAA requires that NESHAP be reviewed every 8 years and revised as appropriate. In addition, section 112(f) requires that each category regulated under section 112(d) be reviewed to ensure that such regulations provide for an ample margin of safety to protect public health (*i.e.,* address ''residual risk'' for each category). This action will include the required reviews under sections 111 and 112. Because the existing regulations are narrow in scope, the reviews will include consideration of broadening the scope of operations and emission points covered by the NSPS and MACT.

*Statement of Need:* Not yet determined.

*Summary of Legal Basis:* Not yet determined.

*Alternatives:* Not yet determined.

*Anticipated Cost and Benefits:* For the NSPS, the annual costs are estimated at $738 million. After taking into account the value of the natural gas and condensate recovered, there would be a net savings of $45 million annually. For the NESHAP, the annual costs of compliance will be $16 million. EPA estimates benefits for the VOCs 540,000 tons per year, or about 25 percent reduction overall; for methane, 3.4 million tpy, which is equal to 65 million metric tons of carbon dioxide equivalent (CO2e), which is a reduction of about 26

percent; and for air toxics, 38,000 tons, or a reduction of nearly 30 percent.

*Risks:* Not yet determined.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/23/11 | 76 FR 52738 |
| Notice—Public Meeting. | 08/26/11 | 76 FR 53371 |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* EPA publication information: NPRM—*http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2010-0505-0002;* EPA Docket information: EPA–HQ–OAR–2010–0505.

*URL for More Information: http://epa.gov/airquality/oilandgas/.*

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*RIN:* 2060–AP76

## EPA

### 145. Criteria and Standards for Cooling Water Intake Structures

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Pub. L. 104–4.

*Legal Authority:* CWA 101; CWA 301; CWA 304; CWA 308; CWA 316; CWA 401; CWA 402; CWA 501; CWA 510

*CFR Citation:* 40 CFR 122; 40 CFR 125.

*Legal Deadline:* NPRM, Judicial, March 28, 2011.

Final, Judicial, July 27, 2012.

*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. 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 the Phase II rule 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. In July 2010, the U.S. Court of Appeals for the Fifth Circuit issued a decision upholding EPA's rule for new offshore oil and gas extraction facilities. Further, the court granted the request of EPA and environmental petitioners in the case to remand the existing facility portion of the rule back to the Agency for further rulemaking. EPA expects this new rulemaking would apply to the approximately 1,200 existing electric generating and manufacturing plants. The Fifth Circuit also affirmed that EPA may consider costs in relation to benefits but is not required to do so.

EPA entered into a settlement with the plaintiffs in two lawsuits related to section 316(b) rulemakings. Under the settlement agreement, as modified, EPA agreed to sign a notice of a proposed rulemaking implementing section 316(b) of the CWA at existing facilities no later than March 28, 2011, and to sign a notice taking final action on the proposed rule no later than July 27, 2012. Plaintiffs agreed to seek dismissal of both their suits, subject to a request to reopen the Cronin proceeding in the event EPA failed to meet the agreed deadlines.

EPA's proposed regulation includes uniform controls at all existing facilities to prevent fish from being trapped against screens (impingement), site-specific controls for existing facilities other than new units to prevent fish from being drawn through cooling systems (entrainment), and uniform controls equivalent to closed cycle cooling for new units at existing facilities (also entrainment). Other regulatory options analyzed included similar uniform impingement controls and progressively more stringent requirements for entrainment controls. Another option considered would impose the uniform impingement controls only for facilities withdrawing 50 million or more gallons per day of cooling water, with site-specific impingement controls for facilities withdrawing less than 50 million gallons per day.

*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, and costs have been updated to 2009. The annual social costs associated with EPA's proposed regulation are $384 million, plus an additional $15 million in costs associated with the new units provision. The annual social costs of the other options ranged from $327 million to $4.63 billion. EPA monetized only a portion of the expected annual benefits of the rule, amounting to $18 million. The monetized benefits for the other

options ranged from $17 to $126 million. EPA is also conducting a stated preference survey to provide a more comprehensive estimate of the monetized benefits and expects to publish a notice of data availability with these results around the end of 2011.

*Risks:* Cooling water intake structures may pose significant risks for aquatic ecosystems.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/20/11 | 76 FR 22174 |
| NPRM Comment Period End. | 07/19/11 | |
| Reopening Public Comment Period. | 07/20/11 | 76 FR 43230 |
| Reopening Comment Period End. | 08/18/11 | |
| Final Action | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, Local, State.

*Additional Information:* EPA publication information: NPRM—*http://www.regulations.gov/#!documentDetail;* EPA Docket information: EPA–HQ–OW–2008–0667.

*Sectors Affected:* 336412 Aircraft Engine and Engine Parts Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 321999 All Other Miscellaneous Wood Product Manufacturing; 324199 All Other Petroleum and Coal Products Manufacturing; 326299 All Other Rubber Product Manufacturing; 331521 Aluminum Die-Casting Foundries; 331524 Aluminum Foundries (except Die-Casting); 331315 Aluminum Sheet, Plate, and Foil Manufacturing; 311313 Beet Sugar Manufacturing; 31321 Broadwoven Fabric Mills; 311312 Cane Sugar Refining; 32731 Cement Manufacturing; 61131 Colleges, Universities, and Professional Schools; 33312 Construction Machinery Manufacturing; 333922 Conveyor and Conveying Equipment Manufacturing; 331525 Copper Foundries (except Die-Casting); 339914 Costume Jewelry and Novelty Manufacturing; 211111 Crude Petroleum and Natural Gas Extraction; 321912 Cut Stock, Resawing Lumber, and Planing; 332211 Cutlery and Flatware (except Precious) Manufacturing; 31214 Distilleries; 221121 Electric Bulk Power Transmission and Control; 221122 Electric Power Distribution; 331112 Electrometallurgical Ferroalloy Product Manufacturing; 31332 Fabric Coating Mills; 333111 Farm Machinery and Equipment Manufacturing; 311225 Fats and Oils Refining and Blending; 221112 Fossil Fuel Electric Power Generation; 332212 Hand and Edge Tool Manufacturing; 33251 Hardware Manufacturing; 221111 Hydroelectric Power Generation; 21221 Iron Ore Mining; 331111 Iron and Steel Mills; 22121 Natural Gas Distribution; 211112 Natural Gas Liquid Extraction; 221113 Nuclear Electric Power Generation; 332323 Ornamental and Architectural Metal Work Manufacturing; 221119 Other Electric Power Generation; 332618 Other Fabricated Wire Product Manufacturing; 332439 Other Metal Container Manufacturing; 332919 Other Metal Valve and Pipe Fitting Manufacturing; 321918 Other Millwork (including Flooring); 312229 Other Tobacco Product Manufacturing; 333923 Overhead Traveling Crane, Hoist, and Monorail System Manufacturing; 32212 Paper Mills; 32213 Paperboard Mills; 32411 Petroleum Refineries; 325992 Photographic Film, Paper, Plate, and Chemical Manufacturing; 333315 Photographic and Photocopying Equipment Manufacturing; 212391 Potash, Soda, and Borate Mineral Mining; 332117 Powder Metallurgy Part Manufacturing; 331312 Primary Aluminum Production; 331419 Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum); 3221 Pulp, Paper, and Paperboard Mills; 333911 Pump and Pumping Equipment Manufacturing; 33651 Railroad Rolling Stock Manufacturing; 321219 Reconstituted Wood Product Manufacturing; 54171 Research and Development in the Physical, Engineering, and Life Sciences; 326192 Resilient Floor Covering Manufacturing; 331221 Rolled Steel Shape Manufacturing; 322291 Sanitary Paper Product Manufacturing; 321113 Sawmills; 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); 337215 Showcase, Partition, Shelving, and Locker Manufacturing; 321212 Softwood Veneer and Plywood Manufacturing; 311222 Soybean Processing; 22133 Steam and Air-Conditioning Supply; 331222 Steel Wire Drawing; 111991 Sugar Beet Farming; 11193 Sugarcane Farming; 311311 Sugarcane Mills; 326211 Tire Manufacturing (except Retreading); 31221 Tobacco Stemming and Redrying; 311221 Wet Corn Milling.

*URL for More Information: http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/index.cfm.*

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*RIN:* 2040–AE95

BILLING CODE 6560–50–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

### Statement of Regulatory and Deregulatory 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 (prohibits 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 and local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, disability, or genetic information).

The item in this Regulatory Plan is entitled ''Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act.'' This item previously appeared as two separate items titled ''Disparate Impact Burden of Proof Under the Age Discrimination in Employment Act'' (RIN 3046–AA76) and ''Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act'' (RIN 3046–AA87). These two items have been merged, and

a final rule will be issued addressing the issues covered in both (appearing under RIN 3046–AA76).

Prior to the Supreme Court's decision in *Smith* v. *City of Jackson,* 544 U.S. 228 (2005), Commission regulations interpreted the ADEA to require employers to prove that actions that had an age-based disparate impact were justified as a business necessity. Although the Court, in *Smith,* agreed with the EEOC that disparate impact claims were recognizable under the ADEA, it held that the defense was not business necessity but reasonable factors other than age (RFOA). The Smith Court did not specify whether the employer or employee bore the burden of proof on the RFOA defense.

On March 31, 2008, the Commission issued a Notice of Proposed Rulemaking (NPRM) to conform Commission ADEA regulations to *Smith,* also taking the position that the employer bore the burden of proving the defense. Because current EEOC regulations do not define the meaning of ''RFOA,'' the NPRM asked whether regulations should provide more information on the meaning of ''reasonable factors other than age'' and, if so, what the regulations should say. 73 FR 16807 (March 31, 2008). Subsequently, the Supreme Court held in *Meacham* v. *Knolls Atomic Laboratory,* 554 U.S. 84, 128 S. Ct. 2395 (2008), that employers have the RFOA burdens of production and persuasion. After consideration of the public comments, and in light of the Supreme Court decisions, the Commission issued a second NPRM on February 18, 2010, to address the scope of the RFOA defense. A final rule will be issued addressing the topics covered in both NPRMs and conforming to both *Smith* and *Meacham.* The rule will not have a significant impact on small businesses because, among other reasons, their employment actions generally will not affect individuals in numbers sufficient to raise questions of disparate impact.

This item is highlighted in EEOC's Plan for Retrospective Review of Significant Regulations, developed pursuant to Executive Order 13563.

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.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the EEOC's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.eeoc.gov/laws/regulations/retro_review_plan_final.cfm.*

*RIN:* 3046–AA76

Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act

This rulemaking is not expected to alter burdens on small businesses.

*RIN:* 3046–AA73

Federal Sector Equal Employment Opportunity Complaint Processing

This rulemaking does not apply to small businesses. It applies only to the Federal Government.

## EEOC

*Final Rule Stage*

### 146. Disparate Impact and Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act

*Priority:* Other Significant.

*Legal Authority:* 29 U.S.C. 628

*CFR Citation:* 29 CFR 1625.7(d).

*Legal Deadline:* None.

*Abstract:* Prior to the Supreme Court's decision in *Smith* v. *City of Jackson,* 544 U.S. 228 (2005), Commission regulations interpreted the ADEA to require employers to prove that actions that had an age-based disparate impact were justified as a business necessity. Although the Court, in Smith, agreed with the EEOC that disparate impact claims were cognizable under the ADEA, it held that the defense was not business necessity but reasonable factors other than age (RFOA). The Smith Court did not specify whether the employer or employee bore the burden of proof on the RFOA defense.

On March 31, 2008, the Commission issued a Notice of Proposed Rulemaking (NPRM) to conform Commission ADEA regulations to Smith, also taking the position that the employer bore the burden of proving the defense. Because current EEOC regulations do not define the meaning of ''RFOA,'' the NPRM also asked whether regulations should provide more information on the meaning of ''reasonable factors other than age'' and, if so, what the regulations should say. 73 FR 16807 (March 31, 2008). Subsequently, the Supreme Court held in *Meacham* v. *Knolls Atomic Laboratory,* 554 U.S. 84, 128 S. Ct. 2395 (2008), that employers have the RFOA burdens of production and persuasion. After consideration of the public comments, and in light of the Supreme Court decisions, the Commission issued a second NPRM on February 18, 2010 to address the scope of the RFOA defense. A final rule will be issued addressing the issues covered in both NPRMs and conforming to both Smith and Meacham.

The RIN associated with the NPRM titled ''Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act'' (RIN 3046–AA87) has been merged with this item (RIN 3046–AA76), which will be the RIN used to identify the final rule.

*Statement of Need:* Current EEOC regulations interpret the ADEA as prohibiting an employment practice that has a disparate impact on individuals within the protected age group unless it is justified as a business necessity. The Supreme Court's holding in *Smith* v. *City of Jackson* validated the Commission's position that disparate impact analysis applies in ADEA cases. The holding, however, differed from the Commission's position that the business necessity test was the appropriate standard for determining the lawfulness of a practice that had an age-based disparate impact. The EEOC is revising its regulation to reflect the Smith decision. Moreover, as noted above, a related item (RIN #3046–AA87) entitled ''Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act'' has been merged with this item. In this final rule, the EEOC is also revising its regulations to address the scope of the RFOA defense.

*Summary of Legal Basis:* The ADEA authorizes the EEOC ''to issue such rules and regulations it may consider necessary or appropriate for carrying out this chapter * * *.'' 29 U.S.C. section 628.

*Alternatives:* The Commission has considered all alternatives proposed by the public comments.

*Anticipated Cost and Benefits:* Based on the information currently available, the EEOC does not anticipate that the rule will have significant economic effects. The purpose of the rule is to help explain the implications of recent Supreme Court decisions and the type of conduct that would support an RFOA defense in court. It therefore does not directly require any action on the part of covered entities.

The regulation makes clear that the employer's burden is to prove the RFOA, rather than the more stringent business necessity, defense. Further, the rule instructs covered entities what to do if they want to ensure that their practices are based on reasonable factors other than age. The rule does not expand the coverage of the ADEA to additional employers or employees, and does not include reporting, recordkeeping, or other requirements for compliance. Costs would result primarily from voluntary modifications to covered entities' business practices made to protect against disparate-impact liability. Modifications may include performing disparate impact analyses of business practices before they are adopted, providing guidance to decisionmakers on how to implement the practice, and evaluating other options to mitigate harm. The costs will be minimal, because these actions are required, for purposes of establishing the RFOA defense, only to the extent that a reasonable employer would perform them under the circumstances. Many covered entities already routinely perform them. To the extent that the regulation motivates employers to take additional actions, free resources minimize the cost of doing so.

This revision, informed by the comments of stakeholders, will be beneficial to courts, employers, and employees seeking to interpret, understand, and comply with the ADEA.

*Risks:* The rule does not affect risks to public health, safety, or the environment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/31/08 | 73 FR 16807 |
| NPRM Comment Period End. | 05/30/08 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses, Governmental Jurisdictions, Organizations.

*Government Levels Affected:* Federal, Local, State, Tribal.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

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*Related RIN:* Related to 3046–AA87.

*RIN:* 3046–AA76

BILLING CODE 6570–01–P

## 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 or Council). 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 Act. The FSOC consists of 10 voting members and 5 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 October 2011, the FSOC issued a revised notice of proposed rulemaking with guidance on the framework that the Council will apply when considering the designation of nonbank financial companies that will be subject to consolidated supervision by the Federal Reserve and enhanced prudential standards. In fiscal year 2012, the Council will approve a rule, which will be issued by the Secretary of the Treasury, outlining an assessment schedule to collect assessments from bank holding companies with greater than $50bn in total assets and non-bank financial companies supervised by the FRB, to provide for the total expenses of the Office of Financial Research and the Council. Additionally, the Council will issue a final rule to implement the Freedom of Information Act that will set forth procedures for requesting access to FSOC records.

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–P

## 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 organization 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' greatest management challenge. PBS' 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 and 13563 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; (3) identifying, evaluating, and promoting best practices to improve efficiency of management processes; and (4) performing ongoing analysis if existing rules that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. In regard to the retrospective analysis of existing rules, GSA's plan (dated Aug. 18, 2011) has been approved by OMB.

OGP's policy regulations are described in the following subsections:

Office of Travel, Transportation, and Asset Management (Federal Travel Regulation)

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 complete versions of the FTR 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.

Office of Travel, Transportation, and Asset Management (Federal Management Regulation)

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), and 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.

Office of Acquisition Policy (Federal Acquisition Regulation and GSA Acquisition Regulation Manual)

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. 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

In fiscal year 2012, GSA plans 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 goods shipments; and
- Removing the Privately Owned Vehicle (POV) rates from the FTR; amending reimbursement for employees staying in their privately owned homes/condos while on TDY.

FMR Regulatory Priorities

In fiscal year 2012, GSA plans 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'';
- Migrating the provisions of the Federal Property Management Regulations (FPMR) regarding purchase of new motor vehicles to the FMR;
- Migrating the provisions of the Interagency Fleet Management Systems from the Federal Property Management Regulations (FPMR) into the FMR;
- Incorporating the requirements of the Presidential Memorandum on Federal Fleet Performance of May 24, 2011, that all agencies develop annual vehicle allocation methodologies to rightsize their fleets and that by fiscal year 2015 all light duty vehicles acquired be alternatively fueled;
- 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;
- Publishing 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 (policies began rulemaking process in fiscal year 2011);
- Removing aircraft, aircraft-related parts, fire control equipment, and guided missiles from the exchange/sale prohibited list; and
- Migrating supply and procurement policy from the FPMR to the FMR.

GSAR Regulatory Priorities

GSA plans, in fiscal year 2012, 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.

Specific GSAR cases that the agency plans to address in FY 2012 and 2013 include:

- The rewrite of GSAM part 515, Contracting by Negotiation.
- The rewrite of GSAM part 538, Federal Supply Schedule Contracting.
- The rewrite of GSAM part 536, Construction and A/E Contracts.

These cases are more fully described in the Agency's approved Final Plan for Retrospective Analysis of Existing Rules (Aug. 18, 2011), created in response to Executive Order 13563.

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. In addition, GSA extensively utilizes its regional resources, within FAS and PBS, to provide grass-roots outreach to small business concerns, through hosting such outreach events, or participating in a vast array of other similar presentations hosted by others.

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

GSA plans to publish FTR Case 2011–308; Payment of Expenses Connected with the Death of Certain Employees in FY 2012. Presidential Memorandum ''Delegation Under Section 2(a) of the Special Agent Samuel Hicks Families of Fallen Heroes Act'', dated September 12, 2011, delegates to the Administrator of General Services the authority to issues regulations under Public Law 111–178, the Special Agent Samuel Hicks Families of Fallen Heroes Act, codified at 5 U.S.C. 5724d, relating to the payment of certain expenses when a covered employee dies as a result of injuries sustained in the performance of his or her official duties. GSA is amending the FTR to establish policy for the transportation of the immediate family, household goods, personal effects, and one privately owned vehicle of a covered employee whose death occurred as a result of personal injury sustained while in the performance of the employee's duty as defined by the agency.

Regulation Required by Office of Federal Procurement Policy (OFPP)

A FAR case will be necessary to implement OFPP Policy Letter 11–01; Performance of Inherently Governmental and Critical Functions.'' Updates will be provided in the Spring Regulatory Agenda.

*III. Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (January 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the

Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *www.gsa.gov/improvingregulations.*

FAR Rules

• 9000–AL93 FAR Case 2007–012; Requirements for Acquisitions Pursuant to Multiple-Award Contracts; yes, this rule increases competition which will benefit small businesses.

• 9000–AL46 FAR Case 2008–025; Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions; no specific impact on small businesses.

• 9000–AL82 FAR Case 2011–001; Organizational Conflicts of Interest; no specific impact on small businesses.

• 9000–AL88 FAR Case 2011–004; Socioeconomic Program Parity; this rule, implementing Section 1347 of the Small Business Jobs Act of 2010, specifically impacts small businesses; however, no overall negative impact is expected.

• 9000–AM12 FAR Case 2011–024; Set-Asides for Small Business; yes, this rule, implementing Section 1331 of the Small Business Jobs Act of 2010, will increase opportunities for small business contractors authorizing agencies to set aside more work for small businesses under multiple award contracts.

GSAR Rules

• 3090–A177 GSAR Case 2006–G507; Rewrite of GSAR Part 538, Federal Supply Schedule Contracting.

• 3090–A176 GSAR Case 2008–G506; Rewrite of GSAR Part 515, Contracting by Negotiation.

• 3090–A181 GSAR Case 2008–G509; Rewrite of GSAR Part 536, Construction and A/E Contracts.

**Note:** The GSAR cases do not specifically provide relief to small businesses or additional administrative flexibility to state, local or tribal governments. However, we do believe that updating and clarifying the regulation will benefit all contractors (and Schedule users).

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

*Statement of Regulatory Priorities*

NASA continues to implement programs according to its 2011 Strategic Plan, released in February 2011. NASA's mission is to ''Drive advances in science, technology, and exploration to enhance knowledge, education, innovation, economic vitality, and stewardship of the Earth.'' The 2011 Strategic Plan guides NASA's program activities through a framework of the following six strategic goals:

• 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, generating tremendous results and benefits for humankind. NASA will continue to push scientific and technical boundaries in pursuing of these goals.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. NASA will review and update the entire NFS. During the second half of FY 2012 with projected completion of January 2013, NASA will report these regulatory actions in the spring 2012 Unified Agenda. Concurrently, we will continue to make routine changes to the NFS to implement NASA initiatives and Federal procurement policy.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13579 ''Regulation and Independent Regulatory Agencies'' (Jul. 11, 2011), the following Regulation Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in NASA's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on *Reginfo.gov* in the Completed Actions section for NASA. These rulemakings can also be found on *Regulations.gov.* NASA's final plans can be found at *http://www.nasa.gov/open.*

| Regulation Identifier No. | Title |
|---|---|
| 2700–AD56 | NASA Grant and Cooperative Agreement Handbook, Delete Requirement for U.S. Citizenship. |
| 2700–AD60 | NASA Grant and Cooperative Agreement: Change Procedures for Letter of Credit Advance Payments. |
| 2700–AD79 | NASA Grant Handbook, Payment of Profit and/or Management Expenses on Cooperative Agreements. |
| 2700–AD81 | Non Procurement Rule, Suspension and Debarment. |
| 2700–AD82 | NASA, Contract Adjustment Board. |
| 2700–AD94 | NASA Grant and Cooperative Agreement Handbook: Update, Streamline and Reorganize. |
| 2700–AD96 | Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government. |
| 2700–AD97 | Small Business Policy. |
| 2700–AD98 | Space Flight. |
| 2700–AD51 | Inventions and Contributions. |
| 2700–AD61 | Information Security Protection. |
| 2700–AD63 | Claims for Patent and Copyright Infringement. |
| 2700–AD71 | Procedures for Implementing the National Environmental Policy Act. |
| 2700–AD72 | Tracking and Data Relay Satellite System. |
| 2700–AD78 | Delegation of authority to license the use of Centennial of Flight Commission name, Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare, and Care and use of animals in the conduct of NASA activities—REPEALS. |
| 2700–AD83 | Collection of Civil Claims of the United States Arising Out of the Activities of NASA. |

| Regulation Identifier No. | Title |
|---|---|
| 2700–AD84 | Research Misconduct. |
| 2700–AD85 | Accessibility Standards for New Construction and Alterations in Federally-Assisted Programs. |
| 2700–AD86 | Privacy Act—NASA Regulations. |
| 2700–AD87 | Space Flight Mission Critical Systems Personnel Reliability Program. |
| 2700–AD88 | Aeronautics and Space—Statement of Organization and General Information. |
| 2700–AD89 | Security Program; Arrest Authority and Use of Force by NASA Security Force Personnel. |
| 2700–AD90 | Inspection of Persons and Personal Effects at NASA Installations or on NASA's Property. |
| 2700–AD91 | NASA Security Areas. |
| 2700–AD92 | Information Security Program—NASA Regulations. |
| 2700–AD95 | Delegations and Designations. |
| 2700–AD99 | Duty-Free Entry of Space Articles. |
| 2700–AE00 | National Space Grant College and Fellowship Program. |

Abstracts for regulations to be amended or repealed between October 2011 and October 2012 are reported in the fall 2011 edition of Unified Agenda of Federal Regulatory and Deregulation actions.

BILLING CODE 7510–13–P

## 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 three regulatory priorities for fiscal year 2012, which are included in The Regulatory Plan.

The first is a continuation of the previous fiscal year's 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. The Notice of Proposed Rulemaking was published on July 8, 2011.

The second priority is NARA's revisions to the Federal records management regulations found at 36 CFR chapter XII, subchapter B, to include the Electronic Records Archives (ERA). ERA is NARA's system that Federal agencies use to draft new records retention schedules for records, officially submit those schedules for approval by NARA, request the transfer of records to NARA for accessioning or pre-accessioning, and submit electronic records for storage in the ERA electronic records repository. The revisions will cover provisions in 36 CFR parts 1220, 1225, 1226, and 1235.

The third priority is NARA's revisions to its Freedom of Information Act (FOIA) regulations, clarifying the applicability of the FOIA to categories of records in NARA's holdings.

## NARA

*Proposed Rule Stage*

**147. • Federal Records Management; Electronic Records Archives (ERA)**

*Priority:* Other Significant.
*Legal Authority:* 44 U.S.C. 2107
*CFR Citation:* 36 CFR 1235.
*Legal Deadline:* None.
*Abstract:* The National Archives and Records proposes to revise the Federal records management regulations found at 36 CFR chapter XII, subchapter B, to include the Electronic Records Archives (ERA). ERA is NARA's system that Federal agencies use to draft new records retention schedules for records, officially submit those schedules for approval by NARA, request the transfer of records to NARA for accessioning or pre-accessioning, and submit electronic records for storage in the ERA electronic records repository. The revisions will cover provisions in 36 CFR parts 1220, 1225, 1226, and 1235.

*Statement of Need:* NARA will revise the Federal records management regulations found at 36 CFR chapter XII, subchapter B, to include the Electronic Records Archives (ERA). ERA is NARA's system that Federal agencies use to draft new records retention schedules for records, officially submit those schedules for approval by NARA, request the transfer of records to NARA for accessioning or pre-accessioning, and submit electronic records for storage in the ERA electronic records repository. The revisions will cover provisions in 36 CFR parts 1220, 1225, 1226, and 1235.

*Summary of Legal Basis:* 44 U.S.C. 2107(2).

*Alternatives:* None.

*Anticipated Cost and Benefits:* None.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal.

*URL for Public Comments:* *regulations.gov.*

*Agency Contact:* Laura McCarthy, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740, *Phone:* 301 837–3023, *Email:* *laura.mccarthy@nara.gov.*

*RIN:* 3095–AB74

BILLING CODE 7515–01–P

## 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 2011 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.

*Managing Senior Executive Performance*

OPM proposes to revise the regulations addressing the performance management of Senior Executives to provide for a Governmentwide appraisal system built around the Executive Core Qualifications and agency mission results. During fiscal year 2011, the President's Management Council (PMC) sponsored several workgroups to address various SES-related issues. One of the recommendations from the work group on SES appraisal system certification, and supported by the PMC, the Chief Human Capital Officers Council, OPM, and OMB, was the creation of a Governmentwide appraisal system for the SES to support and facilitate interagency consistency and mobility of this Governmentwide corps. The new regulations will provide a common structure and basic requirements, while allowing flexibility to address agency-specific needs.

*Recruitment, Relocation, and Retention Incentives*

In OPM's continuing effort to improve the administration and oversight of recruitment, relocation, and retention incentives, OPM anticipates issuing final regulations to improve oversight of group recruitment incentive determinations and all retention incentives, add succession planning to the list of factors that an agency may consider before approving a retention incentive, and provide that OPM may require data on recruitment, relocation, and retention incentives from agencies on an annual basis. These regulations will help support OPM's efforts to ensure agencies actively manage their incentive programs so that they continue to be cost-effective compensation tools.

*Benefits for Reservists and Their Family Members*

OPM anticipates issuing final 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 final 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.

*Suitability Reinvestigations*

OPM anticipates issuing final regulations modifying suitability regulations 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. The proposed rule was originally published on November 3, 2009, at 74 FR 56747, with the comment period ending on January 4, 2010. A new notice was provided on November 5, 2010, at 75 FR 68222 to provided 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 Position*

OPM anticipates issuing final regulations regarding designation of national security positions. The proposed rule was published on December 14, 2010, at 75 FR 77783, as 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 the revised rule 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 regulations will 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 regulations also will 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 rule will clarify when reinvestigation of individuals in national security positions is required.

*Pathways*

OPM proposes to issue regulations based on the Executive Order (E.O.) 13562 ''Recruiting and Hiring Students and Recent Graduates'' issued December 27, 2010. This E.O. established the concept of Pathways Programs to promote employment opportunities for students and recent graduates in the Federal workforce, as well as provides an exception to the competitive hiring rules. The Pathways Programs consist of three discrete excepted service internships programs for students and recent graduates: The Internship Program; the Recent Graduates Program; and the Presidential Management Fellows Program. The E.O. also established a new excepted service

Schedule D in the Code of Federal Regulation (5 CFR).

*Hiring Reform—Recruitment, Selection, and Placement (General) Job Announcement and Applicant Notification*

OPM proposes to amend the regulations concerning the content of a job announcement. We are also proposing to add regulations to require Federal agencies to notify applicants at key stages in the hiring process; to require agencies to use alternative valid assessment tools, excluding lengthy written essays or narratives of knowledge, skills, and abilities/competencies, and to require agencies to accept cover letters and résumés as the initial application for a Federal job. With these changes, OPM plans to streamline the Federal hiring process and improve an applicant's experience.

*Schedule A—Elimination of Job Readiness Certification for People With Disabilities*

OPM proposes to amend its regulations on the appointment of persons with mental retardation, severe physical disabilities, or psychiatric disabilities. The proposed changes will eliminate the certification of job readiness requirement for people with mental retardation, severe physical disabilities, or psychiatric disabilities using the Schedule A appointment authority.

*Noncompetitive Appointment of Certain Former Overseas Employees*

OPM is issuing a proposed regulation to clarify that an employee's same-sex domestic partner qualifies and should be treated as a family member for purposes of eligibility for noncompetitive appointments based on overseas employment, as provided in section 315.608 of title 5, Code of Federal Regulations. These regulations implemented, in part, a June 2, 2010, Presidential Memorandum by providing same-sex domestic partners with the same employment opportunities that opposite-sex spouses of Federal employees receive under 5 CFR 315.608.

*Multi-State Exchanges; Implementations for Affordable Care Act Provisions*

The U.S. Office of Personnel Management (OPM) is proposing to implement regulations for the provisions of the Affordable Care Act of 2010 in order for OPM to contract with at least two multi-State plans for the Affordable Insurance Exchanges to be offered in 2014.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.opm.gov/open/.*

| RIN | Title | Small Business Impact |
|---|---|---|
| 3206–AL93 | Absence and Leave; Sick Leave | N/A. |
| 3206–AM00 | Recruitment, Selection, and Placement (General) Job Announcement and Applicant Notification | N/A. |
| 3206–AM18 | Personnel Management in Agencies; Employee Surveys | N/A. |
| 3206–AM20 | Presumption of Insurable Interest for Same-Sex Domestic Partners | N/A. |
| 3206–AM24 | Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees. | N/A. |
| 3206–AM27 | Designation of National Security Positions | N/A. |
| 3206–AM31 | Change in Definitions; Evacuation Pay and the Separate Maintenance Allowance at Johnston Island. | N/A. |
| 3206–AM34 | Excepted Service, Career and Career-Conditional Employment; and Pathways Programs | N/A. |
| 3206–AM35 | Noncompetitive Appointment of Certain Former Overseas Employees | N/A. |
| 3206–AL36 | Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees | N/A. |
| 3206–AM39 | Federal Employees Health Benefits Program; Community-Rated Health Plans | N/A. |
| 3206–AM45 | Retirement Systems Modernization | N/A. |

BILLING CODE 6325–44–P

## 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 27,500 private-sector 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 on such matters as termination, payment of premiums, reporting and disclosure, and assessment and collection of employer liability. The Corporation is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties.

PBGC intends that its regulations (new and existing) implement the law in ways that do not impede the maintenance of existing defined benefit plans or the establishment of new plans. Thus, in developing new regulations and reviewing existing regulations, the focus, to the extent possible, is to avoid placing burdens on plans, employers, and participants, and to ease and simplify employer compliance. In particular, PBGC strives to meet the needs of small businesses that sponsor defined benefit plans.

PBGC develops its regulations in accordance with the principles set forth in Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011) and PBGC's Plan for Regulatory Review (Regulatory Review Plan), which can be found at *www.pbgc.gov/documents/plan-for-regulatory-review.pdf.* This Statement of Regulatory and Deregulatory Priorities reflects the initial results of the Regulatory Review Plan.

*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*

PBGC's 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.

Pensions and the statutory framework in which they are maintained and terminated are inherently complex. Despite this inherent complexity, PBGC is committed to issuing simple, understandable, flexible, and timely regulations and other guidance that do not impose undue burdens that could impede maintenance or establishment of defined benefit plans.

Through its regulations and other guidance, PBGC strives to minimize burdens on plans, plan sponsors, and plan participants; simplify filing; provide relief for small businesses and plans; and assist plans in complying with applicable requirements. To enhance policymaking through collaboration, PBGC also plans to expand opportunities for public participation in rulemaking (see Open Government and Public Participation below).

PBGC's current regulatory objectives and priorities are to reconsider two proposed regulations, continue to provide targeted relief in certain premium situations, and complete implementation of the Pension Protection Act of 2006 (PPA 2006). PBGC will streamline requirements and reduce unjustified burdens as much as possible in its planned rulemakings.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. The proposals are described below.

| Title | RIN | Effect on Small Business |
|---|---|---|
| Reportable Events; Pension Protection Act of 2006 | 1212–AB06 | Expected to reduce burden on small business. |
| Liability for Termination of Single-Employer Plans; Treatment of Substantial Cessation of Operations; ERISA section 4062(e). | 1212–AB20 | Expected to reduce burden on small business. |
| Assessment of and Relief From Information Penalties | 1212–AB04 | No significant effect on burden. |
| Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets | 1212–AA55 | Undetermined. |

*Reportable events.* PPA 2006 affected certain provisions in the PBGC's reportable events regulation (part 4043), 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 and make other changes.[1] In response to Executive Order 13563 and comments on the non-PPA provisions of the proposed rule, PBGC decided to re-propose the rule. PBGC is trying to take advantage of other existing reporting requirements and methods to avoid burdening companies and plans. PBGC is also considering how to implement stakeholder suggestions that different reporting requirements should apply in circumstances where the risk to PBGC is low or compliance is especially burdensome. PBGC expects that the new proposal will more effectively target troubled plans while reducing burden for healthy plans and sponsors. The target date for publication of a new proposed rule is March 2012.

*ERISA section 4062(e).* The statutory provision requires reporting of, and liability for, certain substantial cessations of operations by employers that maintain single-employer plans. In August 2010, PBGC issued a proposed rule to provide guidance on the applicability and enforcement of section 4062(e).[2] In light of comments, PBGC is reconsidering its 2010 proposed rule. In particular, PBGC is considering reducing the reporting burden and tying 4062(e) to actual risk through the same approaches being considered for reportable events. The target date for publication of a new proposed rule is June 2012.

*Information penalty policy.* PBGC plans to amend its regulation on Rules for Administrative Review of Agency Decisions (part 4003) to cover information penalties under ERISA section 4071. This amendment, which was part of an earlier proposed rule, would make the process for assessing and reviewing information penalties more transparent and consistent with other agency determinations. The target date for publication of a final rule is January 2012.

*Changes in other regulations to improve plan and PBGC administration.* PBGC will review selected aspects its regulations on Benefits Payable in Terminated Single-Employer Plans (part 4022), Allocation of Assets in Single-Employer Plans (part 4044) and Withdrawal Liability for Multiemployer Plans (Subchapter I) and Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans (Subchapter J) to eliminate obsolete provisions, simplify language, and fill in gaps where guidance would be helpful to the public and the relevant operating departments. See the Regulatory Review Plan for details.

*Premium Payment Relief*

PBGC is granting relief in three types of situations under its premium

[1] 74 FR 61248 (Nov. 23, 2009), *www.pbgc.gov/Documents/E9-28056.pdf.*

[2] 75 FR 48283 (Aug. 10, 2010), *www.pbgc.gov/Documents/2010-19627.pdf.*

regulations.[3] PBGC decided to grant this relief as a result of its regulatory review under Executive Order 13563 and in response to comments from premium payers and pension professionals. In that same spirit, PBGC is considering revising its premium penalty policy—appendix to PBGC's regulation on Payment of Premiums (part 4007)—to be more flexible in the case of clerical or administrative errors generally and is already taking steps in this direction. Such changes could remove undue penalty burdens on plan sponsors where there is minimal risk to the pension insurance system or intent to evade regulatory requirements. See Small Businesses for a possible regulatory initiative affecting small businesses and plans.

*PPA 2006 Implementation*

*Cash balance plans.* PPA 2006 changed the rules for determining benefits in cash balance plans and other statutory hybrid plans. In October 2011, PBGC published a proposed rule implementing the changes in both PBGC-trusteed plans and in plans that close out in the private sector. PBGC expects to finalize the proposal in 2012.

*Missing participants.* Currently, PBGC's Missing Participants Program applies only to terminating single-employer defined benefit plans insured by PBGC. PPA 2006 expanded the program to cover single-employer plans sponsored by professional service employers with fewer than 25 employees, multiemployer defined benefit plans, and 401(k) and other defined contribution plans. PBGC is developing a proposed rule to implement the expansion and streamline the existing program. The target date for publication of the proposed rule is June 2012.

*Shutdown benefits.* 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 published a proposed rule implementing this statutory change in March 2011[4] and received one comment. The target date for publication of a final rule is May 2012.

*Commercial airline plans.* Under PPA 2006, there are special rules for commercial airline plans that elected the PPA 2006 17-year funding relief and terminate within 10 years of the election. The amount of benefits guaranteed in such plans is fixed as of the first plan year to which funding relief applies, with plan assets first allocated to the amount of guaranteed benefits lost due to the new rules. The target date for a proposed rule implementing these rules is June 2012.

*Owner-participant benefits.* ERISA contains special guarantee and asset allocation rules that apply to owner-participants in terminating underfunded plans. PPA 2006 simplified these rules and applied them only to majority (50% or more) owners, as opposed to substantial (10% or more) owners, as was the case previously. The target date for publication of a proposed rule implementing these changes is June 2012.

*Other Regulations*

*DC to DB plan rollovers.* PBGC is developing a proposed rule to address title IV treatment of rollovers from defined contribution plans to defined benefit plans, including asset allocation and guarantee limits. The target date for publication of this proposed rule is May 2012.

*ERISA section 4010.* In response to comments, PBGC has begun reviewing its regulation on Annual Financial and Actuarial Information Reporting (part 4010) and the related e-filing application to consider ways of reducing reporting burden, without forgoing receipt of critical information. PBGC is considering waiving reporting for plans that must file 4010 information solely based on (1) the conditions for a statutory lien resulting from missed required contributions totaling over one million dollars being met or (2) outstanding funding waivers totaling over one million dollars. Waiving such reporting would reduce the compliance and cost burden on plan sponsors; PBGC can obtain some information similar to that reported under section 4010 from other sources, such as reportable events filings. PBGC is also considering other changes to section 4010 reporting that would further reduce burden for financially sound companies, by taking into account company financial health and targeting reporting more closely to the risk of plan termination; such changes might require legislative action.

*Small Businesses*

PBGC takes into account 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. PBGC is considering several proposed rules that will focus on small businesses:

*Small plan premium due date.* The premium due date for plans with fewer than 100 participants is 4 months after year-end (April 30 for calendar year plans). PBGC has heard that some small plans with year-end valuation dates have difficulty meeting the filing deadline because such plans traditionally do not complete their actuarial valuation for funding purposes until after the premium due date. In light of this concern, PBGC will review part 4007 to determine whether changes could be made that would enable small plans to streamline their premium valuation procedures and thereby reduce actuarial fees. PBGC will consider several options (*e.g.,* extending the due date or permitting the use of prior-year data).

*Missing participants.* See Missing participants under PPA 2006 Implementation above. Expansion of the program will benefit small businesses closing out terminating plans.

*Owner-participant benefits.* See Owner-participant benefits under PPA 2006 Implementation above. These rules primarily affect small businesses.

*Open Government and Public Participation*

PBGC views public participation as very important to regulatory development and review. For example, PBGC's current efforts to reduce regulatory burden are in substantial part a response to public comments. Regulatory projects discussed above, such as reportable events, ERISA section 4062(e), and ERISA section 4010, highlight PBGC's customer-focused efforts to reduce regulatory burden.

PBGC's Regulatory Review Plan sets forth ways to expand opportunities for public participation in the regulatory process. For example, PBGC plans to hold public hearings as it develops major regulations, so that the agency has a better understanding of the needs and concerns of plan administrators and plan sponsors.

Further, PBGC plans to provide additional means for public involvement, including online town hall meetings, social media, and continuing opportunity for public comment on PBGC's Web site.

[3] 76 FR 57082 (Sep. 15, 2011), *www.pbgc.gov/Documents/2011–23692.pdf.* For 2011 and later plan years, PBGC is waiving premium penalties assessed solely because payments are late by not more than 7 calendar days. For 2010 and later plan years, PBGC is providing relief similar to, but more expansive than, the relief provided in 2010 under Technical Update 10–2: Variable Rate Premiums; Alternative Premium Funding Target Elections; Box 5 Relief. For 2008 and 2009 plan years, PBGC is waiving premium penalties for late premiums in connection with certain errors in connection with alternative premium funding target elections.

[4] 76 FR 13304 (Mar. 11, 2011), *www.pbgc.gov/Documents/2011-5696.pdf .*

PBGC also invites comments on the Regulatory Review Plan on an ongoing basis as we engage in the review process. Comments should be sent to *regs.comments@pbgc.gov.*

PBGC will continue to look for ways to further improve its regulations.

**BILLING CODE 7709–01–P**

## U.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, including 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 guarantor of small business loans and provides management and technical assistance to existing or potential small business owners to help them grow, sustain, or start their businesses. The Agency also provides direct financial assistance to communities that have experienced catastrophes. This assistance is a critical factor in rebuilding the communities and their devastated economies. SBA's regulatory policy encompasses these objectives and is implemented primarily through several core program offices: Office of Capital Access, Office of Government Contracting and Business, 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 policy that affects veterans, American Indians, Alaska Natives, Native Hawaiians, and the indigenous people of Guam and American Samoa.

Reducing Burden on Small Businesses

SBA strives to develop regulations that, to the extent possible, reduce or eliminate the burden on the public, especially its core constituents—small businesses. The Agency's regulatory process generally includes an assessment of the relative costs and benefits of the regulations, as required by Executive Order 12866 ''Regulatory Planning and Review'' and Executive Order 13563, as well as an analysis under the Regulatory Flexibility Act of whether regulations will have a significant economic impact on small businesses or small entities. Where practicable or feasible, SBA also analyzes whether there are alternative approaches to a proposed regulation that would be more beneficial to the public. SBA's program offices are particularly invested in finding ways to reduce the burden imposed by the Agency's loan, innovation, and procurement programs. As a result, SBA is exploring various electronic options for doing business with the Agency, including: E-applications for financial assistance, participation in Government contracting and surety bond assistance programs, as well as submission of loan data. Along those lines, SBA is analyzing the following initiatives that would streamline and simplify the process for participating in the various SBA programs:

• Single Electronic Lender Application for 7(a) Loan Programs

There is potential for process improvement by adopting a single e-application for all SBA 7(a) guaranteed loans. This would reduce the paperwork burden on lenders (which in turn impacts small business borrowers) and will result in greater lender participation, particularly small community banks, credit unions, and rural lenders. These lenders usually support small businesses that seek relatively small amounts of capital to grow and succeed; hence, additional small, community lender-partners will potentially lead to increasing the amount of small-dollar loans flowing to small businesses. This e-application could add value by reducing the screen out rate currently experienced during the loan application process and could improve the timeliness of delivering loan approvals and hence delivery of loan proceeds to small businesses.

• Uniform SBIR Portal for Information and Solicitations

For the Small Business Innovation Research program, there is no one form or database for applying for the program and submitting proposals. Often, there are multiple systems for a single submission—*e.g.,* eRA Commons (Electronic Research Administration NIH Web site) and Grants.gov—in addition to the lack of uniformity across the participating 11 agencies in the program. The goal of the project would be to create a common, simple application form that ports over application data into the agencies' application systems on an as-needed basis. This would not replace other application systems, but it would be a common form that ports data over more simply to multiple application systems. In addition to the technology solution, the business process of narrowing and simplifying into a common base of information can be open-sourced to multiple agencies, as they may navigate the same challenges of common applicants for different programs.

• Single Uniform Certification for SBA Contracting Programs

SBA will analyze the regulatory changes required and implications of developing and implementing a single certification process for common information collected across its small business contracting programs, such as the 8(a) Business Development, HUBZone, Women-Owned Small Business, Service-Disabled Veteran-Owned Small Business, and other Small Business Programs.

• Automated Credit Decision Model for 7(a) Loan Program

For loans of less than $250,000, SBA could develop an optional credit scoring methodology to be used by SBA lender partners in their underwriting process, which could result in lowering the lenders' cost of delivering capital to borrowers and would likely expand their interest in making low-dollar loans. This initiative may also attract additional lenders (*e.g.,* small community banks, credit unions, and rural lenders) to become SBA partners and increase credit availability for small businesses.

• Government Contracting Program Eligibility Web Site

SBA will analyze the feasibility of building a one-stop Web site for small businesses to input basic information about their business (*e.g.,* number of employees, revenues, ownership (*e.g.,* women-owned, service-disabled veteran-owned, minority owned)) to determine contracting and loan programs they may be eligible for, as well as help identify local district offices and resource partners in their area. This would make it easier for the public to access and participate in Federal small business programs.

• Integrated Certification and Program Management System

SBA will review development of a system that will allow the certification and program management (*e.g.,* reviews, protests) processes to be done electronically for the 8(a) and HUBZone programs. The system is also planned to be developed to allow for future additions for other programs such as the Women-Owned Small Business Federal Contract Program and the Service-Disabled Veteran-Owned Small Business program. This system would

enable easier access to the small business programs and reduce the amount of paperwork submitted to SBA by applicants.

• Auto-Approve Disaster Loans Based on Credit Scores

Private industry approves a substantial number of loans through credit scoring to reduce the cost of underwriting. The portfolio analysis that is being currently completed indicates that the performance of loans to borrowers with a FICO score that is greater than 725 have limited risk. Changing this process would allow SBA more flexibility to design a loan approval that is in line with current private-sector practices and reduce the processing cost for lower-dollar disaster loans.

• Automated Process of Receiving Insurance Recovery Information

Under the disaster loan program, loan eligibility is based on the uncompensated disaster loss. Being able to automate the insurance recovery information would enhance our ability to ensure that insurance proceeds are addressed and no duplication of benefits occurs as a result of insurance recovery after loan approval. This would reduce the possibility that disaster victims will be asked to repay erroneously disbursed Federal disaster benefits.

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 Procedure Act, and where appropriate, the Agency consults with other Federal agencies or other entities that the regulation might affect. In addition, in compliance with Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), SBA invited the public to take an active role in helping SBA to develop a plan for conducting a retrospective review of the Agency's regulations, including identification of rules that are obsolete, unnecessary, or excessively burdensome to the public. The final plan is available on SBA's Open Government Web site at *http://www.sba.gov/content/sba-final-plan-retrospective-analysis-existing-rules-0.* SBA also conducted several public meetings throughout diverse areas of the country to solicit feedback on the Agency's development and implementation of various rules required by the Small Business Jobs Act of 2010. The Agency will determine how the comments can inform the rules identified in this plan and the agenda overall, particularly those rules that concern Government contracting programs and activities. Information on the completed SBJA Tour can be found at *www.sba.gov/jobsacttour.*

Finally, as part of the White House's Startup America initiative, SBA and representatives from other agencies met with small business entrepreneurs in eight different cities across the country to solicit ideas and suggestions for reducing barriers and for regulations that foster a more supportive environment for entrepreneurship and innovation. As SBA develops its regulations, the relevant ideas and suggestions will be incorporated into the rules or used to inform the process generally. Information on the Startup America meetings can be found at *www.sba.gov/content/startup-america-reducing-barriers-roundtables.*

Regulatory Framework

The SBA FY 2011 to FY 2016 strategic plan serves as the foundation for the regulations that the Agency will develop during the next 12 months. This strategic plan proposes three primary strategic goals: (1) Growing businesses and creating jobs; (2) building an SBA that meets needs of today's and tomorrow's small businesses; and (3) serving as the voice for small business. In order to achieve these goals SBA will, among other objectives, focus on:

• Expanding 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, nonprofit 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; and

• Mitigating risk to taxpayers and improving program oversight.

Regulatory Priority

As reported in the SBA's fall 2011 regulatory agenda, the Agency plans to publish several regulations during the coming year that are designed to achieve these goals. During this time, SBA's highest regulatory priority will focus on implementing changes to the regulations or policy directives regarding (1) Multiple award contracts and small business set-asides; (2) Small Business Innovation and Research (SBIR) Program; (3) Small Business Technology Transfer (STTR) Program; and (4) Mentor-Protégé Opportunities for the HUBZone, Women-Owned Small Business (WOSB) Contracting, and Service-Disabled Veteran-Owned Small Business (SDVOSB) Programs.

(1) Multiple Award Contracts and Small Business Set-Asides: SBA intends to implement authorities provided by section 1331 of the Small Business Jobs Act that would allow Federal agencies to set aside a part or parts of multiple awards contracts for small business concerns; set aside orders placed against multiple award contracts for small business concerns; and reserve one or more contract awards for small business concerns under full and open competition in certain circumstances. Allowing small businesses to gain access to multiple award contracts through prime contract awards or through set-asides off the orders of the prime contracts should increase Federal contracting opportunities for such businesses.

(2) Small Business Innovation and Research (SBIR) Program: The SBIR Policy Directive has been identified as one of the initial candidates for review under SBA's Retrospective Review Plan under E.O. 13563. This review is also in step with a White House initiative, Innovation and Entrepreneurial Working Group (IEWG), to share best practices and improve the SBIR and STTR Programs. One of the issues highlighted during these discussions is the need to clarify the SBIR data rights afforded to SBIR awardees and the Federal Government. SBA has also worked with small businesses that have had difficulty protecting their SBIR Data Rights as a result of misunderstandings by the procuring agencies of the Government's rights to such data. This confusion has resulted in disagreements between parties and, in some cases, the confusion about data rights may have resulted in small businesses shying away from the SBIR Program. As a result, SBA believes that there is critical need to update the SBIR Policy Directive to set clear guidelines for determining the right of the parties to the SBIR data. Accordingly, SBA plans to update the SBIR Policy Directive to, among other things, revise the definitions relating to SBIR data and clarify the rights of the SBIR awardees and the Federal Government to such data. SBA believes that clarifications to

the directive regarding SBIR data rights will benefit both small businesses and the agencies and further could lead to an increase in responses to SBIR solicitations and savings of administrative costs.

(3) Small Business Technology Transfer (STTR) Program: As identified in the Retrospective Review Plan required by E.O. 13563, SBA also plans to conduct a comprehensive review of the existing STTR Program Policy Directive, which has not been updated since 2005. Many elements of the STTR program are designed and intended to be identical to those of the SBIR program. The SBA is therefore planning to update the STTR Policy Directive to maintain the appropriate consistency with the SBIR program. As with the SBIR program, SBA also expects to make several amendments to the STTR Policy Directive that will reduce confusion for both small businesses and the Federal agencies that make awards under the program, especially on the issue of data rights. Possible benefits include a potential increase in responses to STTR solicitations and savings of administrative costs as a result of fewer informational inquiries and disputes.

(4) Small Business Mentor-Protégé Programs: SBA currently has a mentor-protégé program for the 8(a) Business Development Program that is intended to enhance the capabilities of the protégé and to improve its ability to successfully compete for Federal contracts. The Small Business Jobs Act authorized SBA to use this model to establish similar mentor-protégé programs for the Service Disabled Veteran-Owned, HUBZone and Women-Owned Small Business Programs. This authority is consistent with recommendations issued by an interagency task force created by President Obama on Federal Contracting Opportunities for Small Businesses. Among other things, the task force recommended that mentor-protégé programs should be promoted through a new Governmentwide framework to give small businesses the opportunity to develop under the wing of experienced large businesses in an expanded Federal procurement arena. During the next 12 months, SBA will make it a priority to issue regulations establishing the three newly authorized mentor-protégé programs and set out the standards for participating as a mentor or protégé in each. As is the case with the current mentor-protégé program, the various forms of assistance that a mentor will be expected to provide to a protégé include technical and/or management assistance; financial assistance in the form of equity investment and/or loans; subcontracts and/or assistance in performing prime contracts with the Government in the form of joint venture arrangements.

Retrospective Review of Existing Regulations

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Agency's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in the *Regulatory Plan.* However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Regingo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency retrospective review plan can be found at: *http://www.sba.gov/about-sba-services/open-government.*

| RIN | Title of Rulemaking | Small Business Burden Reduction |
|---|---|---|
| 3245–AF45 | Small Business Technology Transfer (STTR) Policy Directive | YES. |
| 3245–AF84 | Small Business Innovation Research (SBIR) Program Policy Directive | YES. |
| 3245–AG04 | 504 Regulatory Enhancements | YES. |
| 3245–AG07 | Small Business Size Standards: Professional, Scientific, and Technical Services | N/A. |
| 3245–AG08 | Small Business Size Standards: Transportation and Warehousing Industries | N/A. |
| 3245–AG25 | Small Business Size Standards for Utilities Industries | N/A. |
| 3245–AG26 | Small Business Size Standards; Information | N/A. |
| 3245–AG27 | Small Business Size Standards; Administrative and Support, Waste Management and Remediation Services Industries. | N/A. |
| 3245–AG28 | Small Business Size Standards: Real Estate, Rental and Leasing Industries | N/A. |
| 3245–AG29 | Small Business Size Standards: Educational Services Industries | N/A. |
| 3245–AG30 | Small Business Size Standards: Health Care and Social Assistance Services Industries | N/A. |
| 3245–AG36 | Small Business Size Standards: Arts, Entertainment, and Recreation | N/A. |
| 3245–AG37 | Small Business Size Standards: Construction | N/A. |
| 3245–AG38 | Small Business HUBZone Program | YES. |

## SBA

*Proposed Rule Stage*

### 148. Small Business Technology Transfer (STTR) Policy Directive

*Priority:* Other Significant.
*Legal Authority:* 15 U.S.C. 638(p)
*CFR Citation:* None.
*Legal Deadline:* None.

*Abstract:* SBA plans to propose amendments to the 2005 STTR Program Policy Directive. These proposed amendments bring the text up to date on issues, including the changes to program eligibility made by the SBA in 2005 and an adjustment to award guideline amounts consistent with the adjustments to the SBIR award amounts made in 2008, and they seek to add clarity to areas such as STTR data rights and incorporate several miscellaneous corrections to the text.

*Statement of Need:* SBA is proposing to clarify SBIR data rights and make several necessary updates to the SBIR Policy Directive. Many elements of the STTR program are designed and intended to be identical to those of the SBIR program. SBA is therefore planning to update the STTR Policy Directive to maintain the appropriate consistency with the SBIR program.

*Summary of Legal Basis:* Small Business Technology Transfer Act of 1992 (STTR Act), Public Law 102–564 (codified at 15 U.S.C. 638). The STTR Act requires the SBA to ''issue a policy directive for the general conduct of the STTR Programs within the Federal Government.'' 15 U.S.C. 638(p)(1).

*Alternatives:* Not applicable.

*Anticipated Cost and Benefits:* SBA believes that bringing the STTR Policy Directive up to date to conform with the SBIR Program Policy Directive will reduce confusion and benefit both small businesses and the agencies. The possible benefits include a potential

increase in responses to STTR solicitations and savings of administrative costs as a result of fewer informational inquiries and disputes. Ultimately, SBA believes there will be negligible costs to the Federal Government with respect to the award and monitoring of STTR funding agreements as a result of this rule.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Additional Information:* Includes Retrospective Review under Executive Order 13563 with small business burden reduction.

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Edsel M. Brown Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6450, *Email: edsel.brown@sba.gov.*

*RIN:* 3245–AF45

## SBA

### 149. Small Business Innovation Research (SBIR) Program Policy Directive

*Priority:* Other Significant.

*Legal Authority:* 15 U.S.C. 638(j)

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* SBA plans to update the SBIR Policy Directive to revise the definitions relating to SBIR data, add several new definitions, and clarify the rights in such SBIR data afforded to SBIR awardees and the Federal Government. In addition, the SBA proposes to clarify other parts of the Directive relating to Phase I, II, and III awards and the definition of Small Business Concern.

*Statement of Need:* The White House's Innovation and Entrepreneurial Working Group (IEWG) is supporting an initiative to share best practices and improve the SBIR and Small Business Technology Transfer (STTR) Programs. During sessions concerning this initiative, SBA have discussed the issue of SBIR data rights and the need for clarification. In addition, SBA has worked with small businesses that have had difficulty protecting their SBIR data rights as a result of misunderstandings by the procuring agencies of the Government's rights to such data. As a result, SBA believes that the directive must be clarified.

SBA is also proposing to amend the definition of Small Business Concern. SBA amended this definition in 13 CFR section 121.702 of its regulations, at 69 FR 70185 (Dec. 3, 2004). SBA is updating language in the Policy Directive to reflect the current definition as set forth in the regulations.

*Summary of Legal Basis:* The Small Business Innovation Development Act of 1982 requires the SBA to ''issue policy directives for the general conduct of the SBIR programs within the Federal Government.'' 15 U.S.C. 638(j)(1).

*Alternatives:* In clarifying SBIR data rights in the Directive, SBA considered using terms as defined in the sections of the FAR and DFARS that address SBIR data rights. However, SBA determined that some of the terms were not consistent with SBIR policy and other terms could be used with modification. For other proposed updates to the Directive, alternatives were not applicable.

*Anticipated Cost and Benefits:* SBA believes that clarifications to the directive regarding SBIR data rights will benefit both small businesses and the agencies. It is our understanding that there is a misunderstanding of or confusion surrounding the rights in data of each party to an SBIR Funding Agreement. This confusion has resulted in disagreements between parties. In some cases, the confusion about data rights may have resulted in small businesses shying away from the SBIR Program. Therefore, the potential benefits include a potential increase in responses to SBIR solicitations and savings of administrative costs as a result of fewer disputes. Ultimately, SBA believes there will be negligible costs to the Federal Government with respect to the award and monitoring of SBIR funding agreements as a result of this rule.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Additional Information:* Includes Retrospective Review under Executive Order 13563 with small business burden reduction.

*Agency Contact:* Edsel M. Brown Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6450, *Email: edsel.brown@sba.gov.*

*RIN:* 3245–AF84

## SBA

### 150. Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 111–240, sec 1311, 1312, 1313, 1331

*CFR Citation:* 13 CFR 121, 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 socioeconomic programs. The U.S. Small Business Administration is proposing regulations that will set forth a Governmentwide policy on bundling, which will address teams and joint ventures of small businesses and the requirement that each Federal agency must publish on its Web site the rationale for any bundled contract. In addition, the proposed regulations will address contract consolidation and the limitations on the use of such consolidation in Federal procurement to include ensuring that the head of a Federal agency may not carry out a consolidated contract over $2 million unless the Senior Procurement Executive or Chief Acquisition Officer ensures that market research has been conducted and determines that the consolidation is necessary and justified.

*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

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 ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Agency Contact:* Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7322, *Fax:* 202 481–1540, *Email: dean.koppel@sba.gov.*

*RIN:* 3245–AG20

## SBA

### 151. Small Business Jobs Act: Small Business Mentor-Protégé Programs

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 111–240

*CFR Citation:* 13 CFR 124; 13 CFR 125; 13 CFR 126; 13 CFR 127.

*Legal Deadline:* None.

*Abstract:* SBA currently has a mentor-protégé program for the 8(a) Business Development Program that is intended to enhance the capabilities of the protégé and to improve its ability to successfully compete for Federal contracts. The Small Business Jobs Act authorized SBA to use this model to establish similar mentor-protégé programs for the Service Disabled Veteran-Owned, HUBZone, and Women-Owned Small Federal Contract Business Programs. This authority is consistent with recommendations issued by an interagency task force created by President Obama on Federal Contracting Opportunities for Small Businesses. During the next 12 months, SBA will make it a priority to issue regulations establishing the three newly authorized mentor-protégé programs and set out the standards for participating as a mentor or protégé in each. As is the case with the current mentor-protégé program, the various forms of assistance that a mentor will be expected to provide to a protégé include technical and/or management assistance; financial assistance in the form of equity investment and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture arrangements.

*Statement of Need:* Congress determined that the SBA-administered mentor-protégé program currently available to 8(a) BD participants is a valuable tool for all small business concerns and authorized SBA to establish mentor protégé programs for the HUBZone SBC, Service Disabled Veteran-Owned SBCs, and Women-Owned Small Business programs SBCs. This authority is consistent with recommendations issued by an interagency task force created by President Obama on Federal Contracting Opportunities for Small Businesses. Among other things, the task force recommended that mentor-protégé programs should be promoted through a new Governmentwide framework to give small businesses the opportunity to develop under the wing of experienced large businesses in an expanded Federal procurement arena.

*Summary of Legal Basis:* The Small Business Jobs Act of 2010, Public Law No 111–240, section 1337(b)(3), authorizes SBA to establish mentor-protégé programs for HUBZone SBC, Service Disabled Veteran-Owned SBCs, and Women-Owned Small Business programs SBCs.

*Alternatives:* At this point, SBA believes that the best option for implementing the authority is to create a regulatory scheme that is similar to the existing mentor-protégé program.

*Anticipated Cost and Benefits:* SBA has not yet quantified the costs associated with this rule. However, program participants, particularly the protégés, would be able to leverage the mentoring opportunities as a form of business development assistance that could enhance their capabilities to successfully compete for contracts in and out of the Federal contracting arena. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture arrangements.

*Risks:* None identified.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7322, *Fax:* 202 481–1540, *Email: dean.koppel@sba.gov.*

*RIN:* 3245–AG24

BILLING CODE 8025–01–P

## 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 XVIII 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. We fully fund the disability determination services in advance or by way of reimbursement for necessary costs in making disability determinations.

The six 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*

Since the continued improvement of the disability program is of vital concern to us, we have five initiatives in the plan addressing disability-related issues. They include:

- A proposed rule that will modify the requirement to recontact medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence;
- A proposed rule that will allow adjudicators the discretion to proceed to the fifth step of the sequential process for assessing disability when we have insufficient information regarding a claimant's past relevant work history;
- Three proposed rules updating the medical listings used to determine disability—evaluating respiratory

system disorders, mental disorders, and hematological disorders. The revisions reflect our adjudicative experience and advances in medical knowledge, diagnosis, and treatment.

*Enhance Public Service*

We will revise our rules to establish a 12-month time limit for the withdrawal of an old-age benefits application. The final rules will permit only one withdrawal per lifetime.

*Retrospective Review of Existing Regulations*

Pursuant to section 6 of Executive Order 13563 ''Improving Regulation and Regulatory Review'' (Jan. 18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in our final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in *The Regulatory Plan.* However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on Reginfo.gov in the Completed Actions section for that agency. These rulemakings can also be found on Regulations.gov. The final agency plans can be found at: *http://www.socialsecurity.gov/open/regsreview/EO-13563-Final-Plan.html.*

| RIN | Title | Expected to Significantly Reduce Burdens on Small Businesses |
|---|---|---|
| 0960–AF35 | Revised Medical Criteria for Evaluating Neurological Impairments | No. |
| 0960–AF58 | Revised Medical Criteria for Evaluating Respiratory System Disorders | No. |
| 0960–AF69 | Revised Medical Criteria for Evaluating Mental Disorders | No. |
| 0960–AF88 | Revised Medical Criteria for Evaluating Hematological Disorders | No. |
| 0960–AG21 | New Medical Criteria for Evaluating Language and Speech Disorders | No. |
| 0960–AG28 | Revised Medical Criteria for Evaluating Growth Impairments | No. |
| 0960–AG38 | Revised Medical Criteria for Evaluating Musculoskeletal Disorders | No. |
| 0960–AG65 | Revised Medical Criteria for Evaluating Digestive Disorders | No. |
| 0960–AG71 | Revised Medical Criteria for Evaluating Immune (HIV) System Disorders | No. |
| 0960–AG74 | Revised Medical Criteria for Evaluating Cardiovascular Disorders | No. |
| 0960–AG91 | Revised Medical Criteria for Evaluating Skin Disorders | No. |
| 0960–AH03 | Revised Medical Criteria for Evaluating Genitourinary Disorders | No. |
| 0960–AH04 | Revised Medical Criteria for Evaluating Congenital Disorders That Affect Multiple Body Systems. | No. |
| 0960–AH28 | Revised Medical Criteria for Evaluating Visual Disorders | No |

## SSA

*Proposed Rule Stage*

### 152. Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)

*Priority:* Other Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 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 we consider 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 | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Cheryl A. Williams, Director, Social Security Administration, Office of Medical Listings Improvement, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 965–1020.

Joshua B. Silverman, Social Insurance Specialist, Regulations Writer, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 594–2128.

*RIN:* 0960–AF58

## SSA

### 153. Revised Medical Criteria for Evaluating Hematological Disorders (974P)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 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 we consider severe enough to prevent a person from performing any gainful activity or that cause marked and severe functional limitation for a child claiming Supplemental Security Income 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 ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Cheryl A. Williams, Director, Social Security Administration, Office of Medical Listings Improvement, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 965–1020.

Helen Droddy, Social Insurance Specialist, Regulations Writer, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone*: 410 965–1483.

*RIN:* 0960–AF88

## SSA

*Final Rule Stage*

### 154. Revised Medical Criteria for Evaluating Mental Disorders (886F)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(b); 42 U.S.C. 405(d) to 42 U.S.C. 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(h); 42 U.S.C. 421(i); 42 U.S.C. 423; 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382c; 42 U.S.C. 1383; 42 U.S.C. 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 we consider severe enough to prevent a person from doing any gainful activity, or that cause marked and severe functional limitations for a child claiming Supplemental Security Income payments under title XVI. We will 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 these revisions are 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 | |
| NPRM ..... | 11/24/10 | 75 FR 71632 |
| NPRM Comment Period End. | 12/09/10 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Additional Information:* Includes Retrospective Review under E.O. 13563.

*URL for Public Comments: www.regulations.gov.*

*Agency Contact:* Cheryl A. Williams, Director, Social Security Administration, Office of Medical Listings Improvement, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 965–1020.

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*RIN:* 0960–AF69

## SSA

### 155. How We Collect and Consider Evidence of Disability (3487P)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 405(a); 42 U.S.C. 405(d)(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 421(m); 42 U.S.C. 421 note; 42 U.S.C. 422(c); 42 U.S.C. 423; 42 U.S.C. 423 note; 42 U.S.C. 425; 42 U.S.C. 902(a)(5); 42 U.S.C. 1382; 42 U.S.C. 1382c; 42 U.S.C. 1382h; 42 U.S.C. 1382h note; 42 U.S.C. 1383(a); 42 U.S.C. 1383(c); 42 U.S.C. 1383(d)(1); 42 U.S.C. 1383(p); 42 U.S.C. 1383b

*CFR Citation:* 20 CFR 404.1512; 20 CFR 404.1519a; 20 CFR 404.1520; 20 CFR 404.1520b (New); 20 CFR 404.1527; 20 CFR 416.912; 20 CFR 416.919a; 20 CFR 416.920; 20 CFR 416.920b (New); 20 CFR 416.927.

*Legal Deadline:* None.

*Abstract:* We propose to modify the requirement to recontact your medical

source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Depending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need. By giving adjudicators more flexibility in determining how best to obtain this information, we will be able to make a determination or decision on disability claims more quickly and efficiently in certain situations. Eventually, our need to recontact your medical source(s) in many situations will be significantly reduced as a result of our efforts to improve the evidence collection process through the increased utilization of Health Information Technology (HIT).

*Statement of Need:* The final rule would modify the requirement to recontact a claimant's medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Depending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need. By giving adjudicators more flexibility in determining how best to obtain this information, we will be able to make a determination or decision on disability claims more quickly and efficiently in certain situations.

*Summary of Legal Basis:* Administrative—not required by statute or court order.

*Alternatives:* We could have chosen not to make these changes at all. However, the Integrated Disability Process workgroup recommended these changes, and we know from the intercomponent review process that our adjudicators support them. The changes affect the process of collecting and considering evidence, and we believe that this final rule represents our best course of action.

*Anticipated Cost and Benefits:* These changes will have only a negligible net effect on the projected level of OASDI and Federal SSI benefit outlays.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/12/11 | 76 FR 20282 |
| NPRM Comment Period End. | 06/13/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Janet Truhe, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 966–7203.

Brian Rudick, Social Insurance Specialist, Regulations Writer, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 965–7102.

*RIN:* 0960–AG89

## SSA

### 156. Amendments to Regulations Regarding Withdrawals of Applications and Voluntary Suspension of Benefits (3573F)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 402(i); 42 U.S.C. 402(j); 42 U.S.C. 402(o); 42 U.S.C. 402(p); 42 U.S.C. 402(r); 42 U.S.C. 403(a); 42 U.S.C. 403(b); 42 U.S.C. 405(a); 42 U.S.C. 416; 42 U.S.C. 416(i)(2); 42 U.S.C. 423; 42 U.S.C. 423(b); 42 U.S.C. 425; 42 U.S.C. 428(a) to 428(e); 42 U.S.C. 902(a)(5)

*CFR Citation:* 20 CFR 404.313; 20 CFR 404.640.

*Legal Deadline:* None.

*Abstract:* We will modify our regulations to establish a 12-month time limit for the withdrawal of an old age benefits application. We will also permit only one withdrawal per lifetime. These changes will limit the voluntary suspension of benefits only to those benefits disbursed in future months.

*Statement of Need:* We are under a clear congressional mandate to protect the Trust Funds. It is crucial that we change our current policies that have the effect of allowing beneficiaries to withdraw applications or suspend benefits and use benefits from the Trust Funds as something akin to an interest-free loan.

*Summary of Legal Basis:* Discretionary.

*Alternatives:* None.

*Anticipated Cost and Benefits:* Not yet determined.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 12/08/10 | 75 FR 76256 |
| Interim Final Rule Effective. | 12/08/10 | |
| Interim Final Rule Comment Period End. | 02/07/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

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*RIN:* 0960–AH07

## SSA

### 157. Expedited Vocational Assessment Under the Sequential Evaluation Process (3684P)

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 402; 42 U.S.C. 405(a) to 405(b); 42 U.S.C. 405(d) to 405(h); 42 U.S.C. 416(i); 42 U.S.C. 421(a); 42 U.S.C. 421(i); 42 U.S.C. 421(j); 42 U.S.C. 421(m); 42 U.S.C. 421 note; 42 U.S.C. 422(c); 42 U.S.C. 423; 42 U.S.C. 423 note; 42 U.S.C. 425; 42 U.S.C. 902(a)(5); 42 U.S.C. 902 note; 42 U.S.C. 1382; 42 U.S.C. 1382c; 42 U.S.C. 1382h; 42 U.S.C. 1382h note; 42 U.S.C. 1383(a); 42 U.S.C. 1383(c); 42 U.S.C. 1383(d)(i); 42 U.S.C. 1383(p); 42 U.S.C. 1383b

*CFR Citation:* 404.1505; 404.1520; 404.1545; 404.1560; 404.1565; 404.1569; 404.1594; 416.905; 416.920; 416.945; 416.960; 416.965; 416.969; 416.987; 416.994.

*Legal Deadline:* None.

*Abstract:* We propose to give adjudicators the discretion to proceed to the fifth step of the sequential evaluation process for assessing disability when we have insufficient information about a claimant's past relevant work history to make the findings required for step 4. If an adjudicator finds at step 5 that a claimant may be unable to adjust to other work existing in the national economy, the adjudicator would return to the fourth step to develop the claimant's work history and make a finding about whether the claimant can perform his or her past relevant work. This proposed new process would not disadvantage any claimant or change the ultimate conclusion about whether a claimant is disabled, but it would promote administrative efficiency and help us make more timely disability determinations and decisions.

*Statement of Need:* This expedited process will shorten case processing

time, give our adjudicators more flexibility to assess disability claims, and assist in reducing the disability backlog.

*Summary of Legal Basis:* Administrative—not required by statute or court order.

*Alternatives:* Undetermined at this time.

*Anticipated Cost and Benefits:* Undetermined at this time.

*Risks:* None.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 09/13/11 | 76 FR 56357 |
| NPRM Comment Period End. | 11/14/11 | |
| Final Action ..... | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL for Public Comments:* *www.regulations.gov.*

*Agency Contact:* Janet Truhe, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 966–7203.

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*RIN:* 0960–AH26

**BILLING CODE 4191–02–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

*Statement of Regulatory Priorities* [1]

A. CFPB Purposes and Functions

The Bureau of Consumer Financial Protection (CFPB) was established as an independent bureau of the Federal Reserve System by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376) (Dodd-Frank Act). Pursuant to the Act, the CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. Among these are the consumer financial protection authorities that transferred to the CPFB from seven Federal agencies on the designated transfer date, July 21, 2011. These authorities include the ability to issue regulations under more than a dozen Federal consumer financial laws.

As provided in section 1021 of the Dodd-Frank Act, the purpose of the CFPB is to implement and enforce Federal consumer financial laws consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive. The CFPB is authorized to exercise its authorities for the purpose of ensuring that:

(1) Consumers are provided with timely and understandable information to make responsible decisions about transactions involving consumer financial products and services;

(2) Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) Outdated, unnecessary, or unduly burdensome regulations concerning consumer financial products and services are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to status as a depository institution, in order to promote fair competition; and

(5) Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

B. Immediate Regulatory Priorities

The CFPB is working on a wide range of initiatives to address issues in markets for consumer financial products and services that are not reflected in this notice because the Unified Agenda is limited to rulemaking activities. With regard to the exercise of its rulemaking authorities, as reflected in the CFPB's semiannual regulatory agenda, the CFPB's immediate focus is on completing various rulemakings that are mandated by the Dodd-Frank Act and resolving a handful of proposals that had been issued by the transferor agencies prior to July 21, 2011. In addition, the CFPB must issue a number of procedural rules relating to the stand-up of the CFPB as an independent regulatory agency.

The semiannual regulatory agenda provides more detailed descriptions of individual rulemaking projects. The CFPB is particularly focused on meeting the rulemaking deadlines set forth in the Dodd-Frank Act, in order to provide certainty to consumers, financial services providers, and the broader economy. These rules include:

- Regulations governing international money transfers (remittances) under the Electronic Fund Transfer Act. These regulations concern disclosures, error resolution procedures, and other topics. The Board of Governors of the Federal Reserve System issued a Notice of Proposed Rulemaking concerning these rules in May 2011, and the CFPB now has responsibility for finalizing this rulemaking, as appropriate. Final rules on certain topics are required by January 21, 2012.
- An initial rule determining which nondepository covered persons are subject to the CFPB's supervision authority as ''larger participant[s]'' of ''other markets'' for consumer financial products and services. The Dodd-Frank Act vests the CFPB with authority to examine all sizes of nondepository financial services providers engaged in mortgage lending and certain related services, payday lending, and private student lending. It also authorizes examinations of a ''larger participant of a market for other consumer financial products or services,'' as defined by the rule. An initial rule defining who is a larger participant in these other markets is required by July 21, 2012.
- Consolidated mortgage loan disclosures and related rules under the Truth in Lending Act and Real Estate Settlement Procedures Act. The Dodd-Frank Act requires the CFPB to develop consolidated mortgage loan disclosures to satisfy the requirements of both the Truth in Lending Act and Real Estate Settlement Procedures Act. The Dodd-Frank Act also imposes certain new disclosure requirements, and the CFPB inherits proposals to amend Truth in Lending Act regulations relating to mortgage loan disclosures that were issued by the Board of Governors of the Federal Reserve System in August 2009 and September 2010. The consolidated disclosures proposal is required by July 21, 2012.
- Regulations defining lenders' obligations to assess borrowers' ability to repay mortgage loans, including certain protections from liability for ''qualified mortgages.'' The Dodd-Frank Act requires lenders to make a reasonable, good faith determination of applicants' ability to repay closed-end mortgage loans. ''Qualified mortgages'' as defined under the Act and by regulation receive certain protections from liability. The Board of Governors of the Federal Reserve System issued a Notice of Proposed Rulemaking concerning these rules in May 2011, and the CFPB now has responsibility for finalizing this rulemaking, as appropriate. Although the statutory deadline for final rules is January 2013, this rulemaking is a particular priority for the CFPB because it impacts basic

[1] This Statement of Regulatory Priorities (Statement) supplements the semiannual regulatory agenda that is being published contemporaneously. The CFPB is submitting this Statement on a voluntary basis.

underwriting practices and serves as a building block for other Dodd-Frank Act rulemakings.

• Regulations to implement other requirements concerning mortgage origination and servicing under title XIV of the Dodd-Frank Act. As described in more detail in the individual agenda entries, these regulations will address a variety of origination and servicing practices, including loan originator compensation and anti-steering rules, restrictions on high-cost loans, maintenance of escrow accounts and other servicing practices, and (on an interagency basis) various regulations concerning appraisals. Final rules are required by January 21, 2013.

In carrying out these mandates, the CFPB is focused on developing clear, simple disclosures that will give consumers the information they need to determine which consumer financial products and services best meet their needs while avoiding unwarranted regulatory burdens on industry. The CFPB has made the consolidation of mortgage disclosure forms a priority because streamlining the existing, overlapping forms could significantly benefit both consumers and industry members alike.

Because the CFPB is at an early stage of its operations, it is still in the process of assessing the need and resources available for additional substantive rulemakings beyond those listed in its fall 2011 agenda. The CFPB expects to include any such projects that it realistically anticipates considering before October 2012 in its spring 2012 agenda.

BILLING CODE 4810–AM–P

## 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;

• Directs staff to participate in the development or revision of voluntary product safety standards; and

• Follows congressional mandates to enact specific regulations.

Unless directed otherwise by congressional mandate, 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.

*Significant Regulatory Actions*

Currently, the Commission is considering two rules that would constitute ''significant regulatory actions'' under the definition of that term in Executive Order 12866:

1. Flammability Standard for Upholstered Furniture

Under section 4 of the Flammable Fabrics Act (FFA), the Commission may issue a flammability standard or other regulation for a product of interior furnishing if the Commission determines that such a standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage. The Commission's regulatory proceeding could result in several actions, one of which could be the development of a mandatory standard requiring that upholstered furniture meet mandatory labeling requirements, resist ignition, or meet other performance criteria under test conditions specified in the standard.

2. Testing and Certification Rule

Section 102(d)(2) of the CPSIA, as amended by H.R. 2715, requires the Commission to: (1) Initiate by regulation 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 and (2) establish 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 representative 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.

BILLING CODE 6355–01–P

## 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 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, help for consumers in financial distress, health care, consumer privacy and data security, and evolving technology and innovation continue to be at the forefront of the Commission's consumer protection and competition programs. By subject area, the FTC discusses the major workshops, reports,[3] and initiatives pursued since the 2010 Regulatory Plan was published.

(a) Help for 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. On August 10, 2010, the Commission published a final rule amending the Telemarketing Sales Rule to protect consumers from deceptive or abusive practices in the telemarketing of debt relief services. 75 FR 48458. On October 27, 2010, the Commission issued a policy statement staying enforcement of the debt relief provisions of the TSR against companies offering tax relief services; *i.e.,* services offered to renegotiate, settle, or alter the terms of obligation between a consumer and a taxing entity.

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 and completed rulemakings to protect distressed homeowners, one relating to Mortgage Assistance Relief Services (''MARS'') and another relating to Mortgage Acts and Practices (''MAP'')-Advertising, through the life cycle of the mortgage loan.[4] The Commission ceased work on a pending NPRM for MAP–Servicing on July 21, 2011, and other MAP rules, when the legal authority to promulgate rulemaking transferred to the new Consumer Financial Protection Bureau pursuant to the Dodd-Frank Wall Street Reform Act of 2010.

In December 2009, the Commission issued compulsory information requests to nine of the Nation's largest debt buying companies, requiring them to produce information about their practices in buying and selling consumer debt. These nine companies collectively purchased about 75 percent of the debt sold in the United States in 2008. The Commission is using the information for a study of the debt buying industry. In recent years, debt buyers have become a significant part of the debt collection system. In February 2009, the Commission issued a report, based on an agency debt collection workshop, in which it found major problems in the flow of information among creditors, debt buyers, and collection agencies. The Commission issued the compulsory information requests to determine whether the practice of debt buying is contributing to these problems and, more generally, to obtain a better understanding of the role of debt buyers in the debt collection system. The Agency plans to report its findings in early 2012.

In 2011, Commission staff initiated an outreach project to inform various advocacy and educational/research organizations about the litigation research and recommendations in the Commission's July 2010 roundtable report entitled ''Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration.'' [5] Some State reform efforts have been motivated by the Commission's recommendations, and the project has created opportunities for FTC staff to discuss the Commission's findings and recommendations with groups and individuals who work on these issues. The underlying 2010 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.

On April 28, 2011, the Commission held a workshop, ''Debt Collection 2.0: Protecting Consumers as Technologies Change.'' The workshop addressed the impact of technological advances on the debt collection system, the resulting consumer protection concerns, and the need for responsive policy changes. Technologies discussed included the tools collectors use to locate consumers and their assets; changing modes of collector-consumer communications, such as mobile phones, auto-dialers, and electronic mail; the software that collectors use to manage information about consumers and debts; and collector use of social media applications. The workshop featured a diverse group of speakers, including consumer advocates, academics, technologists, law enforcers, and industry representatives. Staff officials are drafting a document highlighting the workshop's key findings and their policy implications.

On July 20, 2011, in response to concerns about possible unfair, deceptive, or abusive practices by certain debt collectors, the Commission finalized a policy statement clarifying that the Agency will not take enforcement action under the Fair Debt Collection Practices Act (FDCPA) or the FTC Act against companies that are attempting to collect the debts of deceased consumers, if the companies communicate with someone who is authorized to pay debts from the estate of the deceased. 76 FR 44915 (Jul. 27, 2011). The policy statement also

[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] See Mortgage Loans Rule under *Rulemakings and Studies Required by Statute, infra.*

[5] The report is available at *http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.*

emphasizes that debt collectors may not mislead relatives to believe that they are personally liable for a deceased consumer's debts or use other deceptive or abusive tactics.

(b) Health Care. The FTC continues to work to end anticompetitive settlement deals featuring payments by branded drug firms to a generic competitor to keep generic drugs off the market (so called, ''pay for delay'' agreements). The Commission has a two-pronged approach to ending these anticompetitive pay-for-delay agreements: Active support for legislation to ban harmful pay-for-delay agreements—one example being the proposed legislation that Senate Judiciary Committee recently approved [6]—and Federal court challenges to invalidate individual agreements. The FTC currently has three cases in active litigation.[7] An FTC Staff Report issued during FY 2010 found a record number (31) of potential pay for delay agreements.[8]

The Commission also studied the competitive impact of authorized generics, which are generic versions of drugs sold by the branded company. On August 31, 2011, the Commission issued a final report on authorized generic drugs, finding that when branded pharmaceutical companies introduce an authorized generic version of their brand-name drug, it can reduce both retail and wholesale drug prices during the first 6 months of competition. The report also found that authorized generics have a substantial effect on the revenues of competing generic firms. Over the longer term, by lowering expected profits for generic competitors, the introduction of an authorized generic could affect a generic drug company's decision to challenge patents on branded drug products with low sales. However, the report concludes that in spite of this, patent challenges by generic competitors remain robust even on drugs with low sales.

Additionally, the FTC is playing an active role in health care reform. The FTC and the Department of Justice's Antitrust Division (the Antitrust Agencies) are working with the Centers for Medicare & Medicaid Services (CMS) and the Office of the Inspector General of the Department of Health and Human Services (HHS OIG) to implement provisions of the Patient Protection and Affordable Care Act (the Act), Public Law 111–48 (2010), that provide for the formation of Accountable Care Organizations (ACOs) under a new Shared Savings Program. That program encourages health care providers to create integrated, efficient health care delivery systems that can improve the quality of health care services and lower health care costs. The purpose of this interagency project is to develop well coordinated rules and policy guidance that avoid conflicting or duplicative requirements and encourage the formation of pro-competitive, legally compliant Shared Savings Program ACOs.

In April 2011, the Antitrust Agencies jointly proposed an enforcement policy statement to provide the antitrust guidance providers need to form pro-competitive ACOs that will participate in both the Shared Savings Program and commercial markets. At the same time, CMS issued its proposed rules for Shared Savings ACOs, and HHS OIG issued its proposed policy guidance. After working with CMS and HHS OIG to revise these documents in light of public comments, the Agencies issued on October 20, 2011, the final version of a joint policy statement detailing how the agencies will enforce U.S. antitrust laws with respect to new ACOs.

(c) Privacy Challenges to Consumers Posed by Technology and Business Practices. During 2009 to 2010, the Commission hosted a series of roundtables to explore the privacy issues and challenges associated with 21st century technology and business practices to determine how best to protect consumer privacy while supporting beneficial uses of information and technological innovation. In December 2010, the FTC staff issued a preliminary privacy report [9] proposing a framework that promotes privacy by design, transparency, consumer choice, and business innovation. The report is intended to inform policymakers, including Congress, as they develop solutions, policies, and potential laws governing privacy, and to guide and motivate industry as it develops more robust and effective best practices and self-regulatory guidelines. The report suggests implementation of a ''Do Not Track'' mechanism, so consumers can control the collection of data about their online searching and browsing activities. Since the release of the report, self-regulatory efforts have progressed and several companies have come forward with ideas and innovations to enhance consumer choice and online privacy. FTC Staff are closely watching these initiatives.

(d) Children's Identity Theft. The FTC and the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, held a forum on July 12, 2011, which explored the nature of child identity theft, including foster care identity theft and identity theft within families, with the goal of advising parents and victims on how to prevent the crime and how to resolve child identity theft problems. The Agencies have released educational materials for public distribution.

(e) Food Marketing to Children. In an effort to combat childhood obesity—the most serious health crisis facing today's youth—a working group of four Federal agencies on April 28, 2011, released for public comment a set of proposed voluntary non-regulatory principles that can be used by industry as a guide for marketing food to children. The Interagency Working Group on Food Marketed to Children, comprised of the FTC, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Department of Agriculture, was established by 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. The working group also held a half-day forum on May 24, 2011, to provide stakeholders with a chance to comment in person. The comment period closed July 14, 2011, with approximately 29,000 comments submitted. Members of the Interagency Working Group are sharing responsibility for reviewing the comments on the proposed principles. Comments pertaining to the proposed nutrition principles, including those about the food categories identified in the principles, are being reviewed primarily by the CDC, FDA, and USDA. Comments relating to the marketing aspects of the recommended principles, as well as general comments, are being reviewed primarily by the FTC. The Working Group will make final recommendations in a pending report to Congress.

Following OMB approval on July 8, 2010, on August 12, 2010, the Commission issued information requests to 48 major food, beverage

[6] S.27, ''Preserve Access to Affordable Generics Act.''

[7] *FTC* v. *Watson Pharm., Inc.,* No. 10–12729–DD (11th Cir. argued May 13, 2011); *FTC* v. *Cephalon, Inc.,* No. 2:08–CV–02141 (E.D. Pa. argued Oct. 21, 2009); Brief for FTC as Amicus Curiae Supporting Plaintiffs, *In re K-Dur Antitrust Litig.,* Nos. 10–2077, 10–2078, 10–2079 (3d Cir. filed May 18, 2011).

[8] The Report on ''Pay-for-Delay: How Drug Company Pay-Offs Cost Consumers Billions'' can be found at *http://www.ftc.gov/os/2010/01/100112payfordelayrpt.pdf.*

[9] See ''*Federal Trade Commission (Bureau of Consumer Protection), A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers*'' (Dec. 1, 2010) at *http://www.ftc.gov/os/2010/12/101201privacyreport.pdf.*

manufacturers, and quick-service restaurant companies about spending and marketing activities targeting children and adolescents, as well as nutritional information for food and beverage products that the companies market to these young consumers. The study will advance the Commission's understanding of 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. The Bureau of Consumer Protection is analyzing the data and preparing a report, which is expected to be released sometime in late 2011 or early 2012.

(f) Alcohol Advertising. Regarding advertising for beverage alcohol products, the Commission issued on September 8, 2010, compulsory information requests requiring three mid-sized suppliers to provide information about advertising and marketing practices and compliance with self-regulatory guidelines. The Commission has reviewed the three companies' responses and communicated with them about the results. 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 began 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.[10]

(g) Gasoline Prices. On September 1, 2011, the Commission issued a Bureau of Economics staff report examining trends in the petroleum industry and how they have affected gasoline prices between 2005 and early 2011.[11] It concludes that while a broad range of factors influence the price of gasoline, worldwide crude oil prices continue to be the main driver of what Americans pay at the pump. The report spells out the factors that determine what consumers pay for gas, and why prices seem to ''rocket up'' but ''feather down'' (in other words, why prices increase faster in response to cost increases than they fall in response to cost decreases). In addition to the price of crude oil, by far and away the largest factor in gasoline prices, the report looks at factors such as refinery profit margins; and the possible impact of futures speculation on oil and gas prices.

(h) Financing of Motor Vehicles. The Commission is holding a series of roundtable events to gather information on possible consumer protection issues that may arise in the sale, lease, or financing of motor vehicles. For many consumers, buying or leasing a car is their most expensive financial transaction aside from owning a home. With prices averaging more than $28,000 for a new vehicle and $14,000 for a used vehicle from a dealer, most consumers seek to lease or finance the purchase of a new or used car. Financing obtained at a dealership may provide benefits for many consumers, such as convenience, special manufacturer-sponsored programs, access to a variety of banks and financial entities, or access to credit otherwise unavailable to a buyer. Dealer-arranged financing, however, can be a complicated, opaque process and could potentially involve unfair or deceptive practices.

The first event took place in Detroit, Michigan, on April 12, 2011. The FTC's second motor vehicle roundtable took place in San Antonio, Texas on August 2–3, 2011. Dates for future additional roundtables will be posted on the FTC Web site at *http://www.ftc.gov.*

(i) Fraud Forum Surveys. The FTC's Bureau of Economics continues to conduct fraud surveys and related research on consumer susceptibility to fraud. For example, the FTC is conducting an exploratory study during 2011 on consumer susceptibility to fraudulent and deceptive marketing. This research is intended to further the FTC's mission of protecting consumers from unfair and deceptive marketing. The FTC also submitted a clearance request for a second study with the OMB, proposing to survey consumer experiences with consumer fraud. Neither study is 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.

(j) Protecting Consumers from Cross-Border Harm. The FTC continues to protect American consumers from fraud by making greater use of the tools provided by the U.S. SAFE WEB Act. The FTC has used the Act to cooperate with its foreign law enforcement counterparts in investigations and enforcement actions involving Internet fraud and other technological abuses and deceptive schemes that victimize U.S. consumers. During the past year, the FTC added to its U.S. SAFE WEB scorecard by sharing information in response to nine requests from five foreign law enforcement agencies. It also issued twelve civil investigative demands on behalf of two foreign agencies in three investigations. In many of these cases, the foreign agencies investigated conduct that directly harms U.S. consumers. In others, the FTC's assistance has led to reciprocal assistance in other FTC investigations. Given the success of the U.S. SAFE WEB Act, the Commission continues to recommend that Congress repeal the Act's seven-year sunset provision before it expires in 2013.

Significant consumer protection developments this year include the launch of the Asia-Pacific Economic Cooperation Cross-Border Privacy Enforcement Arrangement, and a new asset recovery initiative with Federal and provincial Canadian law enforcers. This year the Agency also worked with its counterparts in the Global Privacy Enforcement Network, a group of privacy enforcement agencies around the globe, to launch the organization's Web site, which provides a platform for the participants to interact. The Commission was also instrumental in the development of the Organization for Economic Cooperation and Development's new Consumer Policy Toolkit, which was released at an event hosted by the FTC featuring Karen Kornbluh, U.S. Ambassador to the OECD.

The FTC also stepped up its efforts to reduce Internet-related fraud by convening, with the FBI, a roundtable discussion for law enforcement agencies, domain name registrars, and Internet registries to discuss measures to curb malicious Internet conduct. Law enforcement officials from the United States, Brazil, Canada, Switzerland, and the United Kingdom met with U.S.-based and foreign domain name registrars and four Internet registries to discuss measures to curtail domain name abuse.

(k) Journalism and the Internet. In 2009 to 2010, the FTC began a project to examine how the Internet has transformed the competitive dynamics of the news media landscape. The Agency first held a series of exploratory workshops, seeking expert views and public comments on varied aspects of

[10] More information can be found at *http://www.dontserveteens.gov/.*

[11] See ''*Federal Trade Commission Bureau of Economics: Gasoline Price Changes and the Petroleum Industry: An Update,*'' September 2011, at *http://www.ftc.gov/os/2011/09/110901gasolinepricereport.pdf.*

the challenges and new opportunities facing the news industry. The Agency continues to analyze the issues discussed at those workshops and elsewhere, including the economics of journalism in a digital world, new business and non-profit models for journalism, and potential changes to a variety of Government policies, including antitrust, copyright, and tax policy, relevant to journalism. The Agency plans to release a report in late fall 2011.

(l) Intellectual Property. After a series of eight hearings on the Evolving Intellectual Property (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,'' the Commission released a report in March 2011, ''The Evolving IP Marketplace Aligning Patent Notice and Remedies with Competition,'' that recommends improvements to policies affecting patent notice and remedies for patent infringement. Specifically, the report recommends improving policies relevant to the patent notice function through actions by the courts and the Patent and Trademark Office. Clear notice of what a patent covers promotes innovation by encouraging collaboration, technology transfer, and design-around. The report suggests notice mechanisms to improve the public's ability to identify relevant patents, to understand the scope of patent claims, and to predict the breadth of claims that are likely to emerge from patent applications. The report also explains that patent remedies that align compensation of patent holders with the economic value of their patented inventions are important for both innovation and competition. Patent damages that under-compensate patentees for infringement can deter innovation, but overcompensation can lead to higher prices and encourage speculation in patent rights, which also deters innovation. Finally, the report makes recommendations to courts that would ground damages calculations and injunction analysis in economic principles that recognize competition among patented technologies.

(m) Self-Regulatory and Compliance Initiatives with Industry. The Commission continues to engage 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. More than 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 111–203. Title X of the statute, known as the Consumer Financial Protection Act of 2010 (or the Consumer Financial Protection Act), created a new Bureau of Consumer Financial Protection (''CFPB'') within the Board of Governors of the Federal Reserve System (''Federal Reserve Board''). Most of the FTC's rulemaking authority under certain ''enumerated consumer laws'' was transferred to the CFPB on July 21, 2011. 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, the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the Omnibus Appropriations Act of 2009. Therefore, the Commission removed the following nine matters from its regulatory review schedule because authority to modify or repeal them were transferred to the CFPB: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance, 16 CFR part 320; Mortgage Assistance Relief Services Rule, 16 CFR part 322; Statements of General Policy or Interpretations [of the Fair Credit Reporting Act Rules], 16 CFR part 600; [Identity Theft] Definitions, 16 CFR part 603; Free Annual File Disclosures Rule, 16 CFR part 610 Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency, 16 CFR part 611; Duration of Active Duty Alerts, 16 CFR part 613; Appropriate Proof of Identity, 16 CFR part 614; and Procedures for State Application for Exemption From the Provisions of the [Federal Debt Collection Practices] Act, 16 CFR part 901.2. Further information on 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

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 2010 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.,* amending or supplementing regulations relating to the Fair Credit Reporting Act. The enforcement of the Red Flags Rule (or Identity Theft Rule), 16 CFR 681, was delayed by the Commission from its initial effective date of November 1, 2008, until January 1, 2011, pending clarification by Congress. The ''Red Flag Program Clarification Act of 2010'' (or the Act), Public Law 111–319, was signed into law on December 18, 2010. The Commission and the banking agencies expect to revise the Red Flags Rule to implement the Act by the spring of 2012.

FACTA Studies. On March 27, 2009, the Commission issued compulsory information requests to the nine largest private providers of homeowner's insurance in the Nation. The purpose was to help the FTC collect data for its study on the effects of credit-based scores in the homeowners' insurance market, a study mandated by section 215 of the FACTA. During the summer of 2009 these nine insurers submitted responses to the Commission's requests. FTC staff has reviewed the large policy-level data files included in these submissions and has identified a sample set of data to be used for the study. Staff expects to prepare and submit the report to Congress before the end of 2012. The data collection phase of the study should be completed by March 2012. This study is not affected by the Consumer Financial Protection Act.

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.[12] A major report on the study, which is presently in the field, is due by December 2012. This study is also not affected by the Consumer Financial Protection Act.

Mortgage Loans Rules, 16 CFR 321, 322: 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 FTC Act regarding unfair or deceptive acts or practices. On June 1, 2009, the Commission published an ANPRM in two parts: (1) Mortgage Assistance Relief Services (practices of entities providing assistance to consumers in modifying mortgage loans or avoiding foreclosure) (or MARS), 74 FR 26,130, and (2) Mortgage Acts and Practices through the life cycle of the mortgage loan (*i.e.,* loan advertising, marketing, origination, appraisals, and servicing) (or MAP), 74 FR 26,118.

- MARS—After issuing an NPRM on March 10, 2010, the Commission published a MARS final rule. 75 FR 75092 (Dec. 1, 2011). The final MARS rule prohibits providers of these services from making false or misleading claims, mandates that providers disclose certain information about these services, bars the collection of advance fees for these services, prohibits 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 imposes recordkeeping and compliance requirements. All provisions of the rule except the advance-fee ban became effective December 29, 2010. The advance-fee ban provisions became effective January 31, 2011. Additionally, on July 15, 2011, the FTC issued a stay of enforcement stating that the Agency would forbear from enforcing the MARS Rule, with the exception of the prohibition on misrepresentations, against real estate professionals who assist consumers in negotiating or obtaining short sales.
- MAP-Advertising—After issuing an NPRM on September 30, 2010, the Commission announced a final rule for MAP-Advertising on July 19, 2011. 76 FR 43826. The final rule prohibits misrepresentation in commercial communications regarding any term of a mortgage credit product and imposes certain recordkeeping requirements. The rule became effective on August 19, 2011.
- MAP-Servicing—The Commission ceased work on a pending NPRM for MAP-Servicing on July 21, 2011. On that date, the Commission's rulemaking authority for all of the MAP rules under the Omnibus Appropriations Act of 2009 was transferred to the CFPB.

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (Appliance Labeling Rule), 16 CFR 305: Under direction from Congress to examine the effectiveness of light bulb labels, the FTC introduced a new ''Lighting Facts'' label in July 2010 for medium screw-base light bulbs. 75 FR 41696. On July 22, 2011, the Commission announced an NPRM seeking comment on expanding the ''Lighting Facts'' label coverage to additional bulb types and a specific test procedure for light-emitting diode (LED) bulbs. During November 2011, the Commission will issue an ANPRM seeking comment on disclosures to help consumers, distributors, contractors, and installers easily determine whether a specific furnace, central air conditioner, or heat pump meets the applicable new Department of Energy efficiency standard for the regions where it will be installed. The Commission will seek comment on the content, location, and format of such disclosures. As part of this effort, the Commission staff will hold a public meeting with the Department of Energy (DOE) to discuss possible disclosures. The statutory deadline for the Commission to issue regional efficiency standards is 15 months after DOE issued their final efficiency standards on October 25, 2011. 76 FR at 37408.

Section 325 of the Energy Independence and Security Act of 2007 provides the Commission with the authority to promulgate energy labeling rules for consumer electronics. On October 27, 2010, the Commission announced it was issuing a final rule that will require televisions manufactured after May 10, 2011, to display EnergyGuide labels that include information on estimated yearly energy and the cost range compared to similar models. Staff anticipates sending a recommendation to the Commission by December 2011 regarding a proposed notice of rulemaking for other consumer electronics.

Retrospective Review of Existing Regulations

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 ten-year schedule. 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, because 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.

As part of its continuing ten-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. Pursuant to this program, the Commission has rescinded 37 rules and guides promulgated under the FTC's general authority and updated dozens of other since the early 1990s.

In light of Executive Orders 13563 and 13579, the FTC has taken a fresh look at its longstanding regulatory review process. The Commission is taking a number of steps to ease burdens

[12] See Federal Trade Commission Reports to Congress under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003; available at *http://www.ftc.gov/reports/FACTACT/FACTAct_Report_2006.pdf* (December 2006 Report), *http://www.ftc.gov/opa/2008/12/factareport.shtm* (December 2008 Report) and *http://www.ftc.gov/os/2011/01/1101factareport.pdf* (December 2010 Report).

on business and promote transparency in its regulatory review program:

• The Commission recently issued a revised 10-year review schedule (see next paragraph below) and is accelerating the review of a number of rules and guides in response to recent changes in technology and the marketplace. More than a third of the Commission's 66 rules and guides will be under review, or will have just been reviewed, by the end of 2011.

• The Commission is requesting public comment on the effectiveness of its regulatory review program and suggestions for its improvement.

• The FTC has launched a Web page at *http://www.ftc.gov/regreview* that will serve as a one-stop shop for the public to obtain information and provide comments on individual rules and guides under review as well as the Commission's regulatory review program generally.

Pursuant to section 2 of Executive Order 13579 ''Regulation and Independent Regulatory Agencies'' (Jul. 11, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the FTC's regulatory review plan. The table includes rulemakings that the Agency expects to issue in proposed or final form during the upcoming year. Each entry includes the title of the rulemaking subject to the Agency's retrospective analysis, the RIN and whether it is expected to reduce burdens on small businesses. The regulatory review plan can be found at: *www.ftc.gov.*

| Rule | Regulatory Identifier Nos. (RIN) | Expected to Reduce Burdens on Small Business (Yes/No) |
|---|---|---|
| Business Opportunity Rule, 16 CFR 437 | 3084–AB04 | Yes. |
| Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR 429. | 3084–AB10 | Yes. |
| Children's Online Privacy Protection Rule, 16 CFR 312 | 3084–AB20 | No. |

In addition, the Commission's ten-year periodic review for 2011 includes the following rules and guides (76 FR 41151, July 13, 2011):

(1) Guides for Advertising of Warranties and Guaranties, 16 CFR 239;

(2) Rules and Regulations under the Wool Products Labeling Act of 1939, 16 CFR part 300;

(3) Fur Products Labeling Act Rules, 16 CFR 301;

(4) Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR part 303;

(5) Rule on Retail Food Store Advertising and Marketing Practices (Unavailability Rule), 16 CFR 424;

(6) Interpretations of Magnuson-Moss Warranty Act, 16 CFR 700;

(7) Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR 701;

(8) Pre-Sale Availability of Written Warranty Terms, 16 CFR 702;

(9) Informal Dispute Settlement Procedures, 16 CFR 703; and

(10) [Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules, 16 CFR part 801.

Due to resource constraints, the Commission is postponing review of the following matters previously scheduled for 2011 review: Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 CFR part 14; the Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR part 23; the Preservation of Consumers' Claims and Defenses Rule [Holder in Due Course Rule], 16 CFR part 433; and the Credit Practices Rule, 16 CFR part 444.

Furthermore, consistent with the goal of reducing unnecessary burdens, within and outside the Government, Commission staff officials are in the process of identifying reports required by statute as well as statutes themselves that appear to be of limited value, but that divert business or Commission resources from more pressing work. Thus far, staff preliminarily has identified two reports that do not appear to be useful. The first is a report, required annually, on concentration in the ethanol market. The Commission has found each year that the market is extremely unconcentrated, and that entry is easy and ongoing. Therefore, this report seems to provide little useful information. The second report is prepared by the Commission together with the Department of Justice and the Department of Education, and simply describes actions taken to address scholarship scams. Though stopping scholarship scams is an important priority, the report appears to provide little valuable information. The Commission will make appropriate recommendations to Congress at the conclusion of its review.

Ongoing Rule and Guide Reviews

The Commission is continuing review of a number of rules and guides, which are discussed first under (a) Rules and then (b) Guides.

(a) Rules

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. On June 1, 2011, the Commission requested comments on the rule, as part of the Commission's systematic review of all current Commission rules and guides. The Commission also sought comment on whether to merge its alternative fueled vehicle (AFV) labels with fuel economy labels proposed by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA), add new definitions for AFVs contained in recent legislation, and change labeling requirements for used AFVs. The comment period closed on July 25, 2011, and staff is reviewing the comments. On June 1, 2011, the Commission also postponed any amendments to its Guide Concerning Fuel Economy Advertising for New Automobiles upon completion of ongoing review by the Environmental Protection Agency and the National Highway Traffic Safety Administration of current fuel economy labeling requirements and the Commission's accelerated regulatory review of its own Alternative Fuel Rule. 76 FR 31467.

Telemarketing Sales Rule (TSR). Caller ID—The Commission issued an advance notice of proposed rulemaking on December 15, 2010, requesting public comment on provisions of the Telemarketing Sales Rule concerning caller identification services and disclosure of the identity of the seller or telemarketer responsible for telemarketing calls. 75 FR 78,179. The

comment period closed on January 28, 2011. The Commission solicited comments on whether changes should be made to the TSR to reflect the current use and capabilities of Caller ID technologies. In particular, the Commission is interested in whether the TSR should be amended to better achieve the objectives of the Caller ID provisions—including enabling consumers and law enforcement to use Caller ID information to identify entities responsible for illegal telemarketing practices. Staff is reviewing the comments and anticipates making a recommendation to the Commission by April 2012.

Business Opportunity Rule. Regarding the Business Opportunity Rule, the Commission issued an NPRM (71 FR 19,054, Apr. 12, 2006) and a revised NPRM (73 FR 16,110, Mar. 26, 2008), then later held a workshop on June 1, 2009, to explore changes to the proposed rule, including the effectiveness of a proposed disclosure form. On October 28, 2010, the Commission released a staff report recommending that coverage of the FTC's 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. 75 FR 68,559 (Nov. 8, 2010). FTC staff also recommended streamlining the disclosures required 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 were accepted until January 18, 2011. Staff anticipates Commission action relating to a proposed final rule by the end of 2011.

Children's Online Privacy Protection Rule (''COPPA Rule''), 16 CFR 312. The COPPA Rule requires operators of Web sites, and online service providers directed at children under 13 (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 Rule as part of the systematic regulatory review process. 75 FR 17089 (Apr. 5, 2010). The Commission held a public roundtable on the Rule on June 2, 2010, and the comment period, as extended, ended on July 12, 2010. On September 15, 2011, the Commission announced it was proposing modifications to the Rule in five areas to respond to changes in online technology, including in the mobile marketplace, and, where appropriate, to streamline the Rule: Definitions, including the definitions of ''personal information'' and ''collection,'' parental notice, parental consent mechanisms, confidentiality and security of children's personal information, and the role of self-regulatory ''safe harbor'' programs. 76 FR 59804. In addition, the Commission also proposed adding a new provision addressing data retention and deletion. The comment period will close on November 28, 2011.

Mail or Telephone Order Merchandise 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. On September 30, 2011,[13] the Commission published a NPRM proposing to: clarify that the Rule covers all orders placed over the Internet; revise the Rule to allow sellers to provide refunds and refund notices by any means at least as fast and reliable as first class mail; clarify sellers' obligations when buyers use payment systems not enumerated in the Rule; and require that refunds be made with seven working days for purchases made using third-party credit cards. 76 FR 60765. The comment period closes on December 14, 2011.

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 the end of 2011.

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, as extended, ended on September 25, 2009. 74 FR 36972 (Jul. 27, 2009). Staff prepared a recommendation for the Commission and anticipates publication of an NPRM by the end of 2011.

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, 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 the end of 2011.

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

[13] Please see *Final Action* section for information about a separate FR Notice that announces that the Commission is retaining MOTR with minor technical corrections.

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 2012.

(b) Guides

Guides for the Use of Environmental Marketing Claims (Green Guides), 16 CFR 260: After holding three public workshops, analyzing public comments, and studying consumer perceptions of certain environmental claims, the Commission announced on October 6, 2010, proposed revisions to the Green Guides to help marketers avoid making misleading environmental claims. The proposed changes are designed to update the Guides and make them easier for companies to understand and use. The 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 comment period closed on December 10, 2010. The staff is currently reviewing 338 non-duplicate comments and anticipates sending a recommendation to the Commission by the end of 2011.

Vocational Schools Guides. The Commission sought 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 to the Commission by the end of 2011.

Final Actions [14]

Since the publication of the 2010 Regulatory Plan, the Commission has issued the following final rules or taken other actions to terminate rulemaking proceedings.

FACTA Risk-Based Pricing Rule. After the Commission issued a risk-based pricing rule jointly with the Federal Reserve, 75 FR 2724 (Jan. 15, 2010), the Dodd-Frank Act subsequently amended the Fair Credit Reporting Act to require that this risk-based pricing notice include a credit score if one was used. After issuing an NPRM, the Agencies published final rules requiring creditors to disclose credit score information to consumers when a credit score is used in setting or adjusting the terms of credit. 76 FR 41602 (Jul. 15, 2011).

Hart-Scott-Rodino Rules. For the Hart-Scott-Rodino Premerger Notification Rules (HSR Rules), 16 CFR 801 to 803), the Commission in conjunction with the Antitrust Division, Department of Justice, published a final rule on July 19, 2011, streamlining the HSR Form and capturing new information that will help the Agencies conduct their initial review of a proposed transaction's competitive impact. 76 FR 42471. These final rules were effective August 18, 2011.

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. After notice and comment, 75 FR 12,470 (Mar. 16, 2010), on April 8, 2011, the Commission issued amendments to the rule that allow an alternative octane rating method and made other minor changes. 76 FR 19684. The effective date for the amendments was May 31, 2011. The Commission declined to issue final ethanol labeling amendments at that time, but is currently considering this for possible further action.

Mail or Telephone Order Merchandise 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. During 2007, 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). On September 30, 2011,[15] the Commission announced it was retaining MTOR. 76 FR 60715. Based on previous Rule proceedings and after reviewing public comments received regarding the Rule's overall costs, benefits, and regulatory and economic impact, the Commission concluded that the Rule continues to benefit consumers and the Rule's benefits outweigh its costs. For clarity, the Commission reorganized the Rule by alphabetizing the definitions at the beginning of the Rule.

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

[14] Other final actions can be found under *Rulemakings and Studies Required by Statute, supra.*

[15] Please see *Ongoing Rule and Guide Reviews* section above for information on a separate FR Notice proposing amendments to MOTR.

or improve the health and safety of the public, the environment, or the well-being of the American people.'' Executive Order 12866, section 1.

**II. Regulatory Actions**

The Commission has no proposed rules that would be a ''significant regulatory action'' under the definition in Executive Order 12866.[16]

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## NATIONAL INDIAN GAMING COMMISSION (NIGC)

*Statement of Regulatory Priorities*

In 1988, Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub. L. 100–497, 102 Stat. 2475) with a primary purpose of providing ''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.'' IGRA established the National Indian Gaming Commission (NIGC or the Commission) to protect such gaming, amongst 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 equally committed to strengthening government-to-government relations by engaging in meaningful consultation with tribes to fulfill IGRA's intent. The NIGC's 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 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 fully committed to working with tribes to ensure the integrity of the industry by exercising its regulatory responsibilities through technical assistance, compliance, and enforcement activities.

*Retrospective Review of Existing Regulations*

As an independent regulatory agency, the NIGC has been performing a retrospective review of its existing regulations well before Executive Order 13579 was issued on July 11, 2011. The NIGC, however, recognizes the importance of E.O. 13579 and its regulatory review is being conducted in the spirit of E.O. 13579, to identify those regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with input from the public. In addition, as required by Executive Order 13175, the Commission has been conducting government-to-government consultations with tribes regarding each regulation's relevancy, consistency in application, and limitations or barriers to implementation, based on the tribes' experiences. The consultation process is also intended to result in the identification of areas for improvement and needed amendments, if any, new regulations, and the possible repeal of outdated regulations.

The following Regulatory Identifier Numbers (RINs) have been identified as associated with the review:

| RIN | Title |
|---|---|
| 3141–AA15 | Tribal Background Investigations and Licensing. |
| 3141–AA–27 | Class II and Class III Minimum Internal Control Standards and Class II Minimum Technical Standards. |
| 3141–AA40 | Fees. |
| 3141–AA43 | Definitions. |
| 3141–AA44 | Self Regulation of Class II. |
| 3141–AA45 | Review and Approval of Pre-Existing Ordinances or Resolutions. |
| 3141–AA46 | Management Contracts. |
| 3141–AA47 | Appeal Proceedings Before the Commission. |
| 3141–AA48 | Facility License Notifications, Renewals, and Submissions. |
| 3141–AA49 | Issuance of Investigation Completion Letters. |
| 3141–AA50 | Enforcement Regulations. |

More specifically, the NIGC is reviewing and considering revising its existing regulations in the following areas: (i) Tribal background investigations and licensing, in order to streamline the process for submitting information to the NIGC; (ii) minimum internal control standards (MICS) and minimum technical standards for gaming equipment used in the play of Class II games, in order to respond to changing technologies in the industry and to ensure that the MICS and technical standards remain relevant and appropriate; (iii) requirements for obtaining a self-regulation certification for Class II gaming; (iv) appeals of the Chair's actions on ordinances, management contracts, notices of violations (NOV), civil fine assessments, and closure orders, in order to clarify the appeals process for the regulated community; (v) facility licensing notifications, renewals, and submissions; (vi) monitoring and investigations; (vii) fees, in order to allow for the calculation of fees based on each tribe's fiscal year (instead of calendar year) and to require quarterly fee payments instead of semiannual payments, to ensure fingerprint fees reflect the true cost of fingerprint processing by providing for the annual review and adjustment of fees, and to implement a late payment system in lieu of NOVs for late submissions of fees and utilizing the NOV system only in rare instances; and (viii) enforcement, in order to provide for pre-enforcement procedures.

The NIGC is also currently considering promulgating new regulations: (i) Concerning a definition of the term ''sole proprietary interest'' with regard to the conduct of gaming on

[16] 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:

(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.

Indian lands, in order to reduce uncertainty surrounding the types of development, consulting, financing, and lease agreements tribes may enter into with regard to their gaming activities; and (ii) that would give preference to qualified Indian-owned business when purchasing goods or services needed to carry out the Commission's duties. Lastly, the NIGC has issued a Notice of Proposed Rulemaking repealing the regulation on the review and approval of gaming ordinances enacted by tribes prior to the existence of the Commission, as such ordinances may no longer exist and thus there is no further need for this regulation. The NIGC anticipates that the ongoing consultations with regulated tribes will continue to play an important role in the development of the NIGC's rulemaking efforts.

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## U.S. NUCEAR REGULATORY COMMISSION

*Fiscal Year 2011 Regulatory Plan Statement of Regulatory Priorities*

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. The NRC's regulatory mission is to ensure that civilian uses of nuclear materials and facilities are carried out in a manner that will protect public health and safety and the environment and that will not be inimical to the common defense and security of the United States. The NRC regulates the operation of nuclear power plants and fuel cycle plants; the safeguarding of nuclear materials from theft and sabotage; the safe transport, storage, and disposal of radioactive materials and wastes; the decommissioning and safe release for other uses of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material. In addition, the NRC licenses the import and export of radioactive materials.

As part of its regulatory process, the NRC routinely conducts comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations. The NRC has developed internal procedures and programs to ensure that it imposes only necessary requirements on its licensees and to review existing regulations to determine whether the requirements imposed are still necessary.

The NRC's fiscal year (FY) 2011 regulatory plan is not indicative of all rulemakings ongoing in FY 2011. The NRC anticipates publication of one major rule in FY 2011.

The NRC will update its requirement to recover approximately 90 percent of its budget authority in FY 2011, not including amounts appropriated from the Nuclear Waste Fund, amounts appropriated for Waste Incidental to Reprocessing, and amounts appropriated for generic homeland security activities (nonfee items), through fees to NRC licensees and applicants. The NRC receives 10 percent of its budget authority (not including nonfee items) from the general fund each year to pay for the cost of Agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities (as defined under section 274 of the Atomic Energy Act of 1954, as amended).

The NRC's other significant regulatory priorities for FY 2012 and beyond includes the following:

- Revise the environmental protection requirements for renewing nuclear power plant operating licenses.
- Develop performance-based acceptance criteria for fuel cladding performance during loss-of-coolant accidents at nuclear power plants.
- Certify new designs for nuclear power plants and amend existing approved designs.
- Specify the requirements for a site-specific analysis to demonstrate compliance with low-level waste disposal performance objectives, and the technical requirements needed for this analysis.
- Amend the regulations that govern the medical use of byproduct material related to reporting and notifications of medical events to clarify requirements for permanent implant branchytherapy.
- Expand the options for independent storage of spent nuclear fuel by amending and approving new spent fuel storage cask designs.
- Revise the fitness-for-duty requirements specific to drug and alcohol testing of employees working at nuclear power plants and other licensed facilities, and amend the fatigue management requirements pertaining to personnel who perform quality control and quality verification functions.
- Put in place security requirements for Category 1 and Category 2 quantities of radioactive material.

In addition to the previously stated priorities, additional regulatory priorities may be required due to: (1) Recommendations from a task force established to examine the NRC's regulatory requirements, programs, processes, and implementation in light of information from the Fukushima Daiichi site in Japan, following the March 11, 2011, earthquake and tsunami; and (2) other emerging events.

## NRC

*Proposed Rule Stage*

### 158. Medical Use of Byproduct Material—Amendments/Medical Event Definition [NRC–2008–0071]

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 35.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations that govern medical use of byproduct material related to reporting and notifications of medical events to clarify requirements for permanent implant branchytherapy.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to change the criteria for defining a medical event (ME) for permanent implant brachytherapy from dose-based to activity-based.

Several medical use events involving therapeutic use of byproduct material in 2003, as well as advice from the Advisory Committee on the Medical Use of Isotopes (ACMUI), prompted the reconsideration of the appropriateness and adequacy of the regulations regarding MEs and written directives (WDs).

A proposed rule was published in the **Federal Register** on August 6, 2008 (73 FR 45635), for public comment. Most of the 57 comment letters received primarily opposed parts of the rulemaking. During fall of 2008, a substantial number of MEs involving permanent implant brachytherapy were reported to the NRC. Based on its evaluation of this information, including an independent analysis by an NRC medical consultant, the staff developed a re-proposed rule in SECY–10–0062, ''Re-proposed Rule: Medical Use of Byproduct Material—Amendments/Medical Event Definitions,'' dated May 18, 2010, for Commission approval.

In SRM–SECY–10–0062, dated August 10, 2010, the Commission disapproved the staff's recommendation to publish the re-proposed rule. Instead, the Commission directed the staff to work closely with the ACMUI and the

broader medical and stakeholder community to develop event definitions that will protect the interests of patients, allow physicians the flexibility to take actions that they deem medically necessary, while continuing to enable the agency to detect failures in process, procedure, and training, as well as any misapplication of byproduct materials by authorized users. Additionally, the staff was directed to hold a series of stakeholder workshops to discuss issues associated with the ME definition. The staff plans to expand this part 35 rulemaking to: Modify preceptor attestation requirements, consider extending grandfathering to certain certified individuals (Ritenour petition PRM–35–20), and to consider other issues that have developed in implementation of the current regulations. The NRC intends to merge this proposed rule with RIN 3150–AI63, Preceptor Attestation Requirements (NRC–2009–0175).

*Summary of Legal Basis:* 42 U.S.C. 2201; 42 U.S.C. 5841.

*Alternatives:* As an alternative to the rulemaking, the NRC staff considered the ''no-action'' alternative. Under this option the NRC would not modify part 35, and the medical events would continue to be considered under dose-based criteria than the activity-based criteria for the permanent brachytherapy implants.

*Anticipated Cost and Benefits:* The NRC is in the process of preparing a regulatory analysis to support this rulemaking. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis will be available as part of the rulemaking package.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 02/15/08 | 73 FR 8830 |
| ANPRM Comment Period End. | 02/26/08 | |
| NPRM ..... | 08/06/08 | 73 FR 45635 |
| NPRM Comment Period End. | 10/20/08 | |
| NPRM Comment Period Extended. | 10/06/08 | 73 FR 58063 |
| NPRM Comment Period End. | 11/07/08 | |
| Second NPRM .... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Edward M. Lohr, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–0253, *Email: edward.lohr@nrc.gov.*

*Related RIN:* Merged with 3150–AI63.

*RIN:* 3150–AI26

## NRC

### 159. Fitness-for-Duty Programs [NRC–2009–0090]

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 2201; 41 U.S.C. 5841

*CFR Citation:* 10 CFR 26.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to ensure that personnel who actually perform independent quality control/verification (QC/QV) checks under the licensee's NRC-approved quality assurance program are subject to the same part 26, subpart I, provisions as operating personnel identified in section 26.4(a)(1). The proposed rule would also consider requests the Commission received in Petitions for Rulemaking 26–3, 26–5, and 26–6. Part 26, subpart I, currently does not include QC/QV personnel as covered workers for fatigue management. Also, petitions for rulemaking have raised additional concerns from affected stakeholders. A detailed regulatory analysis will be performed per NRC processes which detail the costs and benefits associated with the proposed rule. This regulatory analysis will be published with the proposed rule.

*Statement of Need:* Part 26, subpart I, currently does not include QC/QV personnel as covered workers for fatigue management. Also, petitions for rulemaking have raised additional concerns from affected stakeholders.

*Anticipated Cost and Benefits:* A detailed regulatory analysis will be performed per NRC processes which detail the costs and benefits associated with the proposed rule. This regulatory analysis will be published with the proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Scott C. Sloan, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, *Phone:* 301 415–1619, *Email: scott.sloan@nrc.gov.*

*RIN:* 3150–AI58

## NRC

### 160. U.S. Evolutionary Power Reactor (EPR) Design Certification Amendment [NRC–2010–0132]

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 52.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to part 52 by issuing a new appendix for the initial certification of the U.S. Evolutionary Power Reactor standard plant design. Applicants or licensees intending to construct and operate a nuclear power plant using the EPR design may do so by referencing this design certification rule.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to certify an amendment to the U.S. Evolutionary Power Reactor (U.S. EPR) standard plant design. This action is necessary so that applicants or licensees intending to construct and operate a U.S. EPR design may do so by referencing this design certification rule. The applicant for certification of the amendment to the U.S. EPR design is AREVA Nuclear Power.

A design certification amendment does not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. As a result, there is no monetary impact for this final rule.

*Alternatives:* The NRC has not prepared alternatives for this rule. The NRC evaluates alternatives for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design

certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of alternatives in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC.

*Anticipated Cost and Benefits:* The NRC has not prepared a regulatory analysis for this rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Fred Schofer, Nuclear Regulatory Commission, Office of New Reactors, Washington, DC 20555–0001, *Phone:* 301 415–5682, *Email: fred.schofer@nrc.gov.*

*RIN:* 3150–AI82

## NRC

### 161. Disposal of Unique Waste Streams [NRC–2011–0012]

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 61.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to require operating and future low-level radioactive waste disposal facilities to conduct a performance assessment and an intruder assessment, to demonstrate compliance with performance objectives in 10 CFR part 61 to enhance safe disposal of low-level radioactive waste. These analyses will identify any additional measures that would enhance adequate protection of public health and safety. The NRC is also proposing additional changes to the current regulations to reduce ambiguity, facilitate implementation, and to better align the requirements with current health and safety standards. This rule would affect existing and future low-level radioactive waste disposal facilities that are regulated by the NRC and the Agreement States.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require low-level radioactive waste (LLRW) disposal facilities to conduct site-specific analyses to demonstrate compliance with the performance objectives. Although the NRC believes that part 61 is adequate to protect public health and safety, requiring a site-specific analysis to demonstrate compliance with the performance objectives would enhance the safe disposal of LLRW and would provide added assurance that waste streams not considered in the part 61 technical basis comply with the part 61 performance objectives. Further, these analyses would identify any additional measures that would be prudent to implement, and these amendments would improve the efficiency of the regulations by making changes to reduce ambiguity, facilitate implementation, and better align the requirements with the current and more modern health and safety regulations. This rulemaking would correct ambiguities and provide added assurance that LLRW disposal continues to meet the performance objectives in part 61.

*Summary of Legal Basis:* 42 U.S.C. 2201; 42 U.S.C. 5841.

*Alternatives:* As an alternative to the rulemaking, the NRC staff considered the ''no-action'' alternative. Under this option the NRC would not modify part 61, no long-term analyses would be required, no period of performance would be specified, and no intruder assessment would be required.

*Anticipated Cost and Benefits:* The NRC is in the process of preparing a regulatory analysis to support this rulemaking. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis will be available as part of the rulemaking package.

*Risks:* Not conducting this rulemaking would allow the ambiguities in the part 61 regulations to continue and would not provide the added assurance that disposal of the waste streams not considered in the part 61 technical basis comply with the part 61 performance objectives.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Preliminary Proposed Rule Language. | 05/03/11 | 76 FR 24831 |
| Comment Period End. | 06/18/11 | |
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Andrew G. Carrera, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–1078, *Email: andrew.carrera@nrc.gov.*

*RIN:* 3150–AI92

## NRC

### 162. • Revision of Fee Schedules: Fee Recovery for FY 2012 [NRC–2011–0207]

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 170; 10 CFR 171.

*Legal Deadline:* Final, Statutory, September 30, 2012.

The Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2012, less the amounts appropriated from the Nuclear Waste Fund, amounts appropriated for Waste Incidental to Reprocessing, and amounts appropriated for generic homeland security activities (non-fee items). The OBRA–90 requires that the fees for FY 2010 must be collected by September 30, 2012.

*Abstract:* This proposed rule would amend the Commission's licensing,

inspection, and annual fees charged to its applicants and licensees. The amendments would implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2012, less the amounts appropriated from the Nuclear Waste Fund, and for Waste Incidental to Reprocessing, and generic homeland security activities.

Based on the FY 2012 NRC budget sent to Congress, the NRC's required fee recovery amount for the FY 2012 budget is approximately $909.5 million. After accounting for carryover and billing adjustments, the total amount to be recovered through fees is approximately $908.5 million.

*Statement of Need:* This rulemaking would amend the licensing, inspection, and annual fees charged to NRC licensees and applicants for an NRC license. The amendments are necessary to recover approximately 90 percent of the NRC budget authority for FY 2012, less the amounts appropriated for non-fee items. The OBRA–90, as amended, requires that the NRC accomplish the 90 percent recovery through the assessment of fees. The NRC assesses two types of fees to recover its budget authority. License and inspection fees are assessed under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) to recover the costs of providing individually identifiable services to specific applicants and licensees (10 CFR part 170). IOAA requires that the NRC recover the full cost to the NRC of all identifiable regulatory services that each applicant or licensee receives. The NRC recovers generic and other regulatory costs not recovered from fees imposed under 10 CFR part 170 through the assessment of annual fees under the authority of OBRA–90 (10 CFR part 171). Annual fee charges are consistent with the guidance in the Conference Committee Report on OBRA–90 that the NRC assess the annual charge under the principle that licensees who require the greatest expenditure of the Agency's resources should pay the greatest annual fee.

*Summary of Legal Basis:* The OBRA–90 requires that the fees for FY 2012 must be collected by September 30, 2012.

*Alternatives:* Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

*Anticipated Cost and Benefits:* The cost to NRC licensees is approximately 90 percent of the NRC FY 2012 budget authority less the amounts appropriated for non-fee items. The dollar amount to be billed as fees to NRC applicants and licensees for FY 2012 is approximately $909.5 million.

*Risks:* Not applicable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions, Organizations.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Agency Contact:* Renu Suri, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–0161, *Email: renu.suri@nrc.gov.*

*RIN:* 3150–AJ03

## NRC

*Final Rule Stage*

### 163. Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements [NRC–2004–0006]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 50; 10 CFR 52.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to allow for a risk-informed alternative to the present loss-of-coolant accident break size. This rulemaking would address a petition for rulemaking submitted by the Nuclear Energy Institute (NEI) (PRM–50–75). The final rule was provided to the Commission on December 10, 2010, in SECY–10–0161.

The NRC staff provided an initial draft final rule to the Advisory Committee on Reactor Safeguards (ACRS) on October 16, 2006. After reviewing the draft rule, the ACRS informed the Commission of numerous technical and policy concerns and recommended that the rule not be issued. The staff prepared a Commission paper (SECY–07–0082; May 16, 2007) to inform the Commission of the impact of the ACRS recommendations and to request guidance before proceeding with the rule. The Commission provided its guidance in a Staff Requirements Memorandum on August 10, 2007. On April 1, 2008, the staff provided an updated rule schedule to the Commission. In a meeting on August 6, 2008, selected NRC managers approved the staff's recommended resolution of the open issues related to the final rule. The staff prepared draft rule language incorporating the new positions into the rule and adding additional requirements for defense-in depth for pipe breaks larger than the transition break size. The OGC reviewed the revised rule language and recommended that portions of the rule be re-noticed to provide an opportunity for public comments on some of the new rule requirements. In a meeting on October 8, 2008, NRC managers decided to repropose the entire rule. On December 18, 2008, the EDO signed a memorandum informing the Commission that the staff will re-notice the section 50.46a rule for additional public comments in August 2009. The staff discussed the revised proposed rule with the ACRS on May 6–7, 2009, and then published the rule on August 10, 2009 (74 FR 40006). On September 24, 2009, in response to a request from NEI, the NRC extended the public comment period by 120 days to close on January 22, 2010 (74 FR 48667). The NRC evaluated the public comments and prepared draft final rule language, which was posted on Regulations.gov on May 12, 2010. A public meeting was held on June 4, 2010, to discuss resolution of public comments and the draft rule language. The staff discussed the rule with the ACRS in September and October of 2010. In its letter of October 20, 2010, the ACRS concluded that the rule was an acceptable alternative for operating reactors. The final rule was provided to the Commission on December 10, 2010 (SECY–10–0161).

*Statement of Need:* This rulemaking would codify alternative requirements for ECCS at nuclear power reactors by using risk information to refine ECCS requirements based on the likelihood of pipe breaks of various sizes. The rule would divide all coolant piping breaks currently considered in emergency core cooling requirements into two size groups: Breaks up to and including a ''transition'' size, and breaks larger than the transition size up to the largest pipe in the reactor coolant system. Selection of the transition size was based upon pipe break frequency estimates and associated uncertainties. Because pipe breaks in the smaller size group are considered more likely, they would be analyzed using existing criteria for ensuring that the reactor core stays cool during and after an accident. Larger breaks are considered less likely and would be analyzed with less conservative methods. Plants would still have to mitigate the effects of breaking the largest pipe and maintain core

cooling. Under the draft final rule, power plant operators could make plant design changes that could enhance safety and/or provide operational benefits. The rule includes risk acceptance criteria to ensure that modified designs would continue to provide adequate protection of public health and safety.

*Alternatives:* The alternative is for the NRC not to issue these requirements. The alternative would not allow operators of nuclear power plants to have the increased design and operational flexibility that would be allowed by these risk-informed requirements.

*Anticipated Cost and Benefits:* There are no costs or benefits associated with this alternative rule for licensees who choose not to implement it. For the licensees who do choose to comply with the alternative requirements, if they request to increase power generation at their facilities and eliminate the need for fast-starting of emergency diesel generators, they would need to invest an estimated overall total of approximately $445 to $1,221 million (in 2008$ @ 3 percent discount rate) for plant modifications and staff support. Total estimated NRC cost associated with implementing the alternative requirements and reviewing licensees' design change requests at these facilities would be approximately $22 to $24 million (in 2008$ @ 3 percent discount rate). Substantial net benefits would result after subtracting both licensee and NRC costs from the benefits that licensees would obtain from making these plant modifications. The total cumulative net benefits are estimated to range from $279 to $2,876 million (in 2008$ @ 3 percent discount rate).

*Risks:* The rule would allow plant design and operational changes which could result in small but acceptable increases in risk. Specific acceptance criteria for risk increases are contained in the rule which limit overall risk increases to very small amounts. Allowable risk increases under this rule are consistent with the current risk increase guidelines specified in Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-informed Decisions on Plant-Specific Changes to the Licensing Basis.''

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/07/05 | 70 FR 67597 |
| NPRM Comment Period End. | 02/06/06 | |
| NPRM Comment Period Extended. | 01/25/06 | 71 FR 4061 |
| NPRM Comment Period End. | 03/08/06 | |
| Supplemental NPRM. | 08/10/09 | 74 FR 40006 |
| Supplemental NPRM Comment Period End. | 09/24/09 | |
| Supplemental NPRM Comment Period Extended. | 10/07/09 | 74 FR 51522 |
| Supplemental NPRM Extended Comment Period End. | 01/22/10 | |
| Final Rule ..... | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Richard F. Dudley, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, *Phone:* 301 415–1116, *Email: richard.dudley@nrc.gov.*

*RIN:* 3150–AH29

## NRC

### 164. Physical Protection of Byproduct Material [NRC–2008–0120]

*Priority:* Economically Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 30; 10 CFR 32; 10 CFR 33; 10 CFR 34; 10 CFR 35; 10 CFR 37; 10 CFR 39; 10 CFR 51; 10 CFR 71; 10 CFR 73.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to put in place security requirements for the use of Category 1 and Category 2 quantities of radioactive material. The objective is to ensure that effective security measures are in place to prevent the dispersion of radioactive material for malevolent purposes. The proposed amendment would also address background investigations and access controls, enhanced security for use, and transportation security for Category 1 and Category 2 quantities of radioactive material. This rulemaking subsumes RIN 3150–AI56, ''Requirements for Fingerprinting and Criminal History Record Checks for Unescorted Access to Radioactive Material and Other Property (part 37).''

*Statement of Need:* The objective of this rule is to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material by establishing generally applicable security requirements similar to those previously imposed on certain licensees by the NRC orders. Although a security order is legally binding on the licensee receiving the order, a rule makes requirements generally applicable to all licensees. In addition, notice and comment rulemaking allows for public participation and is an open process. This rulemaking places the security requirements for use of category 1 and category 2 quantities of radioactive material into the regulations.

*Summary of Legal Basis:* Atomic Energy Act of 1954, as amended.

*Alternatives:* NRC could continue to regulate the security aspects for these facilities by Commission order. This alternative would not significantly reduce the burden as the majority of the cost is associated with the order requirements.

*Anticipated Cost and Benefits:* This final rule will result in maximum annual impact to the economy of approximately $17.9 million (using a 7% discount rate, annualizing the one-time costs over 20 years, and adding these ''annualized'' one-time costs to the annual costs) or $24.4 million (using a 3% discount rate). The Office of Management and Budget has indicated that the annual cost of the orders should be included in the annual impact to the economy calculation. The estimated annual cost to the industry using the pre-order was $111.6 million. Therefore, this final rule is considered a major rule as defined by the Congressional Review Act.

The qualitative values of the rule are associated with safeguard and security considerations of the decreased risk of a security-related event, such as theft or diversion of radioactive material and subsequent use for unauthorized purposes. Increasing the security of high-risk radioactive material decreases this risk and increases the common defense and security of the Nation. Other qualitative values that are positively affected by the decreased risk of a security-related event include public and occupational health due to an accident or event and the risk of damage to on-site and off-site property. In addition, regulatory efficiency is enhanced by the rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/15/10 | 75 FR 33901 |
| NPRM Comment Period End. | 10/13/10 | |

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period Extended. | 10/08/10 | 75 FR 62330 |
| NPRM Comment Period Extended End. | 01/18/11 | |
| Final Rule ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Agency Contact:* Merri L. Horn, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–8126, *Email: merri.horn@nrc.gov.*

*RIN:* 3150–AI12

## NRC

### 165. Environmental Effect of Renewing the Operating License of a Nuclear Power Plant [NRC–2008–0608]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 51.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations that provide the environmental protection requirements for renewing nuclear power plant operating licenses. The regulations require that licensees consider the impact that the licensing action could have on the human environment.

*Statement of Need:* The Nuclear Regulatory Commission (NRC) is amending its environmental protection regulations by updating the Commission's 1996 findings on the environmental effect of renewing the operating license of a nuclear power plant. The rule redefines the number and scope of the environmental impact issues which must be addressed by the NRC during license renewal environmental reviews. The rule also incorporates lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996.

*Summary of Legal Basis:* NRC's environmental protection regulations are in 10 CFR part 51, and implement section 102(2) of the National Environmental Policy Act of 1969 (NEPA).

*Anticipated Cost and Benefits:* A detailed regulatory analysis was published with the proposed rule, and can be accessed in ADAMS at ML090260568.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/31/09 | 74 FR 38117 |
| NPRM Comment Period End. | 10/14/09 | |
| NPRM Comment Period Extended. | 10/07/09 | 74 FR 51522 |
| NPRM Extended Comment Period End. | 01/12/10 | |
| Final Rule ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Stewart Schneider, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, *Phone:* 301 415–4123, *Email: stewart.schneider@nrc.gov.*

*RIN:* 3150–AI42

## NRC

### 166. AP1000 Design Certification Amendment [NRC–2010–0131]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 52.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations for the AP1000 design certification to replace combined license information and design acceptance criteria with specific design information, address compliance with the aircraft impact assessment rule, and incorporate design improvements resulting from detailed design efforts. Applicants or licensees intending to construct and operate a nuclear power plant using the AP1000 design as amended may do so by referencing this design certification rule.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify an amendment to the AP1000 standard plant design. The purpose of the amendment is to replace the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, address the effects of the impact of a large commercial aircraft, incorporate design improvements, and increase standardization of the design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this design certification rule (DCR), and need not demonstrate in its application the safety of the certified design as amended.

The applicant for certification of the amendment to the AP1000 design is Westinghouse Electric Company, LLC (Westinghouse).

A design certification amendment does not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. As a result, there is no monetary impact for this final rule.

*Alternatives:* The NRC has not prepared alternatives for this rule. The NRC evaluates alternatives for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of alternatives in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC.

*Anticipated Cost and Benefits:* The NRC has not prepared a regulatory analysis for this rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an

applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/24/11 | 76 FR 10269 |
| NPRM Comment Period End. | 05/10/11 | |
| Final Rule ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Serita Sanders, Nuclear Regulatory Commission, Office of New Reactors, Washington, DC 20555–0001, *Phone:* 301 415–2956, *Email: serita.sanders@nrc.gov.*

*RIN:* 3150–AI81

## NRC

### 167. U.S. Advanced Boiling Water Reactor (ABWR) Aircraft Impact Design Certification Amendment [NRC–2010–0134]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 52.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations in appendix A ''Design Certification Rule for the U.S. Advanced Boiling Water Reactor'' to 10 CFR part 52 ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' to comply with 10 CFR 50.150 ''Aircraft Impact Assessment.'' Applicants or licensees intending to construct and operate a nuclear power plant using the ABWR design may comply with 10 CFR 50.150 by referencing the amended design certification rule.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to certify an amendment to the U.S. Advanced Boiling Water Reactor (U.S. ABWR) standard plant design to comply with the NRC's aircraft impact assessment (AIA) regulations. This action allows applicants or licensees intending to construct and operate a U.S. ABWR to comply with the NRC's AIA regulations by referencing the amended design certification rule (DCR). The applicant for certification of the amendment to the U.S. ABWR design is STP Nuclear Operating Company (STPNOC).

A design certification amendment does not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. As a result, there is no monetary impact for this final rule.

*Alternatives:* The NRC has not prepared alternatives for this rule. The NRC evaluates alternatives for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of alternatives in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC.

*Anticipated Cost and Benefits:* The NRC has not prepared a regulatory analysis for this rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/20/11 | 76 FR 3540 |
| NPRM Comment Period End. | 04/05/11 | |
| Final Rule ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Fred Schofer, Nuclear Regulatory Commission, Office of New Reactors, Washington, DC 20555–0001, *Phone:* 301 415–5682, *Email: fred.schofer@nrc.gov.*

*RIN:* 3150–AI84

## NRC

### 168. Economic Simplified Boiling-Water Reactor (ESBWR) Design Certification [NRC–2010–0135]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 52.

*Legal Deadline:* None.

*Abstract:* The proposed rule would amend the Commission's regulations to part 52 by issuing a new appendix for the initial certification of the ESBWR standard plant design. Applicants or licensees intending to construct and operate a nuclear power plant using the ESBWR design may do so by referencing this design certification rule.

*Statement of Need:* The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to certify an amendment to the Economic Simplified Boiling-Water Reactor (ESBWR) standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an ESBWR design may do so by referencing this design certification rule (DCR). The applicant for certification of the amendment to the ESBWR design is GE-Hitachi Nuclear Energy.

A design certification amendment does not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be

voluntarily referenced by applicants for combined licenses. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. As a result, there is no monetary impact for this final rule.

*Alternatives:* The NRC has not prepared alternatives for this rule. The NRC evaluates alternatives for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of alternatives in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC.

*Anticipated Cost and Benefits:* The NRC has not prepared a regulatory analysis for this rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/24/11 | 76 FR 16549 |
| NPRM Comment Period End. | 06/07/11 | |
| Final Rule ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* George M. Tartal, Nuclear Regulatory Commission, Office of New Reactors, Washington, DC 20555–0001, *Phone:* 301 415–0016, *Email: george.tartal@nrc.gov*.

*RIN:* 3150–AI85

## NRC

### 169. List of Approved Spent Fuel Storage Casks—MAGNASTOR, Revision 2 [NRC–2011–0008]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*CFR Citation:* 10 CFR 72.

*Legal Deadline:* None.

*Abstract:* The direct final rule amends the Commission's regulations by revising the MAGNASTOR System to include Amendment No. 2 to the Certificate of Compliance. Amendment No. 2 will include changes to allow: The addition of various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets; correction of the code reference in Table 2.1–2 of the Final Safety Analysis Report, table entitled ''ASME Code Alternatives for MAGNASTOR® components;'' change of transportable storage canister surface contamination limits for loose contamination; and other changes in appendices A and B of the technical specification to incorporate minor editorial corrections. This direct final rule allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

*Statement of Need:* On March 22, 2010, and as supplemented on March 30, March 31, June 8, July 1, November 10, and November 19, 2010, and April 22 and May 17, 2011, NAC, the holder of CoC No. 1031, submitted an application to the NRC that requested an amendment to CoC No. 1031. Specifically, NAC requested changes to revise: TS 3.3.2 to reduce the transportable storage canister removable surface contamination limits; TS 4.1.1 to add various boron-10 areal densities for use with Pressurized Water Reactor and Boiling Water Reactor baskets and to replace the fuel tube orthogonal pitch with the minimum fuel tube outer diagonal dimension; Table 2.1–2, ''ASME Code Alternatives for MAGNASTOR® components,'' of the Final Safety Analysis Report to correct the code reference; and appendices A and B of the TSs to make editorial corrections.

As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety will be adequately protected.

This direct final rule revises the MAGNASTOR® System listing in 10 CFR 72.214 by adding Amendment No. 2 to CoC No. 1031. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER. The amended MAGNASTOR® System cask design, when used under the conditions specified in the CoC, the TSs, and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into MAGNASTOR® System casks that meet the criteria of Amendment No. 2 to CoC No. 1031 under 10 CFR 72.212.

*Summary of Legal Basis:* This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1031 and does not include other aspects of the MAGNASTOR® System. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

*Alternatives:* The alternative to this action is to withhold approval of Amendment No. 2 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into MAGNASTOR® System casks under the changes described in Amendment No. 2 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

*Anticipated Cost and Benefits:* Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and

the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Direct Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Gregory Trussell, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–6445, *Email: gregory.trussell@nrc.gov*.

*RIN:* 3150–AI91

[FR Doc. 2012–1620 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

# FEDERAL REGISTER

Vol. 77 Monday,
No. 29 February 13, 2012

Part III

## Department of Agriculture

Semiannual Regulatory Agenda

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 2 CFR IV

### 7 CFR Subtitle A, Chs. I–XI, XIV–XVIII, XX, XXVI–XXXVIII, XLI–XLII, L

### 9 CFR Chs. I–III

### 36 CFR Ch. II

### 48 CFR Ch. 4

### Semiannual Regulatory Agenda, Fall 2011

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Orders (EO) 12866 ''Regulatory Planning and Review,'' and 13563 ''Improving Regulation and Regulatory Review.''

The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions as well as any regulation consistent with EO 13563.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA's complete regulatory agenda is available online at *www.reginfo.gov.* Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA's printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

For this edition of the USDA regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online regulatory agenda and in part II of the **Federal Register** that includes the abbreviated regulatory agenda.

**FOR FURTHER INFORMATION CONTACT:** For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, 202–720–1272.

Dated: September 27, 2011.

**Michael Poe,**

*Chief, Legislative and Regulatory Staff.*

### AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 170 | Wholesale Pork Reporting Program (**Reg Plan Seq No. 1**) | 0581–AD07 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register.**

### AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 171 | National Organic Program, Periodic Pesticide Residue Testing, NOP–10–0102 | 0581–AD10 |

### AGRICULTURAL MARKETING SERVICE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 172 | National Organic Program, Sunset (2011) (Crops and Processing) (TM–07–0136) | 0581–AC77 |

### FARM SERVICE AGENCY—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 173 | Disaster Declaration and Designation | 0560–AH17 |
| 174 | Farm Loan Programs, Clarification and Improvement | 0560–AI14 |

### FARM SERVICE AGENCY—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 175 | Conservation Loan Guarantee Program | 0560–AI04 |

## FARM SERVICE AGENCY—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 176 | Farm Loan Programs Loan Making Activities | 0560–AI03 |
| 177 | Biomass Crop Assistance Program; Corrections | 0560–AI13 |

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 178 | Animal Welfare: Marine Mammals; Nonconsensus Language, and Interactive Programs (**Rulemaking Resulting From a Section 610 Review**). | 0579–AB24 |
| 179 | Animal Welfare; Regulations and Standards for Birds (**Reg Plan Seq No. 3**) | 0579–AC02 |
| 180 | Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products | 0579–AC68 |
| 181 | Scrapie in Sheep and Goats | 0579–AC92 |
| 182 | Plant Pest Regulations; Update of General Provisions **(Reg Plan Seq No. 4)** | 0579–AC98 |
| 183 | Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts. | 0579–AD10 |
| 184 | Importation of Beef From a Region in Brazil | 0579–AD41 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 185 | Citrus Canker; Compensation for Certified Citrus Nursery Stock | 0579–AC05 |
| 186 | Importation of Poultry and Poultry Products From Regions Affected With Highly Pathogenic Avian Influenza. | 0579–AC36 |
| 187 | Handling of Animals; Contingency Plans | 0579–AC69 |

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 188 | Introduction of Organisms and Products Altered or Produced Through Genetic Engineering | 0579–AC31 |
| 189 | Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Interstate Movement of Regulated Nursery Stock. | 0579–AD29 |

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 190 | Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis (**Completion of a Section 610 Review**). | 0579–AC03 |

## RURAL HOUSING SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 191 | Guaranteed Single-Family Housing | 0575–AC18 |

## GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 192 | Implementation of Regs. Required by the 2008 Farm Bill; Swine and Poultry Sample Contracts, Suspension of Delivery of Birds, Add'l Capital Investment Criteria, Breach of Contract, and Arbitration. | 0580–AB07 |

## FOOD AND NUTRITION SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 193 | National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010 (**Reg Plan Seq No. 8**). | 0584–AE09 |
| 194 | Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010. | 0584–AE15 |
| 195 | Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010. | 0584–AE18 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FOOD SAFETY AND INSPECTION SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 196 | Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products (**Reg Plan Seq No. 19**). | 0583–AC46 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FOOD SAFETY AND INSPECTION SERVICE—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 197 | Mandatory Inspection of Catfish and Catfish Products | 0583–AD36 |

## FOREST SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 198 | Special Areas; State-Specific Inventoried Roadless Area Management: Colorado | 0596–AC74 |

## FOREST SERVICE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 199 | Pest and Disease Revolving Loan Fund | 0596–AC97 |

## OFFICE OF THE SECRETARY—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 200 | Designation of Biobased Items for Federal Procurement, Round 7 | 0503–AA36 |

## OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 201 | Designation of Biobased Items for Federal Procurement, Round 9 | 0599–AA15 |
| 202 | Designation of Biobased Items for Federal Procurement, Round 10 | 0599–AA16 |

OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 203 | Designation of Biobased Items for Federal Procurement, Round 8 | 0599–AA14 |

BILLING CODE 3410–90–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Agricultural Marketing Service (AMS)*

Proposed Rule Stage

### 170. Wholesale PORK Reporting Program

*Regulatory Plan:* This entry is Seq. No. 1 in part II of this issue of the **Federal Register.**

*RIN:* 0581–AD07

## DEPARTMENT OF AGRICULTURE (USDA)

*Agricultural Marketing Service (AMS)*

Final Rule Stage

### 171. National Organic Program, Periodic Pesticide Residue Testing, NOP–10–0102

*Legal Authority:* 7 U.S.C. 6501

*Abstract:* Under the Organic Foods Production Act (OFPA) of 1990, the National Organic Program is authorized to require pre-harvest residue testing for products sold or labeled as organic. This requirement is promulgated in section 205.670(b) of the NOP regulations which provides that the Secretary, state programs, and certifying agents may require pre-harvest or post-harvest testing of organic products when there is reason to believe that the product has come into contact with a prohibited substance or has been produced using excluded methods.

As a result of legal opinion received by the NOP on this issue, the NOP plans to publish a proposed rule that would amend regulations such that certifying agents would be required to conduct periodic testing of agricultural products that are to be sold, labeled or represented as ''100 percent organic, organic'', or ''made with organic (specified ingredients or food group(s))''. Specifically, the proposed rule would specify that certifying agents are required, on an annual basis, to randomly sample and test agricultural products from a minimum of 5 percent of the operations they certify.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/29/11 | 76 FR 23914 |
| NPRM Comment Period End. | 06/28/11 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa R. Bailey, Director, Standards Division, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20250, *Phone:* 202 720–3252, *Fax:* 202 205–7808, *Email: melissa.bailey@usda.gov.*

*RIN:* 0581–AD10

## DEPARTMENT OF AGRICULTURE (USDA)

*Agricultural Marketing Service (AMS)*

Completed Actions

### 172. National Organic Program, Sunset (2011) (Crops and Processing) (TM–07–0136)

*Legal Authority:* 7 U.S.C. 6501

*Abstract:* The Agricultural Marketing Service (AMS) is amending regulations pertaining to the National List of Allowed and Prohibited Substances. As required by the National Organic Foods Production Act of 1990, the allowed use of the 12 synthetic and non-synthetic substances in organic production and handling will expire on September 12, 2011. The AMS published an advance notice of proposed rulemaking to make the public aware of this requirement. AMS believes that public comment is essential in the review process to determine whether these substances should continue to be allowed or prohibited in the production and handling of organic agricultural products.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Action | 08/03/11 | 76 FR 46595 |
| Final Action Effective. | 09/12/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa R. Bailey, *Phone:* 202 720–3252, *Fax:* 202 205–7808, *Email: melissa.bailey@usda.gov.*

*RIN:* 0581–AC77

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Farm Service Agency (FSA)*

Proposed Rule Stage

### 173. Disaster Declaration and Designation

*Legal Authority:* 7 U.S.C. 1961; 7 U.S.C. 1989

*Abstract:* This rule proposes to move regulations used by the Farm Service Agency (FSA) from chapter XVIII of the Code of Federal Regulations, formerly used by the predecessor to FSA, the Farmers Home Administration, to chapter VII, the chapter where most FSA rules are located. This rule also proposes to clarify and simplify procedures for identifying disaster areas, reorganize provisions in a more logical manner, and remove administrative provisions. The intent of this rule is to propose updated regulations to match the current USDA structure.

Proposed changes to the disaster regulation would delegate the designation authority from the Secretary to the State level, remove the requirement for a request for designation of a disaster area from a State Governor or Indian Tribal Council to the Secretary, add a simplified disaster designation in severe drought situations, and change the USDA Secretarial disaster designation process from 6 steps to 3 steps for natural disasters, including certain other drought situations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/14/11 | 76 FR 70368 |
| NPRM Comment Period End. | 01/13/12 | |
| Final Rule | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW., Washington, DC 20250–0572, *Phone:* 202 205–5851, *Fax:* 202 720–5233, *Email: deirdre.holder@wdc.usda.gov.*

*RIN:* 0560–AH17

**174. • Farm Loan Programs, Clarification and Improvement**

*Legal Authority:* 5 U.S.C. 301; 7 U.S.C. 1989

*Abstract:* FSA will propose amendments to Farm Loan Programs (FLP) regulations for loan servicing including to following areas:

- Real estate appraisals;
- The lease, subordination, and disposition of security; and
- Conservation contracts.

FSA also proposes additional technical and conforming amendments. The amendments are generally limited to technical corrections, clarifications, and procedural improvements that will allow FSA to further streamline normal servicing activities and reduce burden on borrowers while still protecting the loan security.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW., Washington, DC 20250–0572, *Phone:* 202 205–5851, *Fax:* 202 720–5233, *Email:* *deirdre.holder@wdc.usda.gov.*

*RIN:* 0560–AI14

## DEPARTMENT OF AGRICULTURE (USDA)

*Farm Service Agency (FSA)*

Final Rule Stage

**175. Conservation Loan Guarantee Program**

*Legal Authority:* Pub. L. 110–246

*Abstract:* The interim rule implemented the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD). A final rule is being developed. The section 5002 of the 2008 Farm Bill authorized Conservation Loans and Loan Guarantees. Implementation of this provision will created a new direct and guaranteed loan program directed at assisting farmers in implementing conservation practices.

The rule established a new loan and loan guarantee program to finance qualifying conservation projects. All guarantees will be at 75 percent of the loan amount. The applicant must have an acceptable conservation plan that includes the project to be financed. Preference is given to beginning farmer and socially disadvantaged applicants, conversion to sustainable or organic production practices, and compliance with highly erodible land conservation requirements. Eligibility for the program is not restricted to those who cannot get credit elsewhere. The program is not mandatory.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/03/10 | 75 FR 54005 |
| Interim Final Rule Comment Period End. | 11/02/10 | |
| Notice ..... | 05/13/11 | 76 FR 27986 |
| Final Rule ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW., Washington, DC 20250–0572, *Phone:* 202 205–5851, *Fax:* 202 720–5233, *Email:* *deirdre.holder@wdc.usda.gov.*

*RIN:* 0560–AI04

## DEPARTMENT OF AGRICULTURE (USDA)

*Farm Service Agency (FSA)*

Completed Actions

**176. Farm Loan Programs Loan Making Activities**

*Legal Authority:* Pub. L. 110–246

*Abstract:* The rule will implement the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD); there is discretion involved in the implementation. The sections of the 2008 Farm Bill that the 9/23/2010 proposed rule would implement are: 5001, Direct Loans; 5005, Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program Down Payment Loan Program; 5101, Farming Experience as an Eligibility Requirement; and 5201, Eligibility of Equine Farmers and Ranchers for Emergency Loans.

For the development of the rulemaking that would implement section 5501, Loans to Purchase Highly Fractionated Land, FSA conducted Tribal consultation. The rule would allow individual tribal members to qualify for Indian Land Acquisition loans. This will be published as a separate proposed rule.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Rule ..... | 12/02/11 | 76 FR 75427 |
| Final Rule Effective. | 01/03/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deirdre Holder, *Phone:* 202 205–5851, *Fax:* 202 720–5233, *Email:* *deirdre.holder@wdc.usda.gov.*

*RIN:* 0560–AI03

**177. • Biomass Crop Assistance Program; Corrections**

*Legal Authority:* Pub. L. 110–246

*Abstract:* The Commodity Credit Corporation (CCC) is amending the Biomass Crop Assistance Program (BCAP) regulation to provide specifically for prioritizing limited program funds in favor of the ''project area'' portion of BCAP. CCC is also correcting errors in the regulation.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/15/11 | 76 FR 56949 |
| Interim Final Rule Comment Period End. | 11/14/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW., Washington, DC 20250–0572, *Phone:* 202 205–5851, *Fax:* 202 720–5233, *Email:* *deirdre.holder@wdc.usda.gov.*

*RIN:* 0560–AI13

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Proposed Rule Stage

**178. Animal Welfare: Marine Mammals; Nonconsensus Language, and Interactive Programs (Rulemaking Resulting From a Section 610 Review)**

*Legal Authority:* 7 U.S.C. 2131 to 2159

*Abstract:* The U.S. Department of Agriculture regulates the humane handling, care, treatment, and transportation of certain marine mammals under the Animal Welfare Act. The present standards for these animals have been in effect since 1979 and amended in 1984. During this time, advances have been made and new

information has been developed with regard to the housing and care of marine mammals. This rulemaking addresses marine mammal standards on which consensus was not reached during negotiated rulemaking conducted between September 1995 and July 1996. These include standards affecting variances, indoor facilities, outdoor facilities, space requirements, and water quality, as well as swim-with-the-dolphin programs. These actions appear necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/30/02 | 67 FR 37731 |
| ANPRM Comment Period End. | 07/29/02 | |
| NPRM | 05/00/12 | |
| NPRM Comment Period End. | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, *Phone:* 301 734–7833.

*RIN:* 0579–AB24

**179. Animal Welfare; Regulations and Standards for Birds**

*Regulatory Plan:* This entry is Seq. No. 3 in part II of this issue of the **Federal Register.**

*RIN:* 0579–AC02

**180. Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products**

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 1622; 7 U.S.C. 7701 to 7772; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

*Abstract:* This rulemaking would amend the regulations regarding the importation of bovines and bovine products. Under this rulemaking, countries would be classified as either negligible risk, controlled risk, or undetermined risk for bovine spongiform encephalopathy (BSE). Some commodities would be allowed importation into the United States regardless of the BSE classification of the country of export. Other commodities would be subject to importation restrictions or prohibitions based on the type of commodity and the BSE classification of the country. The criteria for country classification and commodity import would be closely aligned with those of the World Organization for Animal Health. This rulemaking would also address public comments received in response to a September 2008 request for comments regarding certain provisions of an APHIS January 2005 final rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/12 | |
| NPRM Comment Period End. | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 40, Riverdale, MD 20737–1231, *Phone:* 301 734–7837.

*RIN:* 0579–AC68

**181. Scrapie in Sheep and Goats**

*Legal Authority:* 7 U.S.C. 8301 to 8317

*Abstract:* This rulemaking would amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks, increasing the use of genetic testing as a means of assigning risk levels to animals, reducing movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplifying, reducing, or removing certain recordkeeping requirements. This action would provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. It would change the definition of high-risk animal, which will change the types of animals eligible for indemnity, and to pay higher indemnity for certain pregnant ewes and early maturing ewes. It would also make the identification and recordkeeping requirements for goat owners consistent with those for sheep owners. These changes would affect sheep and goat producers and State governments.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/12 | |
| NPRM Comment Period End. | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Diane Sutton, National Scrapie Program Coordinator, Ruminant Health Programs, NCAHP, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 43, Riverdale, MD 20737–1235, *Phone:* 301 734–6954.

*RIN:* 0579–AC92

**182. Plant Pest Regulations; Update of General Provisions**

*Regulatory Plan:* This entry is Seq. No. 4 in part II of this issue of the **Federal Register.**

*RIN:* 0579–AC98

**183. Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts**

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 1622; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

*Abstract:* This rulemaking would amend the bovine spongiform encephalopathy (BSE) and scrapie regulations regarding the importation of live sheep, goats, and wild ruminants and their embryos, semen, products, and byproducts. Some countries from which such imports would be allowed under this rule are currently those from which the importation of live sheep, goats, wild ruminants, their embryos, and ruminant products and byproducts are prohibited under existing BSE regulations. Some products would be allowed importation without restriction due to the inherent lack of BSE risk regarding the product. Certain other products and live animals would be allowed importation if it can be certified that the live animals or the animals from which the products were derived were born after implementation of an effective feed ban. The proposed scrapie revisions regarding the importation of sheep, goats, and susceptible wild ruminants for other than immediate slaughter are similar to those recommended by the World Organization for Animal Health in restricting the importation of such animals to those from scrapie-free regions or certified scrapie-free flocks.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/12 | |
| NPRM Comment Period End. | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Betzaida Lopez, Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service,

4700 River Road, Unit 39, Riverdale, MD 20737–1231, *Phone:* 301 734–5677.

*RIN:* 0579–AD10

**184. • Importation of Beef From a Region in Brazil**

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

*Abstract:* This rulemaking would amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from a region in Brazil (the States of Bahia, Distrito Federal, Espirito Santo, Goias, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Parana, Rio Grande do Sul, Rio de Janeiro, Rondonia, Sao Paulo, Sergipe, and Tocantis). Based on the evidence in a recent risk assessment, we have determined that fresh (chilled or frozen) beef can be safely imported from those Brazilian States provided certain conditions are met. This action would provide for the importation of beef from the designated region in Brazil into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/00/12 | |
| NPRM Comment Period End. | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, *Phone:* 301 734–8419.

*RIN:* 0579–AD41

## DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Final Rule Stage

**185. Citrus Canker; Compensation for Certified Citrus Nursery Stock**

*Legal Authority:* 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786

*Abstract:* This action follows a rulemaking that established provisions under which eligible commercial citrus nurseries may, subject to the availability of appropriated funds, receive payments for certified citrus nursery stock destroyed to eradicate or control citrus canker. The payment of these funds is necessary in order to reduce the economic effects on affected commercial citrus nurseries that have had certified citrus nursery stock destroyed to control citrus canker.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/08/06 | 71 FR 33168 |
| Interim Final Rule Effective. | 06/08/06 | |
| Interim Final Rule Comment Period End. | 08/07/06 | |
| Final Action | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lynn E. Goldner, National Program Manager, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 160, Riverdale, MD 20737–1231, *Phone:* 301 734–7228.

*RIN:* 0579–AC05

**186. Importation of Poultry and Poultry Products From Regions Affected With Highly Pathogenic Avian Influenza**

*Legal Authority:* 7 U.S.C. 1622; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a

*Abstract:* This rulemaking will amend the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and bird and poultry products from regions that have reported the presence in commercial birds or poultry of highly pathogenic avian influenza other than subtype H5N1. This action will supplement existing prohibitions and restrictions on articles from regions that have reported the presence of Newcastle disease or highly pathogenic avian influenza subtype H5N1. The new restrictions will be almost identical to those imposed on articles from regions with Newcastle disease.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/24/11 | 76 FR 4046 |
| Interim Final Rule Comment Period End. | 03/25/11 | |
| Interim Final Rule Comment Period Reopened. | 05/03/11 | 76 FR 24793 |
| Interim Final Rule Comment Period Reopened End. | 05/18/11 | |
| Final Rule | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Javier Vargas, Case Manager, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, MD 20737–1231, *Phone:* 301 734–4356.

*RIN:* 0579–AC36

**187. Handling of Animals; Contingency Plans**

*Legal Authority:* 7 U.S.C. 2131 to 2159

*Abstract:* This rulemaking will amend the Animal Welfare Act regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers. These requirements are necessary because we believe all licensees and registrants should develop a contingency plan for all animals regulated under the Animal Welfare Act in an effort to better prepare for potential disasters. This action will heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/23/08 | 73 FR 63085 |
| NPRM Comment Period End. | 12/22/08 | |
| NPRM Comment Period Extended. | 12/19/08 | 73 FR 77554 |
| NPRM Comment Period Extended End. | 02/20/09 | |
| Final Action | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeanie Lin, National Emergency Programs Manager, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737, *Phone:* 301 734–7833.

*RIN:* 0579–AC69

## DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Long-Term Actions

### 188. Introduction of Organisms and Products Altered or Produced Through Genetic Engineering

*Legal Authority:* 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 31 U.S.C. 9701

*Abstract:* This rulemaking would revise the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms in order to bring the regulations into alignment with provisions of the Plant Protection Act. The revisions would also update the regulations in response to advances in genetic science and technology and our accumulated experience in implementing the current regulations. This is the first comprehensive review and revision of the regulations since they were established in 1987. This rule would affect persons involved in the importation, interstate movement, or release into the environment of genetically engineered plants and certain other genetically engineered organisms.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent to Prepare an Environmental Impact Statement. | 01/23/04 | 69 FR 3271 |
| Comment Period End. | 03/23/04 | |
| Notice of Availability of Draft Environmental Impact Statement. | 07/17/07 | 72 FR 39021 |
| Comment Period End. | 09/11/07 | |
| NPRM | 10/09/08 | 73 FR 60007 |
| NPRM Comment Period End. | 11/24/08 | |
| Correction | 11/10/08 | 73 FR 66563 |
| NPRM Comment Period Reopened. | 01/16/09 | 74 FR 2907 |
| NPRM Comment Period End. | 03/17/09 | |
| NPRM; Notice of Public Scoping Session. | 03/11/09 | 74 FR 10517 |
| NPRM Comment Period Reopened. | 04/13/09 | 74 FR 16797 |
| NPRM Comment Period End. | 06/29/09 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Turner, *Phone:* 301 734–5720.

*RIN:* 0579–AC31

### 189. Citrus Canker, Citrus Greening, and Asian Citrus Psyllid; Interstate Movement of Regulated Nursery Stock

*Legal Authority:* 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786

*Abstract:* This rulemaking will amend the regulations governing the interstate movement of regulated articles from areas quarantined for citrus canker, citrus greening, and/or Asian citrus psyllid (ACP) to allow the movement of regulated nursery stock under a certificate to any area within the United States. In order to be eligible to move regulated nursery stock, a nursery must enter into a compliance agreement with APHIS that specifies the conditions under which the nursery stock must be grown, maintained, and shipped. It will also amend the regulations that allow the movement of regulated nursery stock from an area quarantined for ACP, but not for citrus greening, to amend the existing regulatory requirements for the issuance of limited permits for the interstate movement of the nursery stock. We are making these changes on an immediate basis in order to provide nursery stock producers in areas quarantined for citrus canker, citrus greening, or ACP with the ability to ship regulated nursery stock to markets within the United States that would otherwise be unavailable to them due to the prohibitions and restrictions contained in the regulations while continuing to provide adequate safeguards to prevent the spread of the three pests into currently unaffected areas of the United States.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/27/11 | 76 FR 23449 |
| Interim Final Rule Effective. | 04/27/11 | |
| Interim Final Rule Comment Period End. | 06/27/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Osama El-Lissy, *Phone:* 301 734–5459.

Deborah McPartlan, *Phone:* 301 734–5356.

*RIN:* 0579–AD29

## DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Completed Actions

### 190. Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis (Completion of a Section 610 Review)

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/23/09 | 74 FR 36403 |
| NPRM Comment Period End. | 10/21/09 | |
| Information Collection; Comment Request. | 05/03/11 | 76 FR 24848 |

| Action | Date | FR Cite |
|---|---|---|
| Information Collection Comment Period End. | 07/05/11 | |
| Final Rule | 05/27/11 | 76 FR 31172 |
| Final Rule Effective. | 06/27/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Arnold T. Tschanz, Senior Plant Pathologist, Plant Health Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1231, *Phone:* 301 734–0627.

*RIN:* 0579–AC03

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Rural Housing Service (RHS)*

Final Rule Stage

### 191. Guaranteed Single-Family Housing

*Legal Authority:* 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480

*Abstract:* The Guaranteed Single-Family Housing Loan Program is taking the proposed action to implement authorities granted the Secretary of the USDA, in section 102 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212, July 29, 2010) to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The intent of the annual fee is to make the SFHGLP subsidy neutral when used in conjunction with the one-time guarantee fee, thus eliminating the need for taxpaper support of the program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/15/99 | 64 FR 70124 |
| NPRM Comment Period End. | 02/14/00 | |
| Final Action | 06/00/12 | |
| Final Action Effective. | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Cathy Glover, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, 1400 Independence Avenue SW., STOP 0784, Washington, DC 02050–0784, *Phone:* 202 720–1460, *Email: cathy.glover@wdc.usda.gov*.

*RIN:* 0575–AC18

BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Grain Inspection, Packers and Stockyards Administration (GIPSA)*

Final Rule Stage

### 192. Implementation of Regs. Required by the 2008 Farm Bill; Swine and Poultry Sample Contracts, Suspension of Delivery of Birds, Add'l Capital Investment Criteria, Breach of Contract, and Arbitration

*Legal Authority:* 7 U.S.C. 181

*Abstract:* GIPSA is amending the regulations under the Packers and Stockyards Act, 1921. Notably, these regulations establish criteria that 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. GIPSA will also promulgate regulations to ensure that producers and growers are afforded the opportunity to fully participate in the arbitration process if they so choose.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/22/10 | 75 FR 35338 |
| NPRM Comment Period End. | 08/23/10 | |
| NPRM Comment Period Extended. | 11/22/10 | 75 FR 44163 |
| Final Rule | 12/09/11 | 76 FR 76874 |
| Final Rule Effective. | 02/07/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–7486, *Fax:* 202 690–2173, *Email: h.tess.butler@usda.gov*.

*RIN:* 0580–AB07

BILLING CODE 3410–EN–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Food and Nutrition Service (FNS)*

Proposed Rule Stage

### 193. • National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010

*Regulatory Plan:* This entry is Seq. No. 8 in part II of this issue of the **Federal Register**.

*RIN:* 0584–AE09

### 194. • Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010

*Legal Authority:* Pub. L. 111–296

*Abstract:* This proposed rule would codify section 201 of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) as appropriate, under 7 CFR part 210.

Section 201 of the Act directs the Secretary to provide, no earlier than October 1, 2012, an additional 6 cents per lunch, adjusted annually for changes in the Consumer Price Index, for schools that are certified to be in compliance with the interim/final regulation, ''Nutrition Standards in the National School Lunch and Breakfast Programs,'' (proposed rule published January 13, 2011). This rule would establish the compliance standards that State agencies would use to certify schools that are eligible to receive the rate increase. (11–011)

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov*.

*RIN:* 0584–AE15

### 195. • Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010

*Legal Authority:* Pub. L. 111–296

*Abstract:* Section 221 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, the Act) requires USDA to review and update, no less frequently than once every 10 years, requirements for meals served under the Child and

Adult Care Food Program (CACFP) to ensure that meals are consistent with the most recent Dietary Guidelines for Americans and relevant nutrition science. The Act requires that proposed regulations to update the meal patterns be published no later than 18 months after a review is completed.

In addition to requiring modifications to the CACFP meal requirements, section 221 of the Act:

• Clarifies the purpose of the program is to provide aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth and development of young children, and the health and wellness of older adults and chronically impaired disabled persons;

• Restricts the use of food as a punishment or reward;

• Requires that milk provided in participating child care centers and family or group day care homes as part of a reimbursable meal or supplement meet the requirements of the most recent version of the Dietary Guidelines;

• Allows substitution of milk for children who cannot consume fluid milk due to medical or other special dietary needs other than a disability with a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary, including fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk; and

• Requires participating child care centers and family or group day care homes to make water available to children, as nutritionally appropriate, throughout the day, including during meal times.

This rule will establish the criteria and procedures for implementing these provisions of the Act. (11–015)

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James F. Herbert, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 10th Floor, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 305–2572, *Email: james.herbert@fns.usda.gov.*

*RIN:* 0584–AE18

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Food Safety and Inspection Service (FSIS)*

Final Rule Stage

### 196. Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products

*Regulatory Plan:* This entry is Seq. No. 19 in part II of this issue of the **Federal Register**.

*RIN:* 0583–AC46

## DEPARTMENT OF AGRICULTURE (USDA)

*Food Safety and Inspection Service (FSIS)*

Long-Term Actions

### 197. Mandatory Inspection of Catfish and Catfish Products

*Legal Authority:* 21 U.S.C. 601 *et seq.;* Pub. L. 110–249, sec 11016

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/24/11 | 76 FR 10433. |
| NPRM Comment Period End. | 06/24/11 | |
| Next Action Undetermined. | ..... | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Daniel L. Engeljohn, *Phone:* 202 205–0495, *Fax:* 202 401–1760, *Email: daniel.engeljohn@fsis.usda.gov.*

*RIN:* 0583–AD36

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Forest Service (FS)*

Final Rule Stage

### 198. Special Areas; State-Specific Inventoried Roadless Area Management: Colorado

*Legal Authority:* Not Yet Determined

*Abstract:* On April 11, 2007, Governor of Colorado Ritter submitted a petition under the provisions of the Administrative Procedure Act (5 U.S.C. 553(e)) and Agriculture Department regulation (7 CFR 1.28) to promulgate regulations, in cooperation with the State, for the management of inventoried roadless areas within the State of Colorado. After review and recommendation by the Roadless Area Conservation National Advisory Committee, the Secretary accepted the Governor's petition and initiated a proposed rulemaking for inventoried roadless areas in Colorado. The proposed rulemaking would manage Colorado's inventoried roadless areas by prohibiting road building and tree cutting, with some exceptions, on 4.1 million acres of inventoried roadless areas in Colorado. The 4.1 million acres reflect the most updated IRA boundaries for Colorado, which incorporate planning rule revisions since 2001 on several Colorado national forests. Inventoried roadless areas that are allocated to ski area special uses (approximately 10,000 acres) would also be removed from roadless designation. Road construction and reconstruction plus timber harvesting would be prohibited in inventoried roadless areas, with some exceptions, on the Arapaho-Roosevelt, Grand Mesa-Uncompahgre, Gunnison, Manti-La Sal, Pike-San Isabel, Rio Grande, Routt, San Juan, and White River National Forests in Colorado. Exceptions to the prohibitions would be allowed for certain health, safety, valid existing rights, resource protection, and ecological management needs. Web site: *http://roadless.fs.fed.us.*

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/25/08 | 73 FR 43544 |
| NPRM Comment Period End. | 10/23/08 | |
| Second NPRM .... | 04/15/11 | 76 FR 21272 |
| Second NPRM Comment Period End. | 07/14/11 | |
| Final Rule ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* LaRenda C King, Assistant Director, Directives and Regulations, Department of Agriculture, Forest Service, ATTN: ORMS, D&R Branch, 1400 Independence Avenue Washington, DC 20250–0003, *Phone:* 202 205–6560, *Email: larendacking@fs.fed.us.*

*RIN:* 0596–AC74

## DEPARTMENT OF AGRICULTURE (USDA)

*Forest Service (FS)*

Completed Actions

### 199. Pest and Disease Revolving Loan Fund

*Legal Authority:* Pub. L. 110–234, sec 10205

*Abstract:* The Forest Service is proposing to amend 36 CFR 230 to provide direction on implementing the Pest and Disease Revolving Loan Fund (Pub. L. 110–234, sec 10205), which authorizes loans to eligible units of local governments to finance purchases of authorized equipment to monitor, remove, dispose of, and replace infested trees in quarantine areas. The proposed changes amend part 230, State and Private Forestry Assistance by adding a new subpart.

Currently, there are no Forest Service rules or regulations on providing low interest loans to local municipalities to help them manage their insect and disease infested trees; the proposed rules will provide that direction.

The proposed amendment to 36 CFR 230 would add a subpart and will:

1. Clarify and define eligible units of local government.
2. Further define authorized equipment.
3. Describe the administrative requirements and process to apply for a loan.
4. Clarify the terms of the loan.
5. Describe repayment procedures.
6. Describe the administration of the loan program.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/20/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* LaRenda C King, *Phone:* 202 205–6560, *Email: larendacking@fs.fed.us.*

*RIN:* 0596–AC97

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Office of the Secretary (AgSEC)*

Completed Actions

### 200. Designation of Biobased Items for Federal Procurement, Round 7

*Legal Authority:* Pub. L. 110–246

*Abstract:* Designates for preferred procurement bath products; concrete and asphalt cleaners, including microbial and non-microbial concrete and asphalt cleaners as subcategories; corrosion removers; dishwashing detergents; floor cleaners and protectors; hair cleaning products, including shampoos and conditioners as subcategories; microbial cleaners; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Action ..... | 07/22/11 | 76 FR 43808 |
| Final Action Effective. | 08/22/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ron Buckhalt, *Phone:* 202 205–4008, *Fax:* 202 720–8972 *Email: ronb.buckhalt@dm.usda.gov.*

*RIN:* 0503–AA36

BILLING CODE 3410–90–P

## DEPARTMENT OF AGRICULTURE (USDA)

*Office of Procurement and Property Management (OPPM)*

Proposed Rule Stage

### 201. • Designation of Biobased Items for Federal Procurement, Round 9

*Legal Authority:* Pub. L. 110–246

*Abstract:* Designates for preferred procurement: Agricultural spray adjuvants; animal cleaning products; aquaculture products; cosmetics; deodorants; dethatcher products; fuel conditioners; hair styling products; leather, vinyl, and rubber care products; lotions and moisturizers; massage oils, shaving oils, shaving products; specialty precision cleaners and solvents; sun care products; and wastewater systems coatings.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |
| NPRM Comment Period End. | 04/00/12 | |
| Final Action ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Property Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW., Washington, DC 20250, *Phone:* 202 205–4008, *Fax:* 202 720–8972, *Email: ronb.buckhalt@dm.usda.gov.*

*RIN:* 0599–AA15

### 202. • Designation of Biobased Items for Federal Procurement, Round 10

*Legal Authority:* Pub. L. 110–246

*Abstract:* Designates for preferred procurement: Adhesives; aircraft and boat cleaners; automotive care products; body care products-body powders; engine crankcase oil; exterior paints and coatings; facial care products; gasoline fuel additives; hair removal-depilatory products; metal cleaners and corrosion removers; microbial cleaning products; paint removers; paper products; sanitary tissues; water turbine bearing oils; and asphalt roofing materials—low slope.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |
| NPRM Comment Period End. | 07/00/12 | |
| Final Action ..... | 01/00/13 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Property Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW., Washington, DC 20250, *Phone:* 202 205–4008, *Fax:* 202 720–8972, *Email: ronb.buckhalt@dm.usda.gov.*

*RIN:* 0599–AA16

## DEPARTMENT OF AGRICULTURE (USDA)

*Office of Procurement and Property Management (OPPM)*

Final Rule Stage

### 203. • Designation of Biobased Items for Federal Procurement, Round 8

*Legal Authority:* Pub. L. 110–246

*Abstract:* This proposed rule will designate, for preferred procurement

under the Federal Biobased Products Preferred Procurement Program, 14 items. These are: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; clothing; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/14/11 | 76 FR 56884 |
| NPRM Comment Period End. | 11/14/11 | |
| Final Action | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Property Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW., Washington, DC 20250, *Phone:* 202 205–4008, *Fax:* 202 720–8972, *Email: ronb.buckhalt@dm.usda.gov*.

*RIN:* 0599–AA14

[FR Doc. 2012–1640 Filed 2–10–12; 8:45 am]

BILLING CODE 3410–98–P

# FEDERAL REGISTER

Vol. 77 Monday,
No. 29 February 13, 2012

Part IV

## Department of Commerce

Semiannual Regulatory Agenda

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 13 CFR Ch. III

### 15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

### 19 CFR Ch. III

### 37 CFR Chs. I, IV, and V

### 48 CFR Ch. 13

### 50 CFR Chs. II, III, IV, and VI

### Fall 2011 Semiannual Agenda of Regulations

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** In compliance with Executive Order 12866, entitled ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act, as amended, the Department of Commerce (Department), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2011 agenda. The purpose of the agenda is to provide information to the public on regulations that are currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's fall 2011 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 2011 through September 30, 2012.

**FOR FURTHER INFORMATION CONTACT:**

*Specific:* For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

*General:* Comments or inquiries of a general nature about the agenda should be directed to Asha Mathew, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, telephone: 202 482–3151.

**SUPPLEMENTARY INFORMATION:** The Department hereby publishes its fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of June 30, 2011, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2011 Unified Agenda. The Regulatory Flexibility Act requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities, and a list that identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

In this edition of the Department's regulatory agenda, a list of the most important significant regulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the issue of the **Federal Register** that includes the Unified Agenda.

In addition, beginning with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov,* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act, the Department's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the Department's entire Regulatory Plan will continue to be printed in the **Federal Register**.

Within the Department, the Office of the Secretary and various operating units may issue regulations. These operating units, the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office, issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the Agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of NMFS' programs, an ''Explanation of Information Contained in NMFS Regulatory Entries'' is provided below.

### Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone of the United States (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries that require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing may be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The Department's fall 2011 regulatory agenda follows.

**Cameron F. Kerry,**

*General Counsel.*

## INTERNATIONAL TRADE ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 204 | Commercial Availability of Fabric and Yarn | 0625–AA59 |

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 205 | Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico (**Reg Plan Seq No. 22**). | 0648–AS65 |
| 206 | American Lobster Fishery; Fishing Effort Control Measures To Complement Interstate Lobster Management Recommendations by the Atlantic States Marine Fisheries Commission. | 0648–AT31 |
| 207 | Collection and Use of Tax Identification Numbers From Holders of and Applicants for National Marine Fisheries Service Permits. | 0648–AV76 |
| 208 | Marine Mammal Protection Act Stranding Regulation Revisions | 0648–AW22 |
| 209 | Fisheries Off West Coast States and in the Western Pacific; Klamath River Fall Chinook Salmon Rebuilding Plan. | 0648–AY06 |
| 210 | Amendment 3 to the Spiny Dogfish Fishery Management Plan | 0648–AY12 |
| 211 | Generic Amendment for Annual Catch Limits | 0648–AY22 |
| 212 | Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan | 0648–AY26 |
| 213 | Fisheries in the Western Pacific; Pelagic Fisheries; Purse Seine Fishing With Fish Aggregation Devices | 0648–AY36 |
| 214 | Amendment 5 to the Atlantic Herring Fishery Management Plan | 0648–AY47 |
| 215 | Amendment 2 to the FMP for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands. | 0648–AY55 |
| 216 | Amendment 10 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic. | 0648–AY72 |
| 217 | Comprehensive Annual Catch Limits Amendment to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. | 0648–AY73 |
| 218 | Amendment 20 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region | 0648–AY74 |
| 219 | Amendment To Recover the Administrative Costs of Processing Permit Applications | 0648–AY81 |
| 220 | Amendment 6 to the Monkfish Fishery Management Plan | 0648–BA50 |
| 221 | Amendment 24 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. | 0648–BA52 |
| 222 | Amendment 22 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. | 0648–BA53 |
| 223 | Amendment 21 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region | 0648–BA59 |
| 224 | Amendment 5 to the Golden Crab Fishery Management Plan of the South Atlantic | 0648–BA60 |
| 225 | Implement the 2010 Shark Conservation Act Provisions and Other Regulations in the Atlantic Smoothhound Shark Fishery. | 0648–BB02 |
| 226 | To Establish a Voluntary Fishing Capacity Reduction Program in the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Management Area Non-Pollock Groundfish Fishery. | 0648–BB06 |
| 227 | Amendment 11 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. | 0648–BB10 |
| 228 | Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Cost Recovery Program. | 0648–BB17 |
| 229 | Regulatory Amendment to the Gulf of Mexico Reef Fish Fishery Management Plan To Increase the Total Allowable Catch for Red Grouper. | 0648–BB22 |
| 230 | Amendment 93 To Implement Chinook Salmon Prohibited Species Catch Limits in the Gulf of Alaska Pollock Fishery. | 0648–BB24 |
| 231 | Implementation of Comprehensive Ecosystem Based Amendment 2 | 0648–BB26 |
| 232 | Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. | 0648–BB33 |
| 233 | Amendment 11 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic. | 0648–BB44 |
| 234 | Framework 23 to the Atlantic Sea Scallop Fishery Management Plan | 0648–BB51 |
| 235 | Potential Revisions to the Turtle Excluder Device Requirements | 0648–AV04 |
| 236 | Marine Mammal Protection Act Permit Regulation Revisions | 0648–AV82 |
| 237 | Reduce Sea Turtle Bycatch in Atlantic Trawl Fisheries | 0648–AY61 |
| 238 | Amendment to Regulations Under the Bottlenose Dolphin Take Reduction Plan | 0648–BA34 |
| 239 | North American Right Whales; Continuation of Vessel Speed Restrictions To Reduce Right Whale Deaths From Ship Strikes. | 0648–BB20 |
| 240 | Endangered and Threatened Species; Designation of Critical Habitat for Lower Columbia River Coho Salmon and Puget Sound Steelhead. | 0648–BB30 |
| 241 | Amendment and Updates to the Bottlenose Dolphin Take Reduction Plan | 0648–BB37 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 242 | Amending Regulations for the Pacific Halibut, Sablefish, and Pollock Fisheries Conducted Under the Western Alaska Community Development Quota (CDQ) Program. | 0648–AV33 |
| 243 | Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Environmental Review Procedure. | 0648–AV53 |
| 244 | Allowable Modifications to the Turtle Excluder Device Requirements | 0648–AW93 |
| 245 | Amendment 11 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan | 0648–AX05 |
| 246 | Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs Arbitration Regulations. | 0648–AX47 |
| 247 | Revoke Inactive Quota Share and Annual Individual Fishing Quota From a Holder of Quota Share Under the Pacific Halibut and Sablefish Fixed Gear Individual Fishing Quota Program. | 0648–AX91 |
| 248 | Addendum IV to the Weakfish Interstate Management Plan—Bycatch Trip Limit | 0648–AY41 |
| 249 | Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83. | 0648–AY53 |
| 250 | Amendment To Correct and Clarify Amendment 16 and Subsequent Frameworks of the Northeast Multispecies Fisheries Management Plan. | 0648–AY95 |
| 251 | Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery | 0648–BA13 |
| 252 | Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan | 0648–BA22 |
| 253 | Framework Adjustment 45 to the Northeast Multispecies Fishery Management Plan | 0648–BA27 |
| 254 | Modification of Regulations Governing the Retention of Incidentally Caught Highly Migratory Species in Atlantic Trawl Fisheries. | 0648–BA45 |
| 255 | Framework Adjustment 7 to the Monkfish Fishery Management Plan | 0648–BA46 |
| 256 | Atlantic Highly Migratory Species; Vessel Monitoring Systems | 0648–BA64 |
| 257 | Atlantic Highly Migratory Species; Implementing International Convention for the Conservation of Atlantic Tunas Recommendations on Sharks. | 0648–BA69 |
| 258 | Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan | 0648–BA71 |
| 259 | Framework Adjustment 22 to the Scallop Fishery Management Plan | 0648–BA72 |
| 260 | Atlantic Highly Migratory Species Electronic Dealer Reporting Requirements | 0648–BA75 |
| 261 | Bering Sea Chinook Salmon Economic Data Reporting Program | 0648–BA80 |
| 262 | Central Gulf of Alaska Rockfish Program Fishery Management Plan GOA 88 | 0648–BA97 |
| 263 | Repeal of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico | 0648–BB07 |
| 264 | Implement Framework Adjustment 46 to the Northeast Multispecies Fishery Management Plan | 0648–BB08 |
| 265 | Supplement Amendment 26 and Amendment 29 to the Reef Fish Fishery Management Plan (FMP) of the Gulf of Mexico. | 0648–BB15 |
| 266 | Emergency Rule to Increase the 2011 Catch Limits for the Northeast Skate Complex | 0648–BB32 |
| 267 | Rule To Delay the Effective Date of Atlantic Smoothhound Management Measures | 0648–BB43 |
| 268 | Revision of Critical Habitat Designation for the Endangered Leatherback Sea Turtle | 0648–AX06 |
| 269 | Designating Critical Habitat for the Endangered Black Abalone | 0648–AY62 |
| 270 | False Killer Whale Take Reduction Plan (**Section 610 Review**) | 0648–BA30 |
| 271 | Endangered and Threatened Species, Designation of Critical Habitat for Southern Distinct Population Segment of Eulachon. | 0648–BA38 |
| 272 | Revision of Hawaiian Monk Seal Critical Habitat | 0648–BA81 |

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 273 | Amendment 4 to the Atlantic Herring Fishery Management Plan | 0648–AW75 |
| 274 | Correction and Clarification to Amendment 13 and Subsequent Frameworks of the Northeast Multispecies Fishery Management Plan. | 0648–AW95 |
| 275 | Implementation of Compatible Regulations With U.S. Virgin Islands Territorial Waters | 0648–AY03 |
| 276 | Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011 to 2012 Biennial Specifications and Management Measures; FMP Amendment 16–5 and FMP Amendment 23. | 0648–BA01 |
| 277 | Emergency Rule To Reopen the Recreational Red Snapper Season in the Gulf of Mexico | 0648–BA06 |
| 278 | 2011 Atlantic Bluefish Specifications | 0648–BA26 |
| 279 | Implementation of a Recreational Seasonal Closure for Greater Amberjack; Regulatory Framework Action to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). | 0648–BA48 |
| 280 | Amendment 10 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. | 0648–BA51 |
| 281 | Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico To Set Total Allowable Catch for Red Snapper. | 0648–BA54 |
| 282 | Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures. | 0648–BA65 |
| 283 | Catch Reporting Requirements in the Atlantic Herring Fishery | 0648–BA79 |
| 284 | Framework Adjustment 1 to the Northeast Skate Complex FMP | 0648–BA91 |
| 285 | 2011 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures and Scup Specification Increase (Increased 2011 Total Allowable Landings). | 0648–BA92 |
| 286 | Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011 Tribal Fishery for Pacific Whiting | 0648–BA95 |
| 287 | Permits for Capture, Transport, Import, and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory. | 0648–AH26 |

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS—Continued

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 288 | Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act. | 0648–AV15 |
| 289 | Critical Habitat Designation for Cook Inlet Beluga Whale Under the Endangered Species Act | 0648–AX50 |
| 290 | Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted Within the Gulf of Mexico Range Complex. | 0648–AX86 |

PATENT AND TRADEMARK OFFICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 291 | Adjustment of USPTO Fees for Fiscal Year 2012 | 0651–AC44 |

PATENT AND TRADEMARK OFFICE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 292 | Revision of USPTO Fees for Fiscal Year 2011 | 0651–AC43 |

## DEPARTMENT OF COMMERCE (DOC)

*International Trade Administration (ITA)*

Long-Term Actions

### 204. Commercial Availability of Fabric and Yarn

*Legal Authority:* Pub. L. 106–200, sec 112(b)(5)(B); Pub. L. 106–200, sec 211; EO 13191; Pub. L. 107–210, sec 3103

*Abstract:* This rule implements certain provisions of the Trade and Development Act of 2000 (the Act). Title I of the Act (the African Growth and Opportunity Act or AGOA), title II of the Act (the United States-Caribbean Basin Trade Partnership Act or CBTPA), and title XXXI of the Trade Act of 2002 (the Andean Trade Promotion and Drug Eradication Act or ATPDEA) provide for quota- and duty-free treatment for qualifying apparel products from designated beneficiary countries. AGOA and CBTPA authorize quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more designated beneficiary countries from yarn or fabric that is not formed in the United States or a beneficiary country, provided it has been determined that such yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The President has delegated to the Committee for the Implementation of Textile Agreements (the Committee), which is chaired by the Department of Commerce, the authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA, and has authorized the Committee to extend quota- and duty-free treatment to apparel of such yarn or fabric. The rule provides the procedure for interested parties to submit a request alleging that a yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, the procedure for public comments, and relevant factors that will be considered in the Committee's determination. The rule also outlines the factors to be considered by the Committee in extending quota- and duty-free treatment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | To Be Determined. | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Janet Heinzen, *Phone:* 202 482–4006, *Email: janet_heinzen@ita.doc.gov.*

*RIN:* 0625–AA59

## DEPARTMENT OF COMMERCE (DOC)

*National Oceanic and Atmospheric Administration (NOAA)*

Proposed Rule Stage

**National Marine Fisheries Service**

### 205. Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico

*Regulatory Plan:* This entry is Seq. No. 22 in part II of this issue of the **Federal Register**.

*RIN:* 0648–AS65

### 206. American Lobster Fishery; Fishing Effort Control Measures To Complement Interstate Lobster Management Recommendations by the Atlantic States Marine Fisheries Commission

*Legal Authority:* 16 U.S.C. 5101 *et seq.*

*Abstract:* The National Marine Fisheries Service announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone (EEZ) associated with effort control measures as recommended for Federal implementation by the Atlantic States Marine Fisheries Commission (ASMFC) and as outlined in the Interstate Fishery Management Plan (ISFMP) for American Lobster. This action will evaluate effort control measures in certain Lobster Conservation Management Areas, including: Limits on future access based on historic participation criteria; procedures to allow trap transfers among qualifiers and impose a trap reduction or conservation tax on any trap transfers; and a trap reduction schedule to meet the goals of the ISFMP.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/10/05 | 70 FR 24495 |
| ANPRM Comment Period End. | 06/09/05 | |
| Notice of Public Meeting. | 05/03/10 | 75 FR 23245 |
| NPRM | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AT31

**207. Collection and Use of Tax Identification Numbers From Holders of and Applicants for National Marine Fisheries Service Permits**

*Legal Authority:* 31 U.S.C. 7701; 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

*Abstract:* Pursuant to the Debt Collection Improvement Act of 1996 (Debt Collection Act), the National Marine Fisheries Service (NMFS) proposes to require that each existing holder of and future applicant for a permit, license, endorsement, authorization, transfer, or like instrument issued by the Agency provide a Taxpayer Identification Number (TIN) (business, employer identification number, or individual's Social Security number) and Date of Incorporation or Date of Birth, as appropriate. Under the Debt Collection Act, NMFS is required to collect the TIN to report on and collect any delinquent non-tax debt owed to the Federal Government. NMFS plans to use Date of Incorporation or Date of Birth information for administrative aspects of permitting procedures, with appropriate confidentiality safeguards pursuant to the Privacy Act. The rule will specify: (a) The particular uses that may be made of the reported TIN; (b) the effects, if any, of not providing the required information; (c) how the information will be used to ascertain if the permit holder or applicant owes delinquent non-tax debt to the Government pursuant to the Debt Collection Act; (d) the effects on the permit holder or applicant when such delinquent debts are owed; and (e) the Agency's intended communications with the permit holder or applicant regarding the relationship of such delinquent debts to its permitting process and the need to resolve such debts as a basis for completing permit issuance or renewal. The rule will amend existing Agency permit regulations and contain all appropriate modified and new collections-of-information pursuant to the Paperwork Reduction Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

*RIN:* 0648–AV76

**208. Marine Mammal Protection Act Stranding Regulation Revisions**

*Legal Authority:* 16 U.S.C. 1379; 16 U.S.C. 1382; 16 U.S.C. 1421

*Abstract:* The National Marine Fisheries Service (NMFS) is considering changes to its implementing regulations (50 CFR 216) governing the taking of stranded marine mammals under section 109(h), section 112(c), and title IV of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends to clarify the requirements and procedures for responding to stranded marine mammals and for determining the disposition of rehabilitated marine mammals, which includes the procedures for the placement of nonreleasable animals and for authorizing the retention of releasable rehabilitated marine mammals for scientific research, enhancement, or public display. This action will be analyzed under the National Environmental Policy Act with an Environmental Assessment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 01/31/08 | 73 FR 5786 |
| ANPRM Comment Period End. | 03/31/08 | |
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Cottingham, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 713–2521, *Email: david.cottingham@noaa.gov.*

*RIN:* 0648–AW22

**209. Fisheries Off West Coast States and in the Western Pacific; Klamath River Fall Chinook Salmon Rebuilding Plan**

*Legal Authority:* 16 U.S.C. 1854

*Abstract:* This action would adopt a rebuilding plan for the Klamath River fall Chinook salmon (KRFC) stock, which failed to meet conservation objectives specified in the Fishery Management Plan for the 3-year period 2004 to 2006.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| NPRM Comment Period End. | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

*RIN:* 0648–AY06

**210. Amendment 3 to the Spiny Dogfish Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* The New England and Mid-Atlantic Fishery Management Councils (Councils) announce their intention to prepare, in cooperation with NMFS, an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address several issues regarding the Spiny Dogfish Fishery Management Plan (FMP). Issues that may be addressed include: Initiating a Research Set-Aside provision; specifying the spiny dogfish quota and/or possession limits by sex; adding a recreational fishery to the FMP; identifying commercial quota allocation alternatives; and establishing a limited access fishery.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 08/05/09 | 74 FR 39063 |
| Notice of Intent To Prepare an Environmental Impact Statement. | 08/05/09 | 74 FR 30963 |
| Comment Period End. | 09/04/09 | |
| Notice of Intent .... | 05/13/10 | 75 FR 26920 |
| NPRM ..... | 11/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AY12

**211. Generic Amendment for Annual Catch Limits**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* The generic amendment is intended to modify five of the Gulf of Mexico Fishery Management Council's Fishery Management Plans (FMPs). These include FMPs for: Reef Fish Resources, Shrimp, Stone Crab, Coral and Coral Reef Resources, and Red Drum. NMFS and the Council will develop these Annual Catch Limits (ACLs) in cooperation with the Scientific and Statistical Committee and the Southeast Fisheries Science Center. NMFS, in collaboration with the Council, will develop a Draft Environmental Impact Statement to evaluate alternatives and actions for the ACLs. Some examples of these actions include: Establishing sector-specific ACLs, selecting levels of risk associated with species yields, considering removal or withdrawal of species from FMPs, and delegating species or species assemblages to state regulators.

*Timetable*:

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 08/04/09 | 74 FR 47206 |
| NPRM ..... | 12/00/11 | |
| Notice of Availability. | 12/00/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY22

**212. Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of Amendment 14 is to consider catch shares in the Loligo and Illex fisheries and monitoring/mitigation for river herring bycatch in mackerel, squid, and butterfish (MSB) fisheries.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 06/09/10 | 75 FR 32745 |
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AY26

**213. Fisheries in the Western Pacific; Pelagic Fisheries; Purse Seine Fishing With Fish Aggregation Devices**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The Western Pacific Council is amending the Pelagics Fishery Ecosystem Plan (FEP) to (1) define fish aggregating devices (FADs) as purposefully deployed or instrumented floating objects; (2) require FADs to be registered; and (3) prohibit purse seine fishing using FADs in the U.S. EEZ of the western Pacific. The objective of this action is to appropriately balance the needs and concerns of the western Pacific pelagic fishing fleets and associated fishing communities with the conservation of tuna stocks in the western Pacific.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814, *Phone:* 808 944–2207, *Fax:* 808 973–2941, *Email: alvin.katekaru@noaa.gov.*

*RIN:* 0648–AY36

**214. Amendment 5 to the Atlantic Herring Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* Amendment 5 to the Atlantic Herring Fishery Management Plan will consider: Catch monitoring programs; interactions with river herring; access by herring midwater trawl vessels in groundfish closed areas; and interactions with the mackerel fishery.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Supplemental Notice of Intent. | 12/28/09 | 74 FR 68576 |
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AY47

**215. Amendment 2 to the FMP for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* The Magnuson-Stevens Fishery Conservation and Management Act (MSRA: Pub. L. 94–265), as amended through January 12, 2007, requires the establishment of annual catch limits (ACLs) and accountability measures (AMs) during 2010 for all species that are considered to be overfished or undergoing overfishing. The present amendment is being promulgated to meet those MSRA mandates as well as to establish framework procedures with which to effect future changes to the management plan and to restructure the fisheries management units for grouper and snapper. Various alternatives are included in the draft amendment, including maintenance of the status quo for each action as well as various alternatives regarding the year-sequences used to establish ACLs and the strategies to be employed to account for overages and to respond to needed changes in management methods.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Notice of Availability. | 12/00/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY55

**216. Amendment 10 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* The 2006 Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) included a number of

changes to improve conservation of managed fishery resources. Included in these changes are requirements that the Regional Councils must establish both a mechanism for specifying annual catch limits (ACLs) at a level such that overfishing does not occur in the fishery, and accountability measures (AMs) to correct if overages occur. Accountability measures are management controls to prevent the ACLs from being exceeded and to correct by either in-season or postseason measures if they do occur. The Spiny Lobster fishery is jointly managed by the Gulf and South Atlantic Councils. Amendment 10 to the FMP will set ACLs and AMs, review current regulations, and implement reasonable and prudent measures from the Biological Opinion.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 03/12/10 | 75 FR 11843 |
| Notice of Intent Comment Period End. | 04/12/10 | |
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY72

**217. Comprehensive Annual Catch Limits Amendment to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This amendment establishes Annual Catch Limits (ACLs) and Accountability Measures (AMs) for species not undergoing overfishing, including management measures to reduce the probability that catches will exceed the stocks' ACLs pursuant to reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements.

Actions include removal of species from the South Atlantic Snapper-Grouper Fishery Management Unit; designating some snapper and grouper species as ecosystem component species; considering multispecies groupings for specifying ACLs, ACTs, and AMs; specifying allocations among the commercial, recreational, and for-hire sectors for species not undergoing overfishing; and modifying management measures to limit total mortality to the ACL.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY73

**218. Amendment 20 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Amendment 20 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region consists of regulatory actions that focus on modifications to the wreckfish individual transferable quota (ITQ) program, bringing the program into compliance with the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and make other administrative, monitoring, and enforcement changes.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY74

**219. Amendment To Recover the Administrative Costs of Processing Permit Applications**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1853; 16 U.S.C. 1854; 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 773 *et seq.;* Pub. L. 108–447

*Abstract:* This action amends the fishery management plans of the North Pacific Fishery Management Council and revises Federal regulations at 50 CFR 679 to recover the administrative costs of processing applications for permits required under those plans.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Final Rule ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert D. Mecum, Deputy Acting Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, Room 420, 709 West Ninth Street, Juneau, AK 99802, *Phone:* 907 586–7221, *Fax:* 907 586–7249, *Email: robert.mecum@noaa.gov.*

*RIN:* 0648–AY81

**220. Amendment 6 to the Monkfish Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of Amendment 6 to the Monkfish FMP is to consider developing a catch-share management program for this fishery. This would very likely also involve the development of a referendum for such a program, as required under the Magnuson-Stevens Fishery Conservation and Management Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent To Prepare an EIS. | 11/30/10 | 75 FR 74005 |
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA50

**221. Amendment 24 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of the amendment is to implement a rebuilding plan for red grouper in the South Atlantic that would specify annual catch targets and annual catch limits by sector. NMFS notified the Council of the stock status on June 9, 2010; the Magnuson-Stevens Act specifies that measures must be implemented within 2 years of notification.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent .... | 01/03/11 | 76 FR 99 |

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 02/14/11 | |
| Comment Period End. | | |
| NPRM | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA52

**222. Amendment 22 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of the amendment is to establish a long-term red snapper fishery management program in the South Atlantic to optimize yield and rebuild the stock, while minimizing socioeconomic impacts. More specifically, these alternatives will consider the elimination of harvest restrictions on red snapper as the stock increases in biomass.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 01/03/11 | 76 FR 101 |
| Notice of Intent | 02/14/11 | |
| Comment Period End. | | |
| NPRM | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA53

**223. Amendment 21 to the Snapper-Grouper Fishery Management Plan of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Amendment 21 examines measures to limit participation in the snapper-grouper fishery, including endorsements, trip limits, and catch-share programs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA59

**224. Amendment 5 to the Golden Crab Fishery Management Plan of the South Atlantic**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Golden Crab Amendment 5 examines alternatives for a catch-share program to limit participation in the golden crab fishery.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov*

*RIN:* 0648–BA60

**225. • Implement the 2010 Shark Conservation Act Provisions and Other Regulations in the Atlantic Smoothhound Shark Fishery**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* This rule considers changes in the Atlantic shark fishery to comply with the 2010 Shark Conservation Act. Additionally, the rule reexamines the overall smoothhound shark quota based upon updated catch data and would implement measures, as needed, to comply with the Endangered Species Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze–Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BB02

**226. • To Establish a Voluntary Fishing Capacity Reduction Program in the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Management Area Non-Pollock Groundfish Fishery**

*Legal Authority:* 16 U.S.C. 1279; 46 U.S.C. 1279; Pub. L. 108–199; Pub. L. 108–447

*Abstract:* This action establishes a second fishing capacity reduction program in the longline catcher processor subsector of the Bering Sea/Aleutian Islands non-pollock groundfish fishery. The maximum reduction cost is $2,700,000, funded by a loan to be repaid by landing fees for those participants remaining in the fishery. The program makes payments for relinquishing all Federal fishing licenses and permits. Participating fishing vessels can never again fish anywhere in the world and must remain U.S. flagged. Reducing capacity will increase post-reduction harvesters' productivity, financially stabilize the fishery, and help conserve and manage non-pollock groundfish.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gary C. Reisner, Director, Office of Management and Budget, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2259, *Fax:* 301 713–1464, *Email: gary.reisner@noaa.gov.*

*RIN:* 0648–BB06

**227. • Amendment 11 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* The purpose of the amendment is to modify regulations pertaining to the deepwater species in order to reduce the socio-economic effects expected from the regulations in Amendment 17B to the Snapper-Grouper FMP while maintaining or increasing the biological protection to speckled hind and warsaw grouper in the South Atlantic.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov*.

*RIN:* 0648–BB10

**228. • Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Cost Recovery Program**

*Legal Authority:* 16 U.S.C. 1853a

*Abstract:* This rulemaking would implement a Cost Recovery Program for the Pacific Coast Groundfish Trawl Rationalization Program (TRAT). In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) 16 U.S.C. 1853a MSA 303A(d)(2), the Secretary of Commerce is authorized to collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program (LAPP), up to 3 percent of the ex-vessel value of the fish harvested under the LAPP. The Pacific Fishery Management Council (Council) recommended and NMFS approved Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) in 2010, which acknowledged the MSA requirement for a Cost Recovery Program (Appendix E to the FMP). NMFS implemented most of the Trawl Rationalization Program in January 2011 with notice that the design and implementation of a Cost Recovery Program would follow.

*Timetable*:

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115, *Phone:* 206 526–6142, *Fax:* 206 526–6736, *Email: frank.lockhart@noaa.gov*.

*RIN:* 0648–BB17

**229. • Regulatory Amendment to the Gulf of Mexico Reef Fish Fishery Management Plan To Increase the Total Allowable Catch for Red Grouper**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The 2009 update stock assessment of the red grouper stock indicated that, although the stock continues to be neither overfished nor undergoing overfishing, the stock has declined since 2005. This decline was attributed to a 2005 episodic mortality event resulting in a little over 20 percent of the red grouper stock being killed, in addition to normal natural and fishing mortalities. Therefore, there is a need to improve the stock condition to a level where, at equilibrium, the stock can be harvested at optimum yield. A 2010 framework action set the 2011 total allowable catch (TAC) consistent with the findings of the assessment. A rerun of the assessment was subsequently conducted that included landings data through 2010. Because of lower than predicted landings, the rerun of the assessment supported increasing the 2011 TAC from 5.68 to 6.88 million pounds. The first action of this framework action is to consider increasing the 2011 TAC and setting the TAC for at least 2012 consistent with the results of the update assessment. This increase would provide more fish for harvest by the commercial sector through a quota increase. A second action is to consider increasing the red grouper bag limit for the recreational sector so it can harvest its allocation of the TAC. Alternatives considered in this framework action are consistent with the goals and objectives of the Council's reef fish management strategy and achieve the mandates of the Magnuson-Stevens Fishery Conservation and Management Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov*.

*RIN:* 0648–BB22

**230. • Amendment 93 To Implement Chinook Salmon Prohibited Species Catch Limits in the Gulf of Alaska Pollock Fishery**

*Legal Authority:* 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1801 *et seq.;* Pub. L. 108–199; 118 Stat 110

*Abstract:* This action would limit Chinook salmon prohibited species catch (PSC) and increase monitoring in the Gulf of Alaska (GOA) pollock fishery. A 25,000 lb Chinook salmon PSC annual limit would be apportioned between the GOA Central and Western Regulatory Areas, with a 18,316 lb Chinook salmon PSC limit in the Central Regulatory Area and a 6,684 lb Chinook salmon PSC limit in the Western Regulatory Area. If the PSC limit is reached in a regulatory area, that pollock fishery would be closed. To provide better information on the quantity and source of salmon incidentally caught in the pollock fishery, this action also would increase observer coverage on vessels less than 60 feet in length overall and require full retention of salmon.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |
| Final Rule ..... | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov*.

*RIN:* 0648–BB24

**231. • Implementation of Comprehensive Ecosystem Based Amendment 2**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This CE–BA 2 proposes to specify the annual catch limit (ACL) for octocorals in the South Atlantic region. The South Atlantic Council is considering modifying the fishery management unit (FMU) for octocorals under the Fishery Management Plan for Coral, Coral Reefs, Live/Hardbottom Habitats of the South Atlantic Region (Coral FMP) to specify that octocorals are included in the exclusive economic zone off of North Carolina, South Carolina, and Georgia. As a result of potentially reducing the management unit for octocorals, the South Atlantic Council is also considering an action to set the ACL at zero.

CE–BA 2 would amend the Snapper Grouper FMP and FMP for the Coastal Migratory Pelagic Resources in the Atlantic and Gulf of Mexico to require that harvest (with the use of all non-prohibited fishing gear) and possession of snapper grouper and coastal migratory pelagic managed species in South Carolina SMZs be limited to the recreational bag limit.

An action to modify sea turtle and smalltooth sawfish release gear requirements for the snapper grouper fishery is also included in CE–BA 2.

This amendment would amend Council FMPs as needed to designate new or modify existing EFH and EFH–HAPCs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BB26

**232. • Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* In 2006 the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) was re-authorized and included a number of changes to improve conservation of managed fishery resources. Included in these changes are requirements that the Regional Councils must establish both a mechanism for specifying Annual Catch Limits (ACLs) at a level such that overfishing does not occur in the fishery, and Accountability Measures (AMs) to correct if overages occur. Accountability measures are management controls to prevent the ACLs from being exceeded and to correct by either in-season or post-season measures if they do occur. The coastal migratory pelagics fishery is jointly managed by the Gulf and South Atlantic Councils. The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) are currently considering regulatory action needed to set annual catch limits and accountability measures as required by the Magnuson-Stevens Fishery Conservation and Management Act. In addition, the Councils are addressing actions and alternatives to remove several coastal migratory pelagic species from the FMP, update the framework procedure, establish migratory groups for cobia, and redefine biological reference points.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BB33

**233. • Amendment 11 to the Fishery Management Plan for Spiny Lobster in The Gulf of Mexico and South Atlantic**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The Spiny Lobster fishery is jointly managed by the Gulf and South Atlantic Councils. Amendment 11 to the Fishery Management Plan (FMP) will implement reasonable and prudent measures from the 2009 Biological Opinion. The actions include establishment of trap line marking requirements and closed areas to protect Acropora coral species. These actions were originally included in Amendment 10 to the FMP; however, the Councils chose to take no action at that time to allow for additional stakeholder input.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BB44

**234. • Framework 23 to the Atlantic Sea Scallop Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of Framework 23 is to address four specific issues identified by the public and the Council to improve the overall effectiveness of the Scallop Fishery Management Plan. The need is to develop measures to minimize impacts on sea turtles through the requirement of a turtle deflector dredge; improve the effectiveness of the accountability measures adopted under Scallop Amendment 15 for the yellowtail flounder sub annual catch limit; consider specific changes to the general category Northern Gulf of Maine management program to address potential inconsistencies, and to consider modifications to the vessel monitoring system to improve fleet operations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BB51

**235. Potential Revisions to the Turtle Excluder Device Requirements**

*Legal Authority:* 16 U.S.C. 1533

*Abstract:* With this action, the National Marine Fisheries Service (NMFS) announces that it is considering technical changes to the requirements for turtle excluder devices (TEDs), and to solicit public comment. Specifically, NMFS would modify the size of the TED escape opening currently required in the summer flounder fishery; require the use of TEDs in the whelk, calico scallop, and Mid-Atlantic scallop trawl fisheries; require the use of TEDs in flynets; and move the current northern boundary of the Summer Flounder Fishery-Sea Turtle Protection Area off Cape Charles, Virginia, to a point farther north.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 02/15/07 | 72 FR 7382 |
| ANPRM Comment Period End. | 03/19/07 | |
| ANPRM Comment Period Extended. | 03/19/07 | 72 FR 12749 |
| NPRM ..... | 12/00/11 | |
| NPRM Comment Period End. | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric

Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov*.

*RIN:* 0648–AV04

**236. Marine Mammal Protection Act Permit Regulation Revisions**

*Legal Authority:* 16 U.S.C. 1374

*Abstract:* The National Marine Fisheries Service (NMFS) is considering changes to its implementing regulations (50 CFR 216) governing the issuance of permits for scientific research and enhancement activities under section 104 of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends to streamline and clarify general permitting requirements and requirements for scientific research and enhancement permits, simplify procedures for transferring marine mammal parts, possibly apply the General Authorization (GA) to research activities involving Level A harassment of non-endangered marine mammals, and implement a ''permit application cycle'' for application submission and processing of all marine mammal permits. NMFS intends to write regulations for marine mammal photography permits and is considering whether this activity should be covered by the GA.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 09/13/07 | 72 FR 52339 |
| ANPRM Comment Period Extended. | 10/15/07 | 72 FR 58279 |
| ANPRM Comment Period End. | 11/13/07 | 72 FR 52339 |
| ANPRM Extended Comment Period End. | 12/13/07 | 72 FR 58279 |
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, *Phone:* 907 586–7235, *Fax:* 301 713–2521, *Email: michael.payne@noaa.gov*.

*RIN:* 0648–AV82

**237. Reduce Sea Turtle Bycatch in Atlantic Trawl Fisheries**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* NMFS is initiating a rulemaking action to reduce injury and mortality to endangered and threatened sea turtles resulting from incidental take, or bycatch, in trawl fisheries in the Atlantic waters. NMFS will likely address the size of the Turtle Excluder Device (TED) escape opening currently required in the summer flounder trawl fishery, the definition of a summer flounder trawler, and the use of TEDs in this fishery; the use of TEDs in the croaker and weakfish flynet, whelk, Atlantic sea scallop, and calico scallop trawl fisheries of the Atlantic Ocean; and new seasonal and temporal boundaries for TED requirements. In addition, this rule will address the definition of the Gulf Area applicable to the shrimp trawl fishery in the southeast Atlantic and Gulf of Mexico. The purpose of the rule is to aid in the protection and recovery of listed sea turtle populations by reducing mortality in trawl fisheries through the use of TEDs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alexis Gutierrez, Foreign Affairs Specialist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 713–4060, *Email: alexis.gutierrez@noaa.gov*.

*RIN:* 0648–AY61

**238. Amendment to Regulations Under the Bottlenose Dolphin Take Reduction Plan**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*Abstract:* Serious injury and mortality of the western North Atlantic bottlenose dolphin stocks incidental to Category I and II fisheries continue at levels potentially exceeding Potential Biological Removal (PBR) levels, requiring additional management measures under the Bottlenose Dolphin Take Reduction Plan (BDTRP). Therefore, the this action amends the BDTRP to reduce serious injury and mortality of bottlenose dolphins in the Virginia pound net fishery (Category II) and mid-Atlantic gillnet fishery (Category I) in North Carolina, specifically, the spiny dogfish fishery. The need for this action is to ensure the BDTRP meets its MMPA mandated short- and long-term goals. NMFS will examine a number of management measures, including consensus recommendations from the Bottlenose Dolphin Take Reduction Team, designed to reduce the incidental mortality or serious injury of bottlenose dolphins taken in both the Virginia pound net fishery and spiny dogfish fishery in North Carolina to below PBR, as well as other updates supporting the objectives of the BDTRP.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stacey Leah Carlson, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5312, *Fax:* 727 824–5309, *Email: stacey.carlson@noaa.gov*.

*RIN:* 0648–BA34

**239. • North American Right Whales; Continuation of Vessel Speed Restrictions to Reduce Right Whale Deaths From Ship Strikes**

*Legal Authority:* 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

*Abstract:* NMFS proposes to eliminate an expiration requirement currently contained in vessel speed restrictions designed to reduce the likelihood of vessel collisions with North Atlantic right whales. The regulations require speed restrictions of no more than 10 knots applying to all vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The rule is currently set to expire December 9, 2013. NMFS seeks public comment on the proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2332, *Fax:* 301 427–2520, *Email: jim.lecky@noaa.gov*.

*RIN:* 0648–BB20

**240. • Endangered and Threatened Species; Designation of Critical Habitat for Lower Columbia River Coho Salmon and Puget Sound Steelhead**

*Legal Authority:* 16 U.S.C. 1531 to 1544

*Abstract:* We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat under the Endangered Species Act (ESA) for the lower Columbia River coho salmon and the Puget Sound steelhead distinct

population segments (DPS). The proposed areas include freshwater streams and estuarine habitats in Puget Sound, the Strait of Juan de Fuca, SW Washington, and NW Oregon. This proposed rule will seek comments and any additional information on the areas proposed for designation and our evaluation of areas that may warrant exclusion from the designation.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2332, *Fax:* 301 427–2520, *Email: jim.lecky@noaa.gov*.

*RIN:* 0648–BB30

**241. • Amendment and Updates to the Bottlenose Dolphin Take Reduction Plan**

*Legal Authority:* 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 1361 *et seq.*

*Abstract:* Serious injury and mortality of the Western North Atlantic bottlenose dolphin stocks incidental to Category I and II fisheries continue at levels potentially exceeding Potential Biological Removal (PBR) levels, requiring additional management measures under the Bottlenose Dolphin Take Reduction Plan (BDTRP). Therefore, the purpose of the proposed actions is to amend the BDTRP to reduce serious injury and mortality of bottlenose dolphins in the Virginia pound net fishery (Category II). The need for the proposed action is to ensure the BDTRP meets its MMPA mandated short- and long-term goals. NMFS will examine a number of management measures, including consensus recommendations from the Bottlenose Dolphin Take Reduction Team, designed to reduce the incidental mortality or serious injury of bottlenose dolphins taken in the Virginia pound net fishery to below PBR.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |
| Final Action ..... | 06/00/12 | |
| Final Rule Effective. | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Andersen, Fishery Biologist, Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 713–2521, *Email: melissa.andersen@noaa.gov.*

*RIN:* 0648–BB37

## DEPARTMENT OF COMMERCE (DOC)

*National Oceanic and Atmospheric Administration (NOAA)*

Final Rule Stage

**National Marine Fisheries Service**

**242. Amending Regulations for the Pacific Halibut, Sablefish, and Pollock Fisheries Conducted Under the Western Alaska Community Development Quota (CDQ) Program**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 773 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 108–447

*Abstract:* NMFS proposes to amend regulations that govern fisheries managed under the Western Alaska Community Development Quota (CDQ) Program. These revisions are needed to comply with certain changes made to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in 2006. Proposed changes include revising regulations associated with recordkeeping, vessel licensing, catch retention requirements, and fisheries observer requirements to ensure that they are no more restrictive than the regulations in effect for comparable non-CDQ fisheries managed under individual fishing quotas or cooperative allocations. In addition, NMFS proposes to remove CDQ Program regulations that now are inconsistent with the Magnuson-Stevens Act, including regulations associated with the CDQ allocation process, transfer of groundfish CDQ and halibut prohibited species quota, and the oversight of CDQ groups' expenditures.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/13/10 | 75 FR 39892 |
| NPRM Comment Period End. | 08/12/10 | |
| Final Rule ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert D. Mecum, Deputy Acting Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, Room 420, 709 West Ninth Street, Juneau, AK 99802, *Phone:* 907 586–7221, *Fax:* 907 586–7249, *Email: robert.mecum@noaa.gov.*

*RIN:* 0648–AV33

**243. Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Environmental Review Procedure**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* Section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) (Pub. L. 109–479) requires NOAA Fisheries to revise and update Agency procedures for complying with the National Environmental Policy Act (NEPA) in context of fishery management actions. It further requires that NOAA Fisheries consult with the Council on Environmental Quality (CEQ) and the Regional Fishery Management Councils (Councils), and involve the public in the development of the revised procedures. The MSRA provides that the resulting procedures will be the sole environmental impact assessment procedure for fishery management actions, and that they must conform to the time lines for review and approval of fishery management plans and plan amendments. They must also integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear, and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

This rule would revise and update the NMFS procedures for complying with NEPA in the context of fishery management actions developed pursuant to MSRA.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/14/08 | 73 FR 27998 |
| NPRM Comment Period End. | 06/13/08 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Steve Leathery, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2239, *Email: steve.leathery@noaa.gov.*

*RIN:* 0648–AV53

**244. Allowable Modifications to the Turtle Excluder Device Requirements**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* NMFS proposes to revise the Turtle Excluder Device (TED) requirements to allow new materials and modifications to existing approved TED designs. Specifically, proposed allowable modifications include the use of flat bar, box pipe, and oval pipe for use in currently-approved TED grids; an increase in mesh size on escape flaps from 1⅝ inches to 2 inches; the use of the Boone single straight cut and triangular escape openings; specifications on the use of TED grid brace bars; and the use of the Chauvin Shrimp Kicker to improve shrimp retention.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/02/10 | 75 FR 53925 |
| NPRM Comment Period End. | 10/18/10 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Barnette, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 551–5794, *Email: michael.barnette@noaa.gov.*

*RIN:* 0648–AW93

**245. Amendment 11 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Amendment 11 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan may consider: (1) Limited access in the Atlantic mackerel (mackerel) fishery; (2) implementation of annual catch limits (ACLs) and accountability measures (AMs) for mackerel and butterfish required under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA); (3) updating of the description and identification of essential fish habitat (EFH) for all life stages of mackerel, Loligo squid, Illex squid, and butterfish (including gear impacts on Loligo squid egg EFH); and (4) possible limitations on at-sea processing of mackerel.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 08/11/08 | 73 FR 46590 |
| Notice of Availability. | 07/06/11 | 76 FR 39374 |
| NPRM | 08/01/11 | 76 FR 45742 |
| Notice of Availability Comment Period End. | 09/06/11 | |
| NPRM Comment Period End. | 09/15/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AX05

**246. Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs Arbitration Regulations**

*Legal Authority:* 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479

*Abstract:* This action implements Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs to make minor modifications to the arbitration system used to settle price and other disputes among harvesters and processors in the Bering Sea/Aleutian Islands crab rationalization program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability. | 07/25/11 | 76 FR 44297 |
| NPRM | 08/10/11 | 76 FR 49423 |
| Notice of Availability Comment Period End. | 09/23/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

*RIN:* 0648–AX47

**247. Revoke Inactive Quota Share and Annual Individual Fishing Quota From a Holder of Quota Share Under the Pacific Halibut and Sablefish Fixed Gear Individual Fishing Quota Program**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 773

*Abstract:* This action amends existing commercial fishing regulations for the fixed-gear Pacific Halibut and sablefish individual fishing quota program at 50 CFR 679. The amendment revokes inactive quota share unless the quota share permit holder affirmatively notices NMFS in writing within 60 days of the Agency's preliminary determination of inactivity that they choose to (a) retain the inactive IFQ quota share, (b) activate the quota share through transfer or by fishing, or (c) appeal the preliminary determination. Quota share that is not activated through this process and is revoked would be proportionally distributed to the quota share pool. This regulatory revision is based on the recommendations of the North Pacific Fishery Management Council in June 2006 and again in February 2009. Amending the regulations will improve the efficiency of the Pacific Halibut and Sablefish IFQ program and augment operational flexibility of participating fishermen.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/23/10 | 75 FR 51741 |
| NPRM Comment Period End. | 09/22/10 | |
| Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert D. Mecum, Deputy Acting Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, Room 420, 709 West Ninth Street, Juneau, AK 99802, *Phone:* 907 586–7221, *Fax:* 907 586–7249, *Email: robert.mecum@noaa.gov.*

*RIN:* 0648–AX91

**248. Addendum IV to the Weakfish Interstate Management Plan—Bycatch Trip Limit**

*Legal Authority:* 16 U.S.C. 5101

*Abstract:* NMFS proposes regulations that would modify management restrictions in the Federal weakfish fishery in a manner consistent with the Commission's Weakfish Management Board's (Board) approved Addendum IV to Amendment 4 to the ISFMP for Weakfish. In short, the proposed change would decrease the incidental catch allowance for weakfish in the EEZ in nondirected fisheries using smaller mesh sizes, from 150 pounds to no more than 100 pounds per day or trip, whichever is longer in duration. In addition, it would impose a one-fish possession limit on recreational fishers.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/12/10 | 75 FR 26703 |
| NPRM Comment Period End. | 06/11/10 | |
| NPRM Comment Period Re-opened. | 06/16/10 | 75 FR 34092 |
| NPRM Comment Period End. | 06/30/10 | |
| Final Action | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596,*Email: alan.risenhoover@noaa.gov.*

*RIN:* 0648–AY41

**249. Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This rulemaking establishes Pacific cod allocations in the Gulf of Alaska among the jig, trawl, hook-and-line, and pot sectors. This action also limits access to the parallel fishery for Federal fishery participants. This action is necessary to reduce uncertainty and contribute to stability across the sectors, while providing consideration of fishing communities and entry-level opportunities for the jig sector.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Avail-ability. | 06/28/11 | 76 FR 37763 |
| NPRM | 07/26/11 | 76 FR 44700 |
| NPRM Comment Period End. | 09/09/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert D. Mecum, Deputy Acting Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, Room 420, 709 West Ninth Street, Juneau, AK 99802, *Phone:* 907 586–7221, *Fax:* 907 586–7249, *Email: robert.mecum@noaa.gov.*

*RIN:* 0648–AY53

**250. Amendment to Correct and Clarify Amendment 16 and Subsequent Frameworks of the Northeast Multispecies Fisheries Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This action corrects and clarifies the final rule implementing Amendment 16 to the Northeast Multispecies Fishery Management Plan, as well as subsequent groundfish actions. These corrections are administrative in nature and are intended to correct inaccurate references and other inadvertent errors and to clarify specific regulations to maintain consistency with the intent of Amendment 16 and subsequent actions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/02/11 | 76 FR 24444 |
| NPRM Comment Period End. | 05/17/11 | |
| Interim Final Rule | 07/19/11 | 76 FR 42577 |
| Interim Final Rule Effective. | 07/19/11 | |
| Interim Final Rule Comment Pe-riod End. | 08/18/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AY95

**251. Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 46 U.S.C. 53701 *et seq.;* Pub. L. 108–447; Pub. L. 109–447; Pub. L. 110–161

*Abstract:* This rule would implement a Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery, which is a State-controlled fishery. This program is voluntary and holders of valid limited-entry permits issued by the Alaska Commercial Fisheries Entry Commission to operate in the Southeast Alaska Purse Seine Salmon Fishery are eligible to participate. Permit holders in the program will receive up to $23.5 million, in the aggregate, in exchange for relinquishing permits. NMFS would issue a 30-year loan to finance the buyback, and the loan would be repaid by those harvesters remaining in the fishery. The intent of this rule is to permanently reduce the most harvesting capacity in the fishery at the least cost, which should result in increased harvesting productivity for postreduction permit holders participating in the fishery and improve flexibility in the conservation and management of the fishery. The rule would also establish a fee collection system to ensure repayment of the loan.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/23/11 | 76 FR 29707 |
| NPRM Comment Period End. | 06/22/11 | |
| Final Action | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gary C. Reisner, Director, Office of Management and Budget, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2259, *Fax:* 301 713–1464, *Email: gary.reisner@noaa.gov.*

*RIN:* 0648–BA13

**252. Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* This action is required to bring the Atlantic Deep-Sea Red Crab FMP into compliance with the reauthorized Magnuson-Stevens Fishery Conservation and Management Act by incorporating an annual catch limit (ACL) and accountability measures (AMs). The Red Crab FMP may also be modified to implement a ''hard quota'' (or total allowable landings (TAL)) in place of the current target total allowable catch (TAC) and days-at-sea (DAS) system. Other management measures currently in place may be modified or eliminated.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Avail-ability. | 06/22/11 | 76 FR 36511 |
| NPRM | 07/06/11 | 76 FR 39369 |
| NPRM Comment Period End. | 08/05/11 | |
| Notice of Avail-ability Comment Period End. | 08/22/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA22

**253. Framework Adjustment 45 to the Northeast Multispecies Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The New England Fishery Management Council (Council) developed Framework Adjustment 45 to the Northeast Multispecies FMP to implement measures to update status determination criteria for pollock; revise the rebuilding program for Georges Bank yellowtail flounder; revise annual catch limits for several stocks; implement additional sectors, including State-sponsored permit banks; modify a scallop exemption area; revise monitoring requirements; and implement a spawning closure area in the Gulf of Maine. These measures are expected to continue efforts to rebuild overfished stocks, minimize costs to industry, and increase the economic efficiency of vessel operations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/03/11 | 76 FR 11858 |
| NPRM Comment Period End. | 03/18/11 | |
| Final Rule | 04/25/11 | 76 FR 23042 |
| Temporary Final Rule. | 06/15/11 | 76 FR 34903 |
| Final Action—Adjustments. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA27

**254. Modification of Regulations Governing the Retention of Incidentally Caught Highly Migratory Species in Atlantic Trawl Fisheries**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* This rule modifies the regulations governing Atlantic highly migratory species (HMS) to address the retention of incidentally caught North Atlantic swordfish in squid trawl fisheries, and the retention of incidentally caught species in the smoothhound shark complex (which includes smooth dogfish and Florida smoothhound (genus Mustelus)) in all Atlantic trawl fisheries. Trawl gear is not authorized in Atlantic HMS fisheries, but an allowance for the retention of incidentally caught swordfish in trawl gear has been established to reduce regulatory discards. This rule modifies the allowance for incidentally caught HMS in trawl gear to reduce regulatory dead discards, to the extent practicable, by converting discards into landings, improve fishery data collection, provide additional opportunities for the U.S. swordfish quota to be caught, and accommodate traditional fishing methods (i.e., trawls) that incidentally capture North Atlantic swordfish and smoothhound shark species.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/18/11 | 76 FR 14884 |
| NPRM Comment Period End. | 04/17/11 | |
| Final Rule | 08/10/11 | 76 FR 49368 |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze-Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BA45

**255. Framework Adjustment 7 to the Monkfish Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Framework Adjustment 7 to the Monkfish FMP adjusts the annual catch target (ACT) for the Northern Fishery Management Area (NFMA) to be consistent with the most recent scientific advice regarding the acceptable biological catch (ABC) for monkfish. The New England Fishery Management Council's Scientific and Statistical Committee (SSC) has recommended a revision to the ABC, based on the recent stock assessment (SARC 50), that is lower than the ACT for the NFMA proposed in Amendment 5 to the Monkfish FMP. Specifically, the SSC recommended a revised NFMA ABC of 7,592 mt, which is 29 percent lower than the NFMA ACT of 10,750 mt proposed in Amendment 5. Conversely, the recalculated ABC for the Southern Fishery Management Area (SFMA) is 850 mt higher than the Council's recommended ACT for that area. Thus, no change is proposed for the SFMA. Framework 7 also specifies a new day-at-sea (DAS) allocation and trip limits for the NFMA commensurate with the new ACT (as necessary), and adopts revised biomass reference points based on the recommendations of SARC 50 and the SSC.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/05/11 | 76 FR 47533 |
| NPRM Comment Period End. | 09/06/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA46

**256. Atlantic Highly Migratory Species; Vessel Monitoring Systems**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

*Abstract:* The National Marine Fisheries Service (NMFS) will require replacement of currently required Mobile Transmitting Unit (MTU) VMS units with Enhanced Mobile Transmitting Unit (E–MTU) VMS units in Atlantic Highly Migratory Species (HMS) fisheries, implement a declaration system that requires vessels to declare target fishery and gear type(s) possessed on board, and require that a qualified marine electrician install all E–MTU VMS units. This rulemaking removes dated MTU VMS units from service in Atlantic HMS fisheries, makes Atlantic HMS VMS requirements consistent with other VMS monitored Atlantic fisheries, provides the National Oceanic and Atmospheric Administration Office of Law Enforcement (NMFS) with enhanced communication with HMS vessels at sea, and could increase the level of safety at sea for HMS fishery participants. This rule affects all HMS Pelagic Longline (PLL), Bottom Longline (BLL), and shark gillnet fishermen who are currently required to have VMS onboard their vessels.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/21/11 | 76 FR 36071 |
| NPRM Correction | 06/29/11 | 76 FR 38107 |
| Notice of Additional Public Meetings. | 07/01/11 | 76 FR 38598 |
| NPRM Comment Period End. | 08/01/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze-Haugen, Supervisory Fish Management Officer, Department of Commerce,

National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BA64

**257. Atlantic Highly Migratory Species; Implementing International Convention for the Conservation of Atlantic Tunas Recommendations on Sharks**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

*Abstract:* This action implements two recommendations adopted at the 2010 annual meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Recommendation 10–07 prohibits the retention, transshipping, landing, storing, or selling of oceanic whitetip sharks. Recommendation 10–08 prohibits the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family Sphyrnidae, except for Sphyrnidae tiburo, taken in the Convention area in association with ICCAT fisheries.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/29/11 | 76 FR 23935 |
| NPRM Comment Period End. | 05/31/11 | |
| Final Rule | 08/29/11 | 76 FR 53652 |
| Final Rule Effective. | 09/28/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze-Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BA69

**258. Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) was developed by the New England Fishery Management Council (Council) to implement Annual Catch Limits (ACLs) and Accountability Measures (AMs) to come into compliance with new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In addition, Amendment 15 to the Scallop FMP includes measures that would make management of the scallop fishery more effective including: Modification of the overfishing definition for scallops; an increase in the possession limit for Limited Access General Category (LAGC) vessels; an allowance for carryover of Individual Fishing Quotas (IFQ) for LAGC vessels; a provision to enable LAGC vessel owners to permanently transfer IFQ separate from a vessel's LAGC permit; revision of the essential fish habitat closures under the Scallop FMP; and several changes to the scallop research set-aside program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability. | 03/24/11 | 76 FR 16595 |
| NPRM | 04/11/11 | 76 FR 19929 |
| NPRM Comment Period End. | 05/26/11 | |
| Final Rule | 07/21/11 | 76 FR 43746 |
| Final Action—Correction. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Christopher, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9288.

*RIN:* 0648–BA71

**259. Framework Adjustment 22 to the Scallop Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* Framework 22 to the Atlantic Sea Scallop FMP (Framework 22) sets management measures for the scallop fishery for the 2011–2013 Fishing Years (FYs), including the Annual Catch Limits (ACL) and annual catch targets for the limited access and limited access general category fleets based on the ACL framework proposed in Amendment 15 to the FMP. In addition, Framework 22 revises the scallop access area schedules for FYs 2011–2013, sets the scallop Days-At-Sea (DAS) allocations and sea scallop access area trip allocations, and sets measures to minimize impacts of incidental take of sea turtles in the Mid-Atlantic Total Allowable Catches (TACs) for the Northern Gulf of Maine management area, observer set-aside, and incidental landings (target TAC).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/29/11 | 76 FR 23940 |
| NPRM Comment Period End. | 05/31/11 | |
| Final Action | 07/21/11 | 76 FR 43774 |
| Final Action Effective. | 08/01/11 | |
| Correcting Amendment. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA72

**260. Atlantic Highly Migratory Species Electronic Dealer Reporting Requirements**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This rulemaking requires all federally-permitted Atlantic Highly Migratory Species (HMS) dealers to report commercially caught HMS (i.e., Atlantic sharks, tunas, and swordfish) to the National Marine Fisheries Service (NMFS) through an electronic reporting system. In addition, this rulemaking clarifies that a dealer is only authorized to buy commercially caught HMS if the dealer reports have been submitted to NMFS in a timely manner. Any delinquent reports need to be submitted and accepted before a dealer can buy commercially caught HMS. Finally, this rulemaking requires that all commercially harvested HMS caught by federally permitted fishermen be offloaded to federally-permitted and certified HMS dealers, who must report the associated catch to NMFS. These measures are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of HMS.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/28/11 | 76 FR 37750 |
| NPRM Comment Period End. | 08/12/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze-Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BA75

**261. Bering Sea Chinook Salmon Economic Data Reporting Program**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1851; 16 U.S.C. 3631 *et seq.*

*Abstract:* NMFS implements the Chinook Salmon Economic Data Program to evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The rule is intended to promote the goals and objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

To collect the data, NMFS requires submission of each of the following three reports/surveys. These will be in a fillable electronic format available on the NMFS AKR Web site. Representatives of AFA catcher/processor and mothership sectors, inshore cooperatives, the inshore open access fishery, and CDQ groups will be responsible to submit the Chinook EDR. The Reports/Surveys are: Chinook Salmon PSC Allocation Compensated Transfer Report (CTR); Vessel Fuel Survey; and the Vessel Master Survey.

In addition to these reports/surveys, NMFS will collect new information concerning vessel movements on the fishing grounds and more general data on pollock allocations and transfers through revisions of requirements to the existing IPA Annual Report.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/18/11 | 76 FR 42099 |
| NPRM Comment Period End. | 08/17/11 | |
| Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

*RIN:* 0648–BA80

**262. • Central Gulf of Alaska Rockfish Program Fishery Management Plan GOA 88**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* Amendment 88 would implement the Central Gulf of Alaska Rockfish Program to replace the existing regulations for the Rockfish Pilot Program that are scheduled to expire at the end of 2011. This program would allocate exclusive harvest privileges to a select group of License Limitation Program (LLP) license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during a suite of qualifying years. It would retain the conservation, management, safety, and economic gains realized under the rockfish pilot program and resolve identified issues in the management and viability of each sector. This program, if approved, would be implemented in 2012.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability. | 07/28/11 | 76 FR 45217 |
| NPRM | 08/19/11 | 76 FR 52148 |
| NPRM Commend Period End. | 09/19/11 | |
| Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

*RIN:* 0648–BA97

**263. • Repeal of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This action repeals the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) and removes its implementing regulations, as requested by the Gulf of Mexico Fishery Management Council (Council). The stone crab fishery takes place primarily in State waters (off the coast of Florida) and Florida's Fish and Wildlife Conservation Commission (FWC) is extending its management into Federal waters. Repealing the Federal regulations would eliminate duplication of management efforts, reduce costs, and align with the President's Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure Federal regulations are more effective and less burdensome in achieving regulatory objectives. The intended effect of this action is to enhance the effectiveness and efficiency of managing the stone crab fishery in the Gulf of Mexico (Gulf).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/20/11 | 76 FR 43250 |
| NPRM Comment Period End. | 08/19/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BB07

**264. • Implement Framework Adjustment 46 to the Northeast Multispecies Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* NMFS proposes regulations to implement measures in Framework Adjustment (FW) 46 to the NE Multispecies Fishery Management Plan (FMP). FW 46 was developed and submitted to NMFS for approval by the New England Fishery Management Council (Council) to address haddock catch in the Atlantic herring fishery. The proposed rule would increase the haddock incidental catch cap allocated to the Atlantic midwater trawl herring fishery to 1 percent of the Georges Bank (GB) haddock Acceptable Biological Catch (ABC), and to 1 percent of the Gulf of Maine (GOM) haddock ABC. In addition, this action would modify the cap accountability measures (AMs) such that, upon attainment of the cap, the midwater trawl herring fleet could not catch or land herring in excess of the incidental catch limit (2,000 lb (907.2 kg)) in or from the appropriate haddock stock area. This action is intended to allow the herring fishery to fully utilize available herring quota, while providing incentives for the midwater trawl fishery to minimize haddock catch.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/19/11 | 76 FR 42663 |
| NPRM Comment Period End. | 08/03/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Vasquez, Fishery Policy Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9166, *Email: melissa.vasquez@noaa.gov.*

*RIN:* 0648–BB08

**265. • Supplement Amendment 26 and Amendment 29 to the Reef Fish Fishery Management Plan (FMP) of the Gulf of Mexico**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Amendment 26 to the Reef Fish fishery management plan (FMP) established the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) program. This amendment contains provisions to allow public participation after 5 years of the program. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to participate in the Gulf Red Snapper IFQ program. Amendment 29 to the Reef Fish FMP established the Gulf of Mexico Grouper-Tilefish IFQ program. Under the revised Magnuson-Stevens Act (MSA) of 2007, regulations require any participant in IFQ programs to be U.S. citizens. Currently, information verifying U.S. citizenship is not collected on Federal Reef Fish permit applications. The intended effect of this action is to establish the requirements and procedures for collecting information necessary to identify participants in order to monitor, enforce, and review the IFQ program as specified in Amendments 26 and Amendment 29 to the Reef Fish FMP. This action establishes the requirement that any U.S. citizen, or permanent resident alien applying for participation, or person previously issued an IFQ online account by NOAA Fisheries Service's Southeast Region must provide such information on an IFQ online account application to obtain an IFQ online account.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/17/11 | 76 FR 50979 |
| NPRM Comment Period End. | 09/16/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BB15

**266. • Emergency Rule to Increase the 2011 Catch Limits for the Northeast Skate Complex**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The proposed temporary emergency rule would increase the skate complex Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Annual Catch Target (ACT), and annual Total Allowable Landings (TALs) consistent with best available scientific information, and the procedures contained in the Northeast Skate Complex Fishery Management Plan. The Council requested the emergency action after receiving a new recommendation for ABC from the Scientific and Statistical Committee in June 2011. The action is needed to extend the fishing season for the directed skate fisheries, and help avoid the economic impacts of a potential fishery closure before the end of the fishing year.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/30/11 | 76 FR 53872 |
| NPRM Comment Period End. | 09/14/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BB32

**267. • Rule to Delay the Effective Date of Atlantic Smoothhound Management Measures**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* NMFS is delaying the effective date of smoothhound management measures implemented in the Final Rule for Amendment 3 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) (June 1, 2010). This action is necessary to ensure recent legislation, namely the 2010 Shark Conservation Act, is fully considered and to allow time for a Section 7 consultation under the Endangered Species Act (ESA) to be completed. NMFS expects that the smoothhound management measures would become effective upon the effective date of the rule implementing the Shark Conservation Act smooth dogfish measures or following completion of the Section 7 Biological Opinion, whichever is later.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze–Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BB43

**268. Revision of Critical Habitat Designation for the Endangered Leatherback Sea Turtle**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* The National Marine Fisheries Service announces a rule to revise leatherback turtle (Dermochelys coriacea) critical habitat under the Endangered Species Act of 1973, as amended. The leatherback is currently listed as endangered throughout its range, and critical habitat consists of Sandy Point Beach and adjacent waters, St. Croix, U.S. Virgin Islands. This rule revises critical habitat to include waters along the U.S. West Coast.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/05/10 | 75 FR 319 |
| Notice of Public Hearings. | 02/01/10 | 75 FR 5015 |
| NPRM Comment Period Extension. | 02/19/10 | 75 FR 7434 |
| NPRM Comment Period End. | 03/08/10 | |
| NPRM Comment Period Extension End. | 04/19/10 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sara McNulty, Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 713–4060, *Email: sara.mcnulty@noaa.gov.*

*RIN:* 0648–AX06

**269. Designating Critical Habitat for the Endangered Black Abalone**

*Legal Authority:* 16 U.S.C. 1531 to 1543

*Abstract:* Under section 4 of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall designate critical habitat for species listed as threatened or endangered. This rulemaking designates critical habitat for the endangered black abalone. Once critical habitat is designated, Federal agencies are required to comply with section 7 of the ESA to ensure activities they carry out, authorize, or fund do not

destroy or adversely affect this designated critical habitat. An economic analysis report, biological report, and ESA section 4(b)(2) analysis report prepared in support of this rulemaking will be available for public review and comment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/28/10 | 75 FR 59900 |
| NPRM Comment Period End. | 11/29/10 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Neuman, Fish Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 4200, 501 West Ocean Boulevard, Long Beach, CA 90802, *Phone:* 562 980–4115, *Fax:* 562 980–4027, *Email: melissa.neuman@noaa.gov.*

*RIN:* 0648–AY62

**270. False Killer Whale Take Reduction Plan (Section 610 Review)**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*Abstract:* NMFS is undertaking rulemaking to implement a False Killer Whale Take Reduction Plan (FKWTRP). The FKWTRP is based on consensus recommendations submitted by the False Killer Whale Take Reduction Team (FKWTRT). This action is necessary because current serious injury and mortality rates of the Hawaii Pelagic stock of false killer whales incidental to the Category I Hawaii-based deep-set (tuna target) longline fishery and Category II Hawaii-based shallow-set (swordfish target) fishery are above the stock's potential biological removal (PBR) level, and therefore inconsistent with the short-term goal of the Marine Mammal Protection Act (MMPA). Additionally, serious injury and mortality rates of the Hawaii Insular stock and Palmyra Atoll stocks of false killer whales incidental to the Hawaii-based deep-set longline fishery are above insignificant levels approaching a zero mortality and serious injury rate, and therefore inconsistent with the long-term goal of the MMPA. The FKWTRP is intended to meet the statutory mandates and requirements of the MMPA through both regulatory and nonregulatory measures, and research and data collection priorities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/18/11 | 76 FR 42082 |
| NPRM Comment Period Ends. | 10/17/11 | |
| Final Action | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kristy Long, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13738, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2322, *Fax:* 301 427–2522, *Email: kristy.long@noaa.gov.*

*RIN:* 0648–BA30

**271. Endangered and Threatened Species, Designation of Critical Habitat for Southern Distinct Population Segment of Eulachon**

*Legal Authority:* 16 U.S.C. 1533

*Abstract:* We, the National Marine Fisheries Service (NMFS), propose to designate critical habitat for the southern Distinct Population Segment (DPS) of Pacific eulachon (Thaleichthys pacificus), which was recently listed as threatened under the Endangered Species Act (ESA). We have proposed 12 specific areas for designation as critical habitat within the states of California, Oregon, and Washington. The proposed areas are a combination of freshwater creeks and rivers and their associated estuaries which comprise approximately 470 km (292 mi) of habitat. Three particular areas are proposed for exclusion after evaluating the impacts and benefits associated with tribal land ownership and management by Indian tribes, but no areas are proposed for exclusion based on economic impacts.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/05/11 | 76 FR 515 |
| NPRM Comment Period End. | 03/07/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–1401, *Fax:* 301 427–2523, *Email: marta.nammack@noaa.gov.*

*RIN:* 0648–BA38

**272. Revision of Hawaiian Monk Seal Critical Habitat**

*Legal Authority:* 16 U.S.C. 1533.

*Abstract:* On July 9, 2008, NMFS received a petition from the Center for Biological Diversity, Kahea, and the Ocean Conservancy to revise the Hawaiian monk seal critical habitat designation by adding the following areas in the main Hawaiian Islands (MHI): Key beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland; lagoon waters; inner reef waters; and ocean waters out to a depth of 200 meters. In addition, the petitioners requested that designated critical habitat in the NWHI be extended to include Sand Island at Midway, as well as ocean waters out to a depth of 500 meters. On October 3, 2008, NMFS announced in the 90-day finding that the petition presented substantial scientific information indicating that a revision to the current critical habitat designation may be warranted. On June 12, 2009, in the 12-month finding, NMFS announced that a revision to critical habitat is warranted, on account of new information available regarding habitat use by the Hawaiian monk seal, and announced our intention to proceed toward a proposed rule. This rule describes the critical habitat designation, including supporting information on Hawaiian monk seal biology, distribution, and habitat use, and the methods used to develop the proposed revision to Hawaiian monk seal critical habitat.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/02/11 | 76 FR 32026 |
| Notice of Public Meetings. | 07/14/11 | 76 FR 41446 |
| NPRM Comment Period End. | 08/31/11 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2332, *Fax:* 301 427–2520, *Email: jim.lecky@noaa.gov.*

*RIN:* 0648–BA81

## DEPARTMENT OF COMMERCE (DOC)

*National Oceanic and Atmospheric Administration (NOAA)*

Completed Actions

**273. Amendment 4 to the Atlantic Herring Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The goal of Amendment 4 is to improve catch monitoring and ensure compliance with the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSRA). The management measures developed in this amendment may address one or more of the following objectives: (1) To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery; (2) to implement annual catch limits and accountability measures consistent with the MSRA; (3) to implement other management measures as necessary to ensure compliance with the new provisions of the MSRA; (4) to develop a sector allocation process or other limited access privilege program for the herring fishery; and (5) in the context of objectives 1–4 (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.

The New England Fishery Management Council will develop conservation and management measures to address the issues identified above and meet the goals/objectives of the amendment. Any conservation and management measures developed in this amendment also must comply with all applicable laws.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 05/08/08 | 73 FR 26082 |
| Notice of Availability. | 08/12/10 | 75 FR 48920 |
| Notice of Availability Comment Period End. | 10/12/10 | |
| NPRM | 10/18/10 | 75 FR 63791 |
| NPRM Comment Period End. | 12/02/10 | |
| Final Action | 03/02/11 | 76 FR 11373 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AW75

**274. Correction and Clarification to Amendment 13 and Subsequent Frameworks of the Northeast Multispecies Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This action would make corrections and clarifications to the final rule implementing Amendment 13 to the Northeast Multispecies Fishery Management Plan, as well as subsequent groundfish actions. These corrections are administrative in nature and are intended to correct inaccurate references and other inadvertent errors and to clarify specific regulations to maintain consistency with the intent of Amendment 13 and subsequent actions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| No Further Action | 08/10/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–AW95

**275. Implementation of Compatible Regulations With U.S. Virgin Islands Territorial Waters**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* At the June 2009 Council meeting, the Caribbean Fishery Management Council decided to amend the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (U.S.V.I.) to establish compatible regulations with U.S.V.I. territorial regulations. Currently, fishing for and possession of Queen Conch is prohibited in the Exclusive Economic Zone, with the exception of an area known as Lang Bank east of St. Croix, which is open to harvest of Queen Conch from October 1 through June 30. In U.S.V.I. territorial waters, Queen Conch is managed under a 50,000-pound quota. This action implements compatible regulations which will close the harvest of Queen Conch in Federal waters, including Lang Bank, once the quota has been reached in the U.S.V.I. and the fishery is closed in territorial waters.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/20/11 | 76 FR 3596 |
| NPRM Comment Period End. | 02/22/11 | |
| Final Rule | 04/29/11 | 76 FR 23907 |
| Final Action—Correction. | 05/26/11 | 76 FR 30554 |
| Final Action Effective. | 05/31/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 3370, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–AY03

**276. Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011 to 2012 Biennial Specifications and Management Measures; FMP Amendment 16–5 and FMP Amendment 23**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This rule sets the 2011 to 2012 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. This rule also implements Pacific Coast Groundfish Fishery Management Plan Amendments 16–5 and 23.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability. | 10/01/10 | 75 FR 60709 |
| NPRM | 11/03/10 | 75 FR 67810 |
| Notice of Availability Comment Period End. | 11/30/10 | |
| NPRM Comment Period Extension. | 12/03/10 | 75 FR 75449 |
| NPRM Comment Period End. | 12/03/10 | |
| NPRM Comment Period Extension Ends. | 01/04/11 | |
| Final Rule | 05/11/11 | 76 FR 27508 |
| Interim Final Rule | 06/15/11 | 76 FR 34910 |
| Interim Final Rule Comment Period End. | 07/15/11 | |
| Final Action; Correcting Amendment. | 09/02/11 | 76 FR 54713 |
| Final Rule Effective. | 09/02/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115, *Phone:* 206 526–6142, *Fax:* 206 526–6736, *Email: frank.lockhart@noaa.gov.*

*RIN:* 0648–BA01

**277. Emergency Rule to Reopen the Recreational Red Snapper Season in the Gulf of Mexico**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The Gulf of Mexico Fishery Management Council (Council) has requested that NOAA Fisheries Service publish an emergency rule that will

provide authority to the Regional Administrator to reopen the recreational red snapper season after the September 30, 2010, end of the fishing season, if it is determined that landings during the June 1 to July 23 open season did not meet the quota.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/16/10 | 75 FR 49883 |
| NPRM Comment Period End. | 08/31/10 | |
| Final Emergency Rule. | 09/24/10 | 75 FR 58335 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA06

**278. 2011 Atlantic Bluefish Specifications**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* This action establishes 2011 Atlantic bluefish specifications, including State-by-State commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The action also revises the Atlantic bluefish regulations for the specification of overall total allowable landings and the target fishing mortality rate to more clearly reflect the intent of the Atlantic Bluefish Fishery Management Plan.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/14/11 | 76 FR 2640 |
| NPRM Comment Period End. | 01/31/11 | |
| Final Action ..... | 03/31/11 | 76 FR 17789 |
| Final Action Effective. | 05/02/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA26

**279. Implementation of a Recreational Seasonal Closure for Greater Amberjack; Regulatory Framework Action to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP)**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* To reduce the probability of early in-season closures for recreational greater amberjack in the Gulf of Mexico, this rule closes the greater amberjack recreational fishing season annually from June 1 through July 31. The intended effect of this rule is to maintain the rebuilding plan targets for the overfished greater amberjack, prevent the annual catch limit from being exceeded, and maximize the number of fishing days available to the recreational sector.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/24/11 | 76 FR 4084 |
| NPRM Comment Period End. | 02/23/11 | |
| NPRM Comment Period Reopened. | 03/10/11 | 76 FR 13122 |
| NPRM Reopened Comment Period End. | 03/25/11 | |
| Final Action ..... | 04/29/11 | 76 FR 23904 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA48

**280. Amendment 10 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The purpose of the amendment is to reduce the spatial and temporal coverage of the regulations proposed in Amendment 17A to the Snapper-Grouper FMP, based on the most recent scientific information concerning the red snapper stock in the South Atlantic.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/18/11 | 76 FR 9530 |
| NPRM Comment Period End. | 03/21/11 | |
| Final Action ..... | 04/28/11 | 76 FR 23728 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA51

**281. Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico to Set Total Allowable Catch for Red Snapper**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* This action adjusts the commercial and recreational quotas of red snapper to 3.66 and 3.525 MP, respectively, consistent with the 51:49 ratio for the commercial and recreational allocation of red snapper established in Amendment 1 to the FMP. NOAA Fisheries Service will provide an estimated projection for the number of days in the 2011 recreational fishing season after the 2010 harvest numbers are received.

In addition, NOAA Fisheries Service makes administrative adjustments to the reef fish individual fishing quota program via the authority in section 305(d) of the Magnuson-Stevens Act. This action revises the definition of ''actual ex-vessel value'' in section 622.2 of the regulations. The intent of this revision is to allow NOAA Fisheries Service to more accurately analyze the total value of the Gulf red snapper and grouper and tilefish fisheries. Similarly, NOAA Fisheries Service revises regulations at section 622.16 and section 622.20 to extend the existing 12-hour maintenance window with an additional 8 hours to allow for more time to conduct end of year maintenance. It also clarifies how fishermen can submit an IFQ landing notification during the maintenance window.

Lastly, NOAA Fisheries Service removes an obsolete regulation. Regulations implementing Amendment 30B to the FMP, removed the February 15 to March 15 seasonal closure of the commercial sector of the Gulf reef fish fishery for gag, red grouper, and black grouper. However, NOAA Fisheries Service inadvertently did not remove section 622.45(c)(4) in the final rule for Amendment 30B, which includes the prohibition on the sale/purchase of gag, black grouper, or red grouper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish from February 15 until March 15, each year. This action removes this obsolete paragraph.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/22/11 | 76 FR 9735 |
| NPRM Comment Period End. | 03/24/11 | |
| Final Action | 04/29/11 | 76 FR 23911 |
| Final Action Effective. | 05/31/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roy E. Crabtree, Southeast Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

*RIN:* 0648–BA54

**282. Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures**

*Legal Authority:* 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

*Abstract:* This action modifies Atlantic Bluefin Tuna (BFT) base quotas for all domestic fishing categories; establishes BFT quota specifications for the 2011 fishing year; reinstates pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amends the Atlantic tunas possession-at-sea and landing regulations to allow removal of tail lobes; and clarifies the transfer-at-sea regulations for Atlantic tunas. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS solicited written comments and held public hearings to receive oral comments on these actions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/14/11 | 76 FR 13583 |
| NPRM—Correction. | 03/21/11 | 76 FR 15276 |
| Notice of Public Meetings. | 04/04/11 | 76 FR 18504 |
| NPRM Comment Period End. | 04/28/11 | |
| Final Action | 07/05/11 | 76 FR 39019 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Margo Schulze-Haugen, Supervisory Fish Management Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–0234, *Fax:* 301 713–1917, *Email: margo.schulze-haugen@noaa.gov.*

*RIN:* 0648–BA65

**283. Catch Reporting Requirements in the Atlantic Herring Fishery**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* The goal of the catch reporting rulemaking is to improve monitoring of the Annual Catch Limit (ACL) and sub-ACLs for each management area in the Atlantic herring fishery. Requirements under consideration include: Daily reporting via vessel monitoring systems for limited access herring vessels; weekly reporting via the interactive voice response system for open access vessels; and weekly submission of vessel trip reports for limited access and/or open access vessels.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/15/11 | 76 FR 34947 |
| NPRM Comment Period End. | 06/30/11 | |
| Final Action | 09/01/11 | 76 FR 54385 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA79

**284. Framework Adjustment 1 to the Northeast Skate Complex FMP**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* Framework Adjustment 1 to the Skate FMP adjusts the possession limits for the skate wing fishery in order to slow the rate of skate wing landings, so that the available Total Allowable Landings limit (TAL) is taken by the fishery over a longer duration in the fishing year than occurred in 2010. The action also allows vessels that process skate wings at sea to land skate carcasses for sale into the bait market, without counting the carcass landings against the TAL (skate wings are already converted to live weight for monitoring).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/04/11 | 76 FR 18505 |
| NPRM Comment Period End. | 04/19/11 | |
| Final Action | 05/17/11 | 76 FR 28328 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA91

**285. 2011 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures and Scup Specification Increase (Increased 2011 Total Allowable Landings)**

*Legal Authority:* 16 U.S.C. 1801

*Abstract:* This rulemaking conducts two related actions. It publishes an increase to the previously established 2011 scup TAC and TAL, and it proposes management measures to achieve recreational harvest limits for the summer flounder, scup, and black sea bass recreational fisheries. Recreational management measures include recreational possession limits, minimum fish sizes, and seasonal closures.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/21/11 | 76 FR 22350 |
| NPRM Comment Period End. | 05/23/11 | |
| Final Action | 06/30/11 | 76 FR 38307 |
| Final Action Effective. | 08/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930, *Phone:* 978 281–9200, *Fax:* 978 281–9117, *Email: pat.kurkul@noaa.gov.*

*RIN:* 0648–BA92

**286. Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011 Tribal Fishery for Pacific Whiting**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*

*Abstract:* NMFS proposed this rule for the 2011 Pacific whiting tribal fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). Through this action, NMFS establishes an interim 2011 tribal whiting allocation, reporting

and closure regulations, and refine existing regulations on tribal whiting reapportionment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/05/11 | 76 FR 18709 |
| NPRM Comment Period End. | 04/19/11 | |
| Final Action | 05/19/11 | 76 FR 28897 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115, *Phone:* 206 526–6142, *Fax:* 206 526–6736, *Email: frank.lockhart@noaa.gov.*

*RIN:* 0648–BA95

**287. Permits for Capture, Transport, Import, and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory**

*Legal Authority:* 16 U.S.C. 1372(c)

*Abstract:* This rule revises and simplifies criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display, and provides convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/03/01 | 66 FR 35209 |
| NPRM Comment Period Extended. | 08/22/01 | 66 FR 44109 |
| NPRM Comment Period End. | 09/04/01 | |
| NPRM Comment Period Extended To. | 11/02/01 | |
| Withdrawn | 08/18/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, *Phone:* 907 586–7235, *Fax:* 301 713–2521, *Email: michael.payne@noaa.gov.*

*RIN:* 0648–AH26

**288. Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act**

*Legal Authority:* 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 to 1543

*Abstract:* The National Marine Fisheries Service (NMFS) is considering whether to propose regulations to protect killer whales (Orcinus orca) in the Pacific Northwest. The Southern Resident killer whale distinct population segment (DPS) was listed as endangered under the Endangered Species Act (ESA) on November 18, 2005 (70 FR 69903). In the final rule announcing the listing, NMFS identified vessel effects, including direct interference and sound, as a potential contributing factor in the recent decline of this population. Both the Marine Mammal Protection Act (MMPA) and the ESA prohibit take, including harassment, of killer whales, but these statutes do not prohibit specified acts. NMFS is now considering whether to propose regulations that would prohibit certain acts, under our general authorities under the ESA and MMPA and their implementing regulations. The Proposed Recovery Plan for Southern Resident killer whales (71 FR 69101; Nov. 29, 2006) includes as a management action the evaluation of current guidelines and the need for regulations and/or protected areas. The scope of this ANPRM encompasses the activities of any person or conveyance that may result in the unauthorized taking of killer whales and/or that may cause detrimental individual-level and population-level impacts. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect killer whales from the effects of these activities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/22/07 | 72 FR 13464 |
| ANPRM Comment Period End. | 04/23/07 | |
| NPRM | 07/29/09 | 74 FR 37674 |
| NPRM Comment Period Extended. | 10/19/09 | 74 FR 53454 |
| NPRM Comment Period End. | 10/27/09 | |
| NPRM Extended Comment Period End. | 01/15/10 | |
| Final Action | 04/14/11 | 76 FR 20870 |
| Final Action Effective. | 05/16/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2332, *Fax:* 301 427–2520, *Email: jim.lecky@noaa.gov.*

*RIN:* 0648–AV15

**289. Critical Habitat Designation for Cook Inlet Beluga Whale Under the Endangered Species Act**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*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 22, 2008. NMFS is required to designate critical habitat no later than one year after the publication of a listing. NMFS published a proposed rule on December 2, 2009, and now needs to finalize the rule within one year from publication of the proposed rule (by December 2, 2010).

*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 | 04/11/11 | 76 FR 20180 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–1401, *Fax:* 301 427–2523, Email: *marta.nammack@noaa.gov.*

*RIN:* 0648–AX50

**290. Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted Within the Gulf of Mexico Range Complex**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*Abstract:* NMFS has received requests from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to training and operational activities conducted by the Navy's Atlantic Fleet within Gulf of Mexico (GOMEX) Range Complex for the period beginning December 3, 2009, and ending December 2, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS issues regulations to govern that take.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/14/09 | 74 FR 33960 |
| NPRM Comment Period End. | 08/13/09 | |
| Final Action | 02/17/11 | 76 FR 9250 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2332, *Fax:* 301 427–2520, *Email: jim.lecky@noaa.gov.*

*RIN:* 0648–AX86

## DEPARTMENT OF COMMERCE (DOC)

*Patent and Trademark Office (PTO)*

Final Rule Stage

### 291. Adjustment of USPTO Fees for Fiscal Year 2012

*Legal Authority:* 35 U.S.C. 119; Pub. L. 109–383; Pub. L. 110–116; Pub. L. 110–137; Pub. L. 110–149; Pub. L. 110–161; Pub. L. 110–5; Pub. L. 110–92; 35 U.S.C. 376; 35 U.S.C. 120; 35 U.S.C. 41; 35 U.S.C. 132(b)

*Abstract:* The United States Patent and Trademark Office (USPTO) takes this action to adjust certain patent fee amounts for fiscal year 2012 to reflect fluctuations in the Consumer Price Index for All Urban Consumers (CPI–U). The patent statute provides for the annual CPI–U adjustment of patent fees set by statute to recover the higher costs associated with doing business.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/27/11 | 76 FR 37296 |
| NPRM Comment Period End. | 07/27/11 | |
| Final Rule | 12/00/11 | |
| Final Rule Effective. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Walter Schlueter, Budget Analyst—Fees and Forecasting, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, *Phone:* 571 272–6299, *Fax:* 571 273–6299, *Email: walter.schlueter@uspto.gov.*

*RIN:* 0651–AC44

## DEPARTMENT OF COMMERCE (DOC)

*Patent and Trademark Office (PTO)*

Completed Actions

### 292. Revision of USPTO Fees for Fiscal Year 2011

*Legal Authority:* Pub. L. 109–383; Pub. L. 110–116; Pub. L. 110–137; Pub. L. 110–149; Pub. L. 110–161; Pub. L. 110–5; Pub. L. 110–92; 35 U.S.C. 132(b); 35 U.S.C. 120; 35 U.S.C. 119; 35 U.S.C. 41; 35 U.S.C. 376

*Abstract:* The United States Patent and Trademark Office (USPTO) takes this action to adjust certain patent and trademark fee amounts set in the aggregate to recover the estimated cost to the USPTO for processing activities and services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the USPTO.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn | 07/15/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Walter Schlueter, Budget Analyst—Fees and Forecasting, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, *Phone:* 571 272–6299, *Fax:* 571 273–6299, *Email: walter.schlueter@uspto.gov.*

*RIN:* 0651–AC43

[FR Doc. 2012–1641 Filed 2–10–12; 8:45 am]

BILLING CODE 3510–12–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part V

## Department of Defense

Semiannual Regulatory Agenda

## DEPARTMENT OF DEFENSE

### 32 CFR Chs. I, V, VI, and VII

### 33 CFR Ch. II

### 36 CFR Ch. III

### 48 CFR Ch. II

### Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Department of Defense (DoD).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866, ''Regulatory Planning and Review.'' This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive Order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process. Members of the public may submit comments on individual proposed and interim final rulemakings at *www.regulations.gov* during the comment period that follows publication in the **Federal Register**.

This agenda updates the report published on July 7, 2011, and includes regulations expected to be issued and under review over the next 12 months. The next agenda is scheduled to be published in the spring of 2012. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

Starting with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov,* in a format that offers users the ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Defense's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is in the Unified Agenda available online.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 571 372–0493, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or email: *robert.cushing@whs.mil.*

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600, or call 703 697–2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Ms. Patricia Toppings, telephone 571 372–0485, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or email: *patricia.toppings@whs.mil.*

For general information on Office of the Secretary agenda items, which are procurement-related, contact Ms. Ynette Shelkin, telephone 703 602–8384 or write to Defense Acquisition Regulations Directorate, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, or email: *ynette.shelkin@osd.mil.*

For general information on Department of the Army regulations, contact Ms. Brenda Bowen, telephone 703 428–6173, or write to the U.S. Army Records Management and Declassification Agency, ATTN: AAHS–RDR–C, Casey Building, Room 102, 7701 Telegraph Road, Alexandria, Virginia 22315–3860, or email: *brenda.s.bowen.civ@mail.mil.*

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703 693–3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310–0108, or email: *chip.smith@hqda.army.mil.*

For general information on Department of the Navy regulations, contact LT Lisa Senay, telephone 703 614–5360, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374–5066, or email: *lisa.senay@navy.mil.*

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703 696–6515, or write to Department of the Air Force, SAF/XCPP, 1800 Air Force Pentagon, Washington, DC 20330–1800, or email: *bao-anh.trinh@pentagon.af.mil.*

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;

b. Paperwork Reduction Act of 1995;

c. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes,

will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) long-term actions; and (5) completed actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601[6]).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: August 16, 2011.

**Michael L. Rhodes,**

*Director, Administration and Management.*

## Defense Acquisition Regulations Council—Proposed Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 293 | Reporting of Government-Furnished Property (DFARS Case 2012–D001) | 0750–AG83 |
| 294 | Updates to Wide Area WorkFlow (WAWF) (DFARS Case 2011–D027) | 0750–AH40 |

## Defense Acquisition Regulations Council—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 295 | Business Systems—Definition and Administration (DFARS Case 2009–D038) | 0750–AG58 |
| 296 | Responsibility and Liability for Government Property (DFARS Case 2010–D018) | 0750–AG94 |
| 297 | Government Support Contractor Access to Technical Data (DFARS Case 2009–D031) | 0750–AG95 |
| 298 | Representation Relating to Compensation of Former DoD Officials (DFARS Case 2010–D020) | 0750–AG99 |
| 299 | Accelerated Payments to Small Business (DFARS Case 2011–D008) | 0750–AH19 |
| 300 | Fire-Resistant Fiber for Production of Military Uniforms (DFARS Case 2011–D021) | 0750–AH22 |
| 301 | Pilot Program on Acquisition of Military Purpose Nondevelopmental Items (DFARS Case 2011–D034) | 0750–AH27 |
| 302 | Contractors Performing Private Security Functions (DFARS Case 2011–D023) | 0750–AH28 |
| 303 | Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011–D031) | 0750–AH30 |
| 304 | Utilization of Domestic Photovoltaic Devices (DFARS Case 2011–D046) | 0750–AH43 |

## Defense Acquisition Regulations Council—Completed Actions

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 305 | Warranty Tracking of Serialized Items (DFARS Case 2009–D018) | 0750–AG74 |
| 306 | Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010–D027) | 0750–AG88 |
| 307 | Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010–D024) | 0750–AG91 |
| 308 | Electronic Ordering Procedures (DFARS Case 2009–D037) | 0750–AH20 |
| 309 | Inclusion of Option Amounts in Limitations on Authority of the Department of Defense to Carry Out Certain Prototype Projects (DFARS Case 2011–D024). | 0750–AH23 |
| 310 | Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009–D039) | 0750–AH24 |
| 311 | Material Inspection and Receiving Report (DFARS Case 2009–D023) | 0750–AH33 |
| 312 | Extension of Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2011–D035) | 0750–AH34 |

## Office of Assistant Secretary for Health Affairs—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 313 | TRICARE; Reimbursement of Sole Community Hospitals | 0720–AB41 |

## DEPARTMENT OF DEFENSE (DOD)

*Defense Acquisition Regulations Council (DARC)*

Proposed Rule Stage

### 293. Reporting of Government—Furnished Property (DFARS Case 2012–D001)

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* This rule revises and expands reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources. The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.211–7007, is being renamed as ''Reporting of Government-Furnished Property,'' and is being revised to expand definitions, and provide guidance on reporting of GFP. This clause applies to commercial contracts that have GFP and reporting applicability, and is added to the list of solicitation provisions and contract clauses applicable to the acquisition of commercial items at DFARS 212.301. Additionally, the clause at 252.251–7000 is being revised to require electronic receipts of property obtained from Government supply sources. The objective of the rule is to improve the accountability and control of DoD assets. At the time of publication, DoD was unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invited comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/22/10 | 75 FR 80426 |
| NPRM Comment Period Extended. | 02/18/11 | 76 FR 9527 |
| Public Meeting .... | 03/18/11 | 76 FR 11190 |
| NPRM Comment Period End. | 04/08/11 | |
| Second NPRM .... | 10/19/11 | 76 FR 64885 |
| Second NPRM Comment Period End. | 12/19/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG83

### 294. • Updates to Wide Area Workflow (WAWF) (DFARS Case 2011–D027)

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* DoD proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy and procedures on electronic submission of payment requests and receiving reports through Wide Area WorkFlow (WAWF) and TRICARE Encounter Data System (TEDS). WAWF is the accepted DoD system for generating invoices and receiving reports. TEDS is an accepted system for processing payment requests for rendered TRICARE health care services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH40

## DEPARTMENT OF DEFENSE (DOD)

*Defense Acquisition Regulations Council (DARC)*

Final Rule Stage

### 295. Business Systems—Definition and Administration (DFARS Case 2009–D038)

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of DoD oversight of contractor business systems. Section 893 of the National Defense Authorization Act for Fiscal Year 2011 established statutory requirements for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. In accordance with section 893, DoD is issuing a rule to improve the effectiveness of DCMA/DCAA oversight and clarify the definition and administration of contractor business systems.

The rule addresses comments received under the interim rule for this case, as well as statutory requirements of section 893 of the National Defense Authorization Act for Fiscal Year 2011. DoD published an interim rule with request for comments on May 18, 2011 (76 FR 28856).

The rule will apply to solicitations and contracts that are subject to the Cost Accounting Standards (CAS) under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix). Since contracts and subcontracts with small businesses are exempt from CAS requirements, DoD estimates that this rule will have no impact on small businesses.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/15/10 | 75 FR 2457 |
| NPRM Comment Period End. | 03/16/10 | |
| Second NPRM .... | 12/03/10 | 75 FR 75549 |
| Second NPRM Comment Period Extended. | 12/09/10 | 75 FR 76692 |
| Second NPRM Comment Period End. | 01/10/11 | |
| Interim Final Rule | 05/18/11 | 76 FR 28855 |
| Interim Final Rule Effective. | 05/18/11 | |
| Interim Final Rule Comment Period End. | 07/18/11 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG58

### 296. Responsibility and Liability for Government Property (DFARS Case 2010–D018)

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the Government self-insurance policy for Government property provided under negotiated fixed-price contracts that are awarded on a basis other than submission of certified cost or pricing data. This rule proposes that DoD contractors not be held liable for loss of Government property under such contracts, and eliminates the use of Alternate I of the FAR clause at 52.245–1, Government Property. Use of Alternate I requires contractors to assume the risk and be responsible for

loss of Government property. The basic premise of this case, that the Government should be self-insuring under contracts that provide Government property, is supported by the Government Accountability Office (GAO) policy contained in GAO publication, GAO–04–261SP Appropriations Law, and its decisions. Any impact of this rule on small entities is expected to be beneficial. The Government assuming the liability for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data should provide some relief for the small entities concerning costs to acquire insurance against risk of loss.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/19/11 | 76 FR 21852 |
| NPRM Comment Period End. | 06/20/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG94

**297. Government Support Contractor Access to Technical Data (DFARS Case 2009–D031)**

*Legal Authority:* Pub. L. 111–84

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

Additionally, this rule amends the DFARS to provide needed editorial changes. The rule implements a new third statutory exception to the prohibition on release of privately developed data outside the Government, allowing a covered Government support contractor access to, and use of, any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates.

The rule also provides a definition of ''covered Government support contractor'' as contractor under a contract, whose primary purpose is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort . A ''covered Government support contractor'' must meet certain criteria identified in the rule and provide certain assurances to the Government to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor, to include signing a non-disclosure agreement.

The rule affects small businesses that are Government support contractors that need access to proprietary technical data belonging to prime contractors and other third parties. There are no known significant alternatives to the rule that would meet the requirements of the statute and minimize any significant economic impact of the rule on small entities. The impact of this rule on small business is not expected to be significant because the execution of a non-disclosure agreement is not likely to have a significant cost or administrative impact.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 03/02/11 | 76 FR 11363 |
| Interim Final Rule Effective Date. | 03/02/11 | |
| Interim Final Rule Comment Period End. | 05/02/11 | |
| Final Action ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG95

**298. Representation Relating to Compensation of Former DOD Officials (DFARS Case 2010–D020)**

*Legal Authority:* 41 U.S.C. 1303; 18 U.S.C. 207; 41 U.S.C. 423; Pub. L. 110–181

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to require that offerors represent whether former DoD officials employed by the offeror are in compliance with post-employment restrictions concerning post-government employment for DoD and other Federal employees after leaving Government employment. The proposed rule will require offerors to submit representations at the time of contract award that all former DoD officials that are covered by the Procurement Integrity Act are in compliance with post-employment restrictions set forth in DFARS 203.171–3 and DFARS 252.203–7000. The representation goes further in also requiring a representation that former DoD employees employed by the contractor are also in compliance with additional post-employment restrictions. This representation will be required in contracts for commercial items.

There is no impact on the offeror unless the former DoD officials covered by the Procurement Integrity Act are not in compliance with the post—employment restrictions. In order to submit an offer, small entities that hire a former DoD official covered by the Procurement Integrity Act will have to check the compliance of such employees with various applicable post-employment restrictions.

DFARS 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, already requires contractors to determine that a covered DoD official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor, regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the contractor. Therefore, this representation of compliance does not impose an additional burden on the offeror. Any economic impact is expected to be minimal.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/06/11 | 76 FR 32846 |
| NPRM Comment Period End. | 08/05/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG99

**299. Accelerated Payments to Small Business (DFARS Case 2011–D008)**

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to accelerate payments to all small business concerns. Currently, DoD assists small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract. This rule proposes removal of the term ''disadvantaged'' from the language at DFARS 232.903 and DFARS 232.906(a)(ii) extending this assistance to all small business concerns. This will align the DFARS with the statutory language at 5 CFR 1315.5 and FAR 32.903, which allows agencies to authorize accelerated payment procedures for small businesses. Because the rule proposes to extend accelerated payment assistance to all small business concerns, a positive economic impact on small business is expected.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/27/11 | 76 FR 23505 |
| Interim Final Rule Effective. | 04/27/11 | |
| Interim Final Rule Comment Period End. | 06/27/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH19

**300. • Fire-Resistant Fiber for Production of Military Uniforms (DFARS Case 2011–D021)**

*Legal Authority:* Pub. L. 111–383

*Abstract:* Implements section 821 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 821 prohibits specification of the use of fire-resistant rayon fiber in solicitations issued before January 1, 2015.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/06/11 | 76 FR 32843 |
| Interim Final Rule Effective. | 06/06/11 | |
| Interim Final Rule Comment Period End. | 08/05/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AH22

**301. • Pilot Program on Acquisition of Military Purpose Nondevelopmental Items (DFARS Case 2011–D034)**

*Legal Authority:* Pub. L. 111–383

*Abstract:* Implements section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383). Section 866 authorized the Secretary of Defense to establish a pilot program to assess the feasibility and advisability of acquiring military purpose nondevelopmental items. The authority for this pilot program expires on January 6, 2016. Under this pilot program, DoD may enter into contracts with nontraditional defense contractors for the purpose of: (1) Enabling DoD to acquire items that otherwise might have been available to DoD; (2) assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/29/11 | 76 FR 38048 |
| Interim Final Rule Effective. | 06/29/11 | |
| Interim Final Rule Comment Period End. | 08/29/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH27

**302. • Contractors Performing Private Security Functions (DFARS Case 2011–D023)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 110–181; Pub. L. 110–417; Pub. L. 111–383

*Abstract:* This interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011. Section 862, as amended, establishes minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions. The DFARS is being revised to implement the statute. This interim rule implements the legislation by establishing (1) regulations addressing the selection, training, equipping, and conduct of personnel performing private security functions in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, (2) a contract clause, and (3) remedies. DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the statute impacts only private security contractors performing outside the United States. Nevertheless, an initial regulatory flexibility analysis has been performed. Additionally, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/19/11 | 76 FR 52133 |
| Interim Final Rule Effective. | 08/19/11 | |
| Interim Final Rule Comment Period End. | 10/18/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC

20301, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AH28

**303. • Management of Manufacturing Risk in Major Defense Acquisition Programs (DFARS Case 2011–D031)**

*Legal Authority:* Pub. L. 111–383

*Abstract:* DoD is issuing an interim rule to implement section 812 of the National Defense Authorization Act for Fiscal Year 2011. Section 812(b)(5), instructs DoD to issue guidance that, at a minimum, shall require appropriate consideration of the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs. The interim rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 215.3, Source Selection by adding paragraph (iv) to state that the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors shall be considered as a part of the source selection process for major defense acquisition programs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/29/11 | 76 FR 38050 |
| Interim Final Rule Effective. | 06/29/11 | |
| Interim Final Rule Comment Period End. | 08/29/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH30

**304. • Utilization of Domestic Photovoltaic Devices (DFARS Case 2011–D046)**

*Legal Authority:* Pub. L. 111–383; 41 U.S.C. 1905; 41 U.S.C. 1906; 41 U.S.C. 1707

*Abstract:* This interim rule amends the Defense Federal Acquisition Regulation Supplement to implement section 846 of the National Defense Authorization Act for Fiscal Year 2011. The section provides that photovoltaic devices to be utilized in performance of any covered contract shall comply with the Buy American statute, subject to the exceptions provided in the Trade Agreements Act of 1979 or otherwise provided by law. The rule amends DFARS subpart 225.70 by adding a new section 225.7017, Utilization of domestic photovoltaic devices, as well as an associated provision and clause in DFARS part 252. DoD has not made a determination to apply the requirement of section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 to contracts at or below the simplified acquisition threshold (SAT), but has determined to apply the rule to contracts for the acquisition of commercial items. The objective of the rule is to promote utilization of domestic photovoltaic devices under an energy savings contract, a utility service contract, or a private housing contract, if such contract does not include DoD purchase of photovoltaic devices as end products, but will nevertheless result in DoD ownership of photovoltaic devices. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies. We do not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities. DoD expects that this interim rule may have a significant economic impact on a substantial number of small entities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 12/00/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AH43

## DEPARTMENT OF DEFENSE (DOD)

*Defense Acquisition Regulations Council (DARC)*

Completed Actions

**305. Warranty Tracking of Serialized Items (DFARS Case 2009–D018)**

*Legal Authority:* 41 U.S.C. 401

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology and Logistics dated February 6, 2007, that required definition of the requirements to track warranties for Item Unique Identification-required items in the Item Unique Identification registry. This proposed rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness. The capability to track warranties will significantly enhance the ability of DoD to—(1) Identify and enforce warranties, (2) Ensure sufficient durations of warranties for specific goods; and (3) Realize improved material readiness. The rule is structured to reduce burden to contractors and to facilitate data capture. DoD anticipates that there will be limited, if any, additional costs imposed on small businesses.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/30/10 | 75 FR 52917 |
| NPRM Comment Period End. | 10/29/10 | |
| Final Action ..... | 06/08/11 | 76 FR 33166 |
| Final Action Effective. | 06/08/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG74

**306. Prohibition on Interrogation of Detainees by Contractor Personnel (DFARS Case 2010–D027)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 111–84

*Abstract:* This final rule implements section 1038 of the Fiscal Year 2010 National Defense Implements Authorization Act (Pub. L. 111–84). Section 1038 prohibits contractor personnel from interrogating detainees under the control of the Department of Defense. It also allows the Secretary of Defense to waive the prohibition for a limited period of time, if determined necessary to the national security interests of the United States. The interim rule added coverage at Defense Federal Acquisition Regulation Supplement (DFARS) 237.173 and a new clause at DFARS 252.237–7010 that prescribes policies prohibiting interrogation of detainees by contractor personnel as required by the statute. The interim rule also addressed permissible support roles for contractors by providing that contractor personnel

with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of, and advisors to, interrogations, if the contractor personnel meet the criteria provided by DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix; DoD Directive 2310.01E, The Department of Defense Detainee Program; and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning. This rule only prescribed policies that prohibit interrogation of detainees by contractor personnel. DoD anticipates that there will be no additional costs imposed on small businesses.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 11/03/10 | 75 FR 67632 |
| Interim Final Rule Effective. | 11/03/10 | |
| Interim Final Rule Comment Period End. | 01/03/11 | |
| Final Action ..... | 07/25/11 | 76 FR 44282 |
| Final Action Effective. | 07/25/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AG88

**307. Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010–D024)**

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* This rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement to prepare contractor performance evaluations for construction and architect-engineer services by using DoD-unique forms. In 2010, consistent with the Office of Federal Procurement Policy memorandum dated July 29, 2008, Improving the Use of Contractor Performance Information, the Contractor Performance Assessment Reporting System (CPARS) was named as the sole system for collecting past-performance information. As such, CPARS will support Governmentwide data collection requirements for contractor past performance reporting, to include construction and A&E contracts, and DFARS was updated to delete the outdated procedures and references to the obsolete DoD forms. The clarifications require no additional effort by contractors as the changes simply updated the DFARS to reflect the current automated process being used. CPARS is already being used by DoD personnel to report construction and A&E services contractor past performance, and the DFARS was merely updated to remove references to obsolete forms and procedures and reflect the current process. No start-up costs are expected as only Internet access is required should small entities elect to comment on their past performance rating in CPARS. Accordingly, any economic impact is expected to be minimal.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/19/11 | 76 FR 21851 |
| NPRM Comment Period End. | 06/20/11 | |
| Final Action ..... | 09/20/11 | 76 FR 58155 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AG91

**308. Electronic Ordering Procedures (DFARS Case 2009–D037)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 107–347

*Abstract:* This rule addresses electronic business procedures for placing orders. This rule adds a new clause in the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify this process and standardize issuance of orders via electronic means DoD currently has the capability to distribute orders electronically on a routine basis, and can post to a Web site that any contractor can access. In order to make this possible, the DFARS needs to provide language that will make those procedures a routine part of contract issuance. This will enable DoD to further the goals of the E–Government Act of 2002 (Pub. L. 107–347). The benefit of this rule to small business is that it will make electronic distribution procedures a routine part of order issuance. This change will ultimately help improve the management and promotion of electronic Government services and processes, and will establish a framework to improve public access to Government information, and services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Direct Final Rule | 05/05/11 | 76 FR 25566 |
| Final Action Effective. | 05/05/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AH20

**309. • Inclusion of Option Amounts in Limitations on Authority of the Department of Defense To Carry Out Certain Prototype Projects (DFARS Case 2011–D024)**

*Legal Authority:* Pub. L. 111–383

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 826 of the National Defense Authorization Act for Fiscal Year 2011. Section 826 amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Direct Final Rule | 06/08/11 | 76 FR 33170 |
| Final Action Effective. | 06/08/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH23

**310. • Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009–D039)**

*Legal Authority:* Pub. L. 111–84; Pub. L. 109–364

*Abstract:* DoD issued an interim rule on November 12, 2011, amending the Defense FAR Supplement to implement section 823 of the National Defense Authorization Act for Fiscal Year 2010 and section 834 of the National Defense Authorization Act for Fiscal Year 2011.

Section 823 requires that all covered contracts for the procurement of goods or services using award fees be reviewed by the contracting officer during the evaluation of the contractor performance for the relevant award fee period, to determine if actions of gross negligence or reckless disregard by the contractor or its subcontractors caused harm or death to Government personnel, both civilian or military. Section 834 of the National Defense Authorization Act for Fiscal Year 2011, added an additional disposition, for a finding of fault by the Secretary of Defense in an administrative proceeding, where a reduction or denial of award fee is applicable. The case was closed as agreed to by the DAR Council on June 2, 2011, incorporated into DFARS Case 2011–D033, and renamed Award Fee Reduction or Denial for Health or Safety Issues, RIN 0750–AH37.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 11/12/10 | 75 FR 69360 |
| Interim Final Rule Effective. | 11/12/10 | |
| Interim Final Rule Comment Period End. | 01/11/11 | |
| Merged With 0750–AH37. | 06/02/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ynette R. Shelkin, Editor, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, OUSD/AT&L DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060, *Phone:* 703 602–8384, *Email: ynette.shelkin@osd.mil.*

*RIN:* 0750–AH24

**311. • Material Inspection and Receiving Report (DFARS Case 2009–D023)**

*Legal Authority:* 41 U.S.C. 1303

*Abstract:* DoD issued a final rule with changes to implement updates to the Defense FAR Supplement (DFARS), appendix F, Material Inspection and Receiving Report, that incorporate procedures for using the electronic Wide Area Workflow (WAWF) Receiving Report required for use in most contracts in lieu of the DD Form 250, Material Inspection and Receiving Report, which is now used mostly on an exception basis. DoD published a proposed rule in the **Federal Register** (75 FR 56961) on September 17, 2010, to amend DFARS appendix F to provide new coverage on the use, preparation, and distribution of the electronic WAWF receiving report which is the primary method for documenting acceptance and distribution of shipments. The rule also addressed WAWF capability to provide Item Unique Identification (IUID), and Radio Frequency Identification (RFID). The rule was revised to reflect comments received. A final regulatory flexibility analysis has been prepared. The final rule affects all DoD contractors who are not exempt from using WAWF, however, the exact number of small entities is unknown. Any impact on small business is expected to be beneficial from providing detailed preparation and distribution guidance for use of WAWF.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/17/10 | 75 FR 56961 |
| NPRM Comment Period End. | 11/16/10 | |
| Final Action | 09/20/11 | 76 FR 58122 |
| Final Action Effective. | 09/20/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH33

**312. • Extension of Restrictions on the Use of Mandatory Arbitration Agreements (DFARS 2011–D035)**

*Legal Authority:* Pub. L. 112–10

*Abstract:* This rule amends the Defense Federal Acquisition Regulation Supplements (DFARS)to implement section 8102 of the DoD Appropriations Act for Fiscal Year 2011 (Pub. L. 112–10) to restrict the use of mandatory arbitration agreements when awarding contracts that exceed $1 million when using Fiscal Year 2011 funds appropriated or otherwise made available by the DoD Appropriations Act. Section 8102 of Public Law 112–10 prohibits the use of Fiscal Year 2011 funds for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention. This rule does not apply to the acquisition of commercial items. Section 8102(b) requires the contractor to certify compliance by subcontractors. The Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Direct Final Rule | 06/29/11 | 76 FR 38047 |
| Final Action Effective. | 06/29/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Overstreet, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301, *Phone:* 703 602–0311, *Email: mary.overstreet@osd.mil.*

*RIN:* 0750–AH34

## DEPARTMENT OF DEFENSE (DOD)

*Office of Assistant Secretary for Health Affairs (DODOASHA)*

Final Rule Stage

**313. TRICARE; Reimbursement of Sole Community Hospitals**

*Legal Authority:* 5 U.S.C. 301; 10 U.S.C. ch 55

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/05/11 | 76 FR 39043 |
| NPRM Comment Period End. | 09/06/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Marty Maxey, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301, *Phone:* 303 676–3627.

*RIN:* 0720–AB41

[FR Doc. 2012–1642 Filed 2–10–12; 8:45 am]

BILLING CODE 5001–06–P

# FEDERAL REGISTER

Vol. 77 Monday,

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Part VI

## Department of Education

Semiannual Regulatory Agenda

## DEPARTMENT OF EDUCATION

### Office of the Secretary

### 34 CFR Subtitles A and B

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866 ''Regulatory Planning and Review.'' The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to LaTanya Cannady or Hilary Malawer, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6C128, 400 Maryland Avenue SW., Washington, DC 20202–2241, telephone: 202 401–9676 (LaTanya Cannady) or 202 401–6148 (Hilary Malawer). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1 800 877–8339.

**SUPPLEMENTARY INFORMATION:** Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish a regulatory flexibility agenda in October and April of each year.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). The Secretary publishes this agenda in compliance with the Executive Order and the Regulatory Flexibility Act.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan, ED is committed to regulations that improve the quality and equality of services to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities. ED has determined that none of the uncompleted actions in this agenda require review under section 610.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

**Electronic Access to This Document**

The entire Unified Agenda is published electronically and is available online at *www.reginfo.gov.*

Dated: September 9, 2011.

**Philip H. Rosenfelt,**

*Acting General Counsel.*

OFFICE OF POSTSECONDARY EDUCATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 314 | Program Integrity: Gainful Employment—Measures | 1840–AD06 |

## DEPARTMENT OF EDUCATION (ED)

*Office of Postsecondary Education (OPE)*

Completed Actions

### 314. Program Integrity: Gainful Employment—Measures

*Legal Authority:* 20 U.S.C. 1001 to 1003; 20 U.S.C. 1070g; 20 U.S.C. 1085; 20 U.S.C. 1088; 20 U.S.C. 1091 to 1092; 20 U.S.C. 1094; 20 U.S.C. 1099c; 20 U.S.C. 1099c–1

*Abstract:* The Secretary amends the Student Assistance General Provisions regulations 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.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Action | 06/13/11 | 76 FR 34386 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John A. Kolotos, *Phone:* 202 502–7762, *Email: john.kolotos@ed.gov.*

Fred Sellers, *Phone:* 202 502–7502, *Email: fred.sellers@ed.gov.*

*RIN:* 1840–AD06

[FR Doc. 2012–1643 Filed 2–10–12; 8:45 am]

BILLING CODE 4000–01–P

# FEDERAL REGISTER

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Part VII

## Department of Energy

Semiannual Regulatory Agenda

## DEPARTMENT OF ENERGY

### 10 CFR Chs. II, III, and X

### 48 CFR Ch. 9

### Semiannual Regulatory Agenda

**AGENCY:** Department of Energy.

**ACTION:** Notice of semiannual regulatory agenda.

**SUMMARY:** The Department of Energy (DOE) has prepared and is making available its portion of the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), including its Regulatory Plan (Plan), pursuant to Executive Order 12866 ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act.

**SUPPLEMENTARY INFORMATION:** The Agenda is a Governmentwide compilation of upcoming and ongoing regulatory activity, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy's portion of the Agenda includes regulatory actions called for by the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and programmatic needs of DOE offices.

The Internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE's entire fall 2011 Agenda can be accessed online by going to: *www.reginfo.gov.* Agenda entries reflect the status of activities as of approximately November 30, 2011.

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. DOE's regulatory flexibility agenda is made up of six rulemakings setting energy efficiency standards for the following products:

Fluorescent lamp ballasts

Battery chargers and external power supplies

Walk-in coolers and freezers

Residential clothes washers

Residential furnace, central air conditioners and heat pumps

ER, BR and small-diameter incandescent reflector lamps

The Plan appears in both the online Agenda and the **Federal Register** and includes the most important of DOE's significant regulatory actions and a Statement of Regulatory and Deregulatory Priorities.

Issued in Washington, DC, on September 22, 2011.

**Sean Lev,**

*Acting General Counsel.*

ENERGY EFFICIENCY AND RENEWABLE ENERGY—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 315 | Energy Efficiency Standards for Battery Chargers and External Power Supplies (**Reg Plan Seq No. 27**) | 1904–AB57 |
| 316 | Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers (**Reg Plan Seq No. 28**) | 1904–AB86 |
| 317 | Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps (**Reg Plan Seq No. 30**). | 1904–AC15 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 318 | Energy Efficiency Standards for Fluorescent Lamp Ballasts (**Reg Plan Seq No. 31**) | 1904–AB50 |
| 319 | Energy Conservation Standards for Residential Clothes Washers | 1904–AB90 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 320 | Energy Efficiency Standards for Residential Furnace, Central Air Conditioners and Heat Pumps | 1904–AC06 |

## DEPARTMENT OF ENERGY (DOE)

*Energy Efficiency and Renewable Energy (EE)*

Proposed Rule Stage

**315. Energy Efficiency Standards for Battery Chargers and External Power Supplies**

*Regulatory Plan:* This entry is Seq. No. 27 in part II of this issue of the **Federal Register.**

*RIN:* 1904–AB57

**316. Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers**

*Regulatory Plan:* This entry is Seq. No. 28 in part II of this issue of the **Federal Register.**

*RIN:* 1904–AB86

**317. Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps**

*Regulatory Plan:* This entry is Seq. No. 30 in part II of this issue of the **Federal Register.**

*RIN:* 1904–AC15

## DEPARTMENT OF ENERGY (DOE)

*Energy Efficiency and Renewable Energy (EE)*

Final Rule Stage

**318. Energy Efficiency Standards for Fluorescent Lamp Ballasts**

*Regulatory Plan:* This entry is Seq. No. 31 in part II of this issue of the **Federal Register.**

*RIN:* 1904–AB50

**319. Energy Conservation Standards for Residential Clothes Washers**

*Legal Authority:* 42 U.S.C. 6295(g)(9)

*Abstract:* This rulemaking will implement a provision in the Energy Independence and Security Act of 2007 that amended the Energy Policy and Conservation Act to require the Secretary of Energy to publish by December 31, 2011, a final rule determining whether amended energy conservation standards should apply to clothes washers manufactured on or after January 1, 2015.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice: Public Meeting, Framework Document Availability. | 08/28/09 | 74 FR 44306 |
| Comment Period End. | 09/20/09 | |
| Direct Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephen Witkowski, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585.

*Phone:* 202 586–7463, *Email: stephen.witkowski@ee.doe.gov*.

*RIN:* 1904–AB90

## DEPARTMENT OF ENERGY (DOE)

*Energy Efficiency and Renewable Energy (EE)*

Completed Actions

**320. Energy Efficiency Standards for Residential Furnace, Central Air Conditioners and Heat Pumps**

*Legal Authority:* 42 U.S.C. 6295(f); 42 U.S.C. 6295(d)

*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 initiated this rulemaking to consider amended energy conservation standards for residential furnaces. In this rulemaking DOE is also 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.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| NPRM | 06/27/11 | 76 FR 37549 |
| Direct Final Rule | 06/27/11 | 76 FR 37408 |
| Direct Final Rule Comment Period End. | 10/17/11 | |
| Direct Final Rule Effective. | 10/25/11 | |
| Final Action | 10/31/11 | 76 FR 67037 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mohammed Khan, *Phone:* 202 586–7892, *Email: mohammed.khan@ee.doe.gov*

Wes Anderson, *Phone:* 202 586–7335, *Email: wes.anderson@ee.doe.gov.*

*RIN:* 1904–AC06

[FR Doc. 2012–1646 Filed 2–10–12; 8:45 am]

BILLING CODE 6450–01–P

# FEDERAL REGISTER

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Part VIII

## Department of Health and Human Services

Semiannual Regulatory Agenda

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 21 CFR Ch. I

### 42 CFR Chs. I–V

### 45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

### Regulatory Agenda

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Regulatory Flexibility Act of 1980 and Executive Order (EO) 12866 require the semiannual issuance of an inventory of rulemaking actions under development throughout the Department with a view to offering summarized information about forthcoming regulatory actions for public review.

**FOR FURTHER INFORMATION CONTACT:** Jennifer M. Cannistra, Executive Secretary, Department of Health and Human Services, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** The information provided in the Agenda presents a forecast of the rulemaking activities that the Department of Health and Human Services (HHS) expects to undertake in the foreseeable future.

Rulemakings are grouped according to pre-rulemaking actions, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2011 Agenda was published.

Please note that the rulemaking abstracts included in this paper issue of the **Federal Register** relate strictly to those prospective rulemakings that are likely to have a significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act of 1980. Also available in this issue of the **Federal Register** is the Department's submission to the Fiscal Year 2011 Regulatory Plan, required under Executive Order 12866.

The complete Regulatory Agenda of the Department is accessible online at *www.reginfo.gov* in an interactive format that offers users enhanced capabilities to obtain information from the Agenda's database. The purpose of the Agenda is to encourage more effective public participation in the regulatory process.

**Jennifer M. Cannistra,**

*Executive Secretary to the Department.*

### SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 321 | Opioid Drugs in Maintenance or Detoxification Treatment of Opiate Addiction (**Section 610 Review**) | 0930–AA14 |

### CENTERS FOR DISEASE CONTROL AND PREVENTION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 322 | Establishment of Minimum Standards for Birth Certificates | 0920–AA46 |

### CENTERS FOR DISEASE CONTROL AND PREVENTION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 323 | Control of Communicable Diseases: Foreign | 0920–AA12 |
| 324 | Control of Communicable Diseases: Interstate | 0920–AA22 |

### FOOD AND DRUG ADMINISTRATION—PRERULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 325 | Over-the-Counter (OTC) Drug Review—Sunscreen Products | 0910–AF43 |
| 326 | Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures (**Section 610 Review**). | 0910–AG14 |
| 327 | Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents (**Section 610 Review**). | 0910–AG61 |
| 328 | General Requirements for Blood, Blood Components, and Blood Derivatives; Donor Notification (**Section 610 Review**). | 0910–AG62 |

### FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 329 | Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics (**Reg Plan Seq No. 33**). | 0910–AC52 |
| 330 | Over-the-Counter (OTC) Drug Review-Internal Analgesic Products | 0910–AF36 |
| 331 | Over-the-Counter (OTC) Drug Review-Topical Antimicrobial Drug Products | 0910–AF69 |
| 332 | Import Tolerances for Residues of Unapproved New Animal Drugs in Food | 0910–AF78 |
| 333 | Laser Products; Amendment to Performance Standard | 0910–AF87 |

## FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE—Continued

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 334 | Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals (**Reg Plan Seq No. 34**). | 0910–AG10 |
| 335 | Over-the-Counter (OTC) Drug Review-Pediatric Dosing for Cough/Cold Products | 0910–AG12 |
| 336 | Electronic Distribution of Content of Labeling for Human Prescription Drug and Biological Products | 0910–AG18 |
| 337 | Amendment to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Second Phase. | 0910–AG20 |
| 338 | Unique Device Identification (**Reg Plan Seq No. 35**) | 0910–AG31 |
| 339 | Produce Safety Regulation (**Reg Plan Seq No. 36**) | 0910–AG35 |
| 340 | Hazard Analysis and Risk-Based Preventive Controls (**Reg Plan Seq No. 37**) | 0910–AG36 |
| 341 | "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act. | 0910–AG38 |
| 342 | Human Subject Protection; Acceptance of Data From Clinical Studies for Medical Devices | 0910–AG48 |
| 343 | General Hospital and Personal Use Devices: Issuance of Draft Special Controls Guidance for Infusion Pumps. | 0910–AG54 |
| 344 | Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives | 0910–AG59 |
| 345 | Amendments to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Components. | 0910–AG70 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FOOD AND DRUG ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 346 | Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors (**Reg Plan Seq No. 40**). | 0910–AF27 |
| 347 | Label Requirement for Food That Has Been Refused Admission Into the United States | 0910–AF61 |
| 348 | Food Labeling: Nutrition Labeling for Food Sold in Vending Machines (**Reg Plan Seq No. 43**) | 0910–AG56 |
| 349 | Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments (**Reg Plan Seq No. 44**). | 0910–AG57 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 350 | Food Labeling; Revision of the Nutrition and Supplement Facts Labels | 0910–AF22 |
| 351 | Over-the-Counter (OTC) Drug Review-Oral Health Care Products | 0910–AF40 |
| 352 | Pet Food Labeling Requirements | 0910–AG09 |
| 353 | Further Amendments to General Regulations of the Food and Drug Administration to Incorporate Tobacco Products. | 0910–AG60 |
| 354 | Food Labeling: Hard Candies and Breath Mints | 0910–AG82 |
| 355 | Food Labeling; Serving Sizes; Reference Amounts for Candies | 0910–AG83 |

## FOOD AND DRUG ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 356 | Over-the-Counter (OTC) Drug Review—Cough/Cold (Bronchodilator) Products | 0910–AF32 |
| 357 | Over-the-Counter (OTC) Drug Review—Poison Treatment Drug Products | 0910–AF68 |
| 358 | Cigarette Warning Label Statements | 0910–AG41 |

## CENTERS FOR MEDICARE & MEDICAID SERVICES—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 359 | Covered Outpatient Drugs (CMS–2345–P) (**Section 610 Review**) | 0938–AQ41 |
| 360 | Medicare and Medicaid Electronic Health Record Incentive Program—Stage 2 (CMS–0044–P) | 0938–AQ84 |
| 361 | Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation (CMS–3244–P) (**Reg Plan Seq No. 45**). | 0938–AQ89 |
| 362 | Proposed Changes to Hospital OPPS and CY 2013 Payment Rates; ASC Payment System and CY 2013 Payment Rates (CMS–1589–P) (**Section 610 Review**) (**Reg Plan Seq No. 47**). | 0938–AR10 |
| 363 | Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2013 (CMS–1590–P) (**Section 610 Review**) (**Reg Plan Seq No. 48**). | 0938–AR11 |

CENTERS FOR MEDICARE & MEDICAID SERVICES—PROPOSED RULE STAGE—Continued

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 364 | Changes to the Hospital Inpatient and Long-Term Care Prospective Payment System for FY 2013 (CMS–1588–P) (**Section 610 Review**) (**Reg Plan Seq No. 49**). | 0938–AR12 |
| 365 | Transparency Reports and Reporting of Physician Ownership of Investment Interests (CMS–5060–F) | 0938–AR33 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 366 | 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 FY 2012 Rates (CMS–1518–F) (**Completion of a Section 610 Review**). | 0938–AQ24 |
| 367 | Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2012 (CMS–1524–FC) (**Completion of a Section 610 Review**). | 0938–AQ25 |
| 368 | Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2012 (CMS–1525–F) (**Completion of a Section 610 Review**). | 0938–AQ26 |
| 369 | Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Required Disclosures of Ownership (CMS–1351–F) (**Completion of a Section 610 Review**). | 0938–AQ29 |
| 370 | Home Health Prospective Payment System Refinements and Rate Update for CY 2012 (CMS–1353–F) (**Section 610 Review**). | 0938–AQ30 |
| 371 | Enhanced Federal Funding for Medicaid Eligibility Determination and Enrollment Activities (CMS–2346–F) | 0938–AQ53 |
| 372 | Five Year Review of Work Relative Value Units Under the Physician Fee Schedule (CMS–1582–PN) | 0938–AQ87 |

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Substance Abuse and Mental Health Services Administration (SAMHSA)*

Final Rule Stage

### 321. Opioid Drugs in Maintenance or Detoxification Treatment of Opiate Addiction (Section 610 Review)

*Legal Authority:* 21 U.S.C. 823(9); 42 U.S.C. 257a; 42 U.S.C. 290aa(d); 42 U.S.C. 290dd–2; 42 U.S.C. 300xx–23; 42 U.S.C. 300x–27(a); 42 U.S.C. 300y–11

*Abstract:* This rule would amend the Federal opioid treatment program regulations. It would modify the dispensing requirements for buprenorphine and buprenorphine combination products that are approved by the Food and Drug Administration (FDA) for opioid dependence and used in federally certified and registered opioid treatment programs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/19/09 | 74 FR 29153 |
| NPRM Comment Period End. | 08/18/09 | |
| Final Action | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Nicholas Reuter, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Suite 2–1063, One Choke Cherry Road, Rockville, MD 20857, *Phone:* 240 276–2716, *Email: nicholas.reuter@samhsa.hhs.gov*.

*RIN:* 0930–AA14

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Centers for Disease Control and Prevention (CDC)*

Proposed Rule Stage

### 322. • Establishment of Minimum Standards for Birth Certificates

*Legal Authority:* 42 U.S.C. 264

*Abstract:* Section 7211 of the Intelligence Reform and Terrorism Prevention Act (IRTPA) mandates that HHS establish, by regulation, minimum standards to improve the security of birth certificates for use by Federal agencies for official purposes.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Charles Rothwell, Director, Division of Vital Statistics, Department of Health and Human Services, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 7311, M, Hyattsville, MD 20782, *Phone:* 301 458–4555.

*RIN:* 0920–AA46

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Centers for Disease Control and Prevention (CDC)*

Long-Term Actions

### 323. Control of Communicable Diseases: Foreign

*Legal Authority:* 42 U.S.C. 243; 42 U.S.C. 264 and 265; 42 U.S.C. 267 and 268; 42 U.S.C. 270 and 271

*Abstract:* The final rule focuses primarily on requirements relating to the reporting of deaths and illnesses onboard aircrafts and ships traveling from foreign countries into the United States, and the collection of specific traveler contact information for the purpose of CDC contacting travelers in the event of an exposure to a communicable disease.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/30/05 | 70 FR 71892 |
| NPRM Comment Period End. | 01/20/06 | |
| Final Action | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ashley Marrone, Public Health Analyst, Department of Health and Human Services, Centers for Disease Control and Prevention, MS–E03, 1600 Clifton Road NE., Atlanta, GA 30329, *Phone:* 404 498–1600, *Email: amarrone@cdc.gov*.

*RIN:* 0920–AA12

**324. Control of Communicable Diseases: Interstate**

*Legal Authority:* 28 U.S.C. 198; 28 U.S.C. 231; 25 U.S.C. 1661; 42 U.S.C. 243; 42 U.S.C. 248 and 249; 42 U.S.C. 264; 42 U.S.C. 266 to 268; 42 U.S.C. 270 to 272; 42 U.S.C. 2001

*Abstract:* This rule focuses primarily on requirements relating to the reporting of deaths and illnesses onboard aircrafts traveling domestically, and the collection of specific traveler contact information for the purpose of CDC contacting travelers in the event of an exposure to a communicable disease.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/30/05 | 70 FR 71892 |
| NPRM Comment Period End. | 01/30/06 | |
| Final Action | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ashley Marrone, Public Health Analyst, Department of Health and Human Services, Centers for Disease Control and Prevention, MS–E03, 1600 Clifton Road NE., Atlanta, GA 30329, *Phone:* 404 498–1600, *Email: amarrone@cdc.gov.*

*RIN:* 0920–AA22

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Food and Drug Administration (FDA)*

Prerule Stage

**325. Over-the-Counter (OTC) Drug Review—Sunscreen Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first of the future actions will address the safety of sunscreen active ingredients. The second of the future actions will address active ingredients reviewed under time and extent applications. The last action addresses combination products containing sunscreen and insect repellent ingredients.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM (Sunscreen and Insect Repellent). | 02/22/07 | 72 FR 7941 |
| ANPRM Comment Period End. | 05/23/07 | |
| NPRM (UVA/UVB). | 08/27/07 | 72 FR 49070 |
| NPRM Comment Period End. | 12/26/07 | |
| Final Action (UVA/UVB). | 06/17/11 | 76 FR 35620 |
| NPRM (Effectiveness). | 06/17/11 | 76 FR 35672 |
| NPRM (Effectiveness) Comment Period End. | 09/15/11 | |
| ANPRM (Dosage Forms). | 06/17/11 | 76 FR 35669 |
| ANPRM (Dosage Forms) Comment Period End. | 09/15/11 | |
| ANPRM (Safety) | 06/00/12 | |
| NPRM (Time and Extent Applications). | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Eng, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5487, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–2773, *Fax:* 301 796–9899, *Email: david.eng@fda.hhs.gov.*

*RIN:* 0910–AF43

**326. Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures (Section 610 Review)**

*Legal Authority:* 21 U.S.C. 331; 21 U.S.C. 333; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353; 21 U.S.C. 360; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 381

*Abstract:* Pursuant to section 610 of the Regulatory Flexibility Act, FDA is currently undertaking a review of regulations promulgated under the Prescription Drug Marketing Act (PDMA) including those contained in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763). The purpose of this review is to determine whether the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA solicited comments on the following: (1) The continued need for the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (2) the nature of complaints or comments received from the public concerning the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (3) the complexity of the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (4) the extent to which the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) overlap, duplicate, or conflict with other Federal rules, and to the extent feasible, with State and local governmental rules, and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763).

Last year, FDA extended the completion date by one year due to the RxUSA Wholesale, Inc., v. HHS case. Since then, the case has ended and FDA proposed to withdraw section 203.50(a). Therefore, FDA will complete the review by December 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Begin Review of Current Regulation. | 11/24/08 | |
| End Review of Current Regulation. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Howard Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6234, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3601, *Fax:* 301 847–8440, *Email: pdma610(c)review@fda.hhs.gov.*

*RIN:* 0910–AG14

**327. Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents (Section 610 Review)**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 360c and 360d; 21 U.S.C. 360h and 360i; 21 U.S.C. 371 and 372; 21 U.S.C. 374; 21 U.S.C. 381; 42 U.S.C. 216; 42 U.S.C. 262 to 264; 42 U.S.C. 263; 42 U.S.C. 263a; 42 U.S.C. 264

*Abstract:* FDA is undertaking a review of 21 CFR sections 610.40, 610.41,

610.42, 610.44, 640.67, 640.70 (as amended in 66 FR 31146) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in 21 CFR sections 610.40, 610.41, 610.42, 610.44, 640.67, 640.70 (as amended in 66 FR 31146) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Begin Review of Current Regulation. | 06/01/11 | |
| End Review of Current Regulation. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Reisman, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research, Suite 200N (HFM–17), 1401 Rockville Pike, Rockville, MD 20852, *Phone:* 301 827–6210.

*RIN:* 0910–AG61

**328. General Requirements for Blood, Blood Components, and Blood Derivatives; Donor Notification (Section 610 Review)**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351 and 352; 21 U.S.C. 355; 21 U.S.C. 360 and 360j; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 216; 42 U.S.C. 262; 42 U.S.C. 263a; 42 U.S.C. 264; * * *

*Abstract:* FDA is undertaking a review of 21 CFR sections 606.100(b), 606.160(b) and 630.6 (as amended in 66 FR 31165) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in 21 CFR sections 606.100(b), 606.160(b) and 630.6 (as amended in 66 FR 31165) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Begin Review ..... | 06/01/11 | |
| End Review ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Melissa Reisman, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research, Suite 200N (HFM–17), 1401 Rockville Pike, Rockville, MD 20852, *Phone:* 301 827–6210.

*RIN:* 0910–AG62

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Food and Drug Administration (FDA)*

Proposed Rule Stage

**329. Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics**

*Regulatory Plan:* This entry is Seq. No. 33 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AC52

**330. Over-the-Counter (OTC) Drug Review—Internal Analgesic Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 379e

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses acetaminophen safety. The second action addresses products marketed for children under 2 years old and weight- and age-based dosing for children's products.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) (Required Warnings and Other Labeling). | 12/26/06 | 71 FR 77314 |
| NPRM Comment Period End. | 05/25/07 | |
| Final Action (Required Warnings and Other Labeling). | 04/29/09 | 74 FR 19385 |
| Final Action (Correction). | 06/30/09 | 74 FR 31177 |
| Final Action (Technical Amendment). | 11/25/09 | 74 FR 61512 |
| NPRM (Acetaminophen). | 06/00/12 | |
| NPRM (Amendment) (Pediatric). | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Chung, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–0260, *Fax:* 301 796–9899, *Email: mary.chung@fda.hhs.gov.*

*RIN:* 0910–AF36

**331. Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses consumer products. The second action addresses testing requirements.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Healthcare). | 06/17/94 | 59 FR 31402 |
| Comment Period End. | 12/15/95 | |

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Consumer). | 04/00/12 | |
| NPRM (Food Handlers). | To Be Determined | |
| NPRM (Testing) .. | To Be Determined | |
| Final Action (Consumer). | To Be Determined | |
| Final Action (Testing). | To Be Determined | |
| Final Action (Food Handlers). | To Be Determined | |
| Final Action (First Aid Antiseptic). | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Eng, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5487, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–2773, *Fax:* 301 796–9899, *Email: david.eng@fda.hhs.gov.*

*RIN:* 0910–AF69

**332. Import Tolerances for Residues of Unapproved New Animal Drugs in Food**

*Legal Authority:* 21 U.S.C. 342; 21 U.S.C. 360b(a)(6); 21 U.S.C. 371

*Abstract:* The Food and Drug Administration (FDA) plans to publish a proposed rule related to the implementation of the import tolerances provision of the Animal Drug Availability Act of 1996 (ADAA). The ADAA authorizes FDA to establish tolerances for unapproved new animal drugs where edible portions of animals imported into the United States may contain residues of such drugs (import tolerances). It is unlawful to import animal-derived food that bears or contains residues of a new animal drug that is not approved in the United States, unless FDA has established an import tolerance for that new animal drug and the residue of the new animal drug in the animal-derived food does not exceed that tolerance.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |
| NPRM Comment Period End. | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Thomas Moskal, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 101, (MPN–4, HFV–232), 7519 Standish Place, Rockville, MD 20855, *Phone:* 240 276–9242, *Fax:* 240 276–9241, *Email: thomas.moskal@fda.hhs.gov.*

*RIN:* 0910–AF78

**333. Laser Products; Amendment to Performance Standard**

*Legal Authority:* 21 U.S.C. 360hh to 360ss; 21 U.S.C. 371; 21 U.S.C. 393

*Abstract:* FDA is proposing to amend the performance standard for laser products to achieve closer harmonization between the current standard and the International Electrotechnical Commission (IEC) standard for laser products and medical laser products. The proposed amendment is intended to update FDA's performance standard to reflect advancements in technology. The proposal would adopt portions of an IEC standard to achieve greater harmonization and reflect current science. In addition, the proposal would include an alternative mechanism for providing certification and identification, address novelty laser products, and clarify the military exemption for laser products.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nancy Pirt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4438, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: nancy.pirt@fda.hhs.gov.*

*RIN:* 0910–AF87

**334. Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals**

*Regulatory Plan:* This entry is Seq. No. 34 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AG10

**335. Over-the-Counter (OTC) Drug Review—Pediatric Dosing for Cough/Cold Products**

*Legal Authority:* 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action will propose changes to the final monograph to address safety and efficacy issues associated with pediatric cough and cold products.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Chung, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–0260, *Fax:* 301 796–9899, *Email: mary.chung@fda.hhs.gov.*

*RIN:* 0910–AG12

**336. Electronic Distribution of Content of Labeling for Human Prescription Drug and Biological Products**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353; 21 U.S.C. 355; 21 U.S.C. 358; 21 U.S.C. 360; 21 U.S.C. 360b; 21 U.S.C. 360gg to 360ss; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 379e; 42 U.S.C. 216; 42 U.S.C. 241; 42 U.S.C. 262; 42 U.S.C. 264

*Abstract:* This rule would require electronic package inserts for human drug and biological prescription products with limited exception, in lieu of paper, which is currently used. These inserts contain prescribing information intended for healthcare practitioners. This would ensure that the information accompanying the product is the most up-to-date information regarding important safety and efficacy issues about these products.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Megan Clark-Velez, Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Office of Policy, WO Building 32, Room 4249, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–9301, *Email: megan.clark@fda.hhs.gov.*

*RIN:* 0910–AG18

**337. Amendment to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Second Phase**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262; 42 U.S.C. 264

*Abstract:* The Food and Drug Administration (FDA) periodically reassesses and revises the cGMP regulations to accommodate advances in technology and other scientific knowledge that further safeguard the drug manufacturing process and the public health. In August 2002, FDA announced the Pharmaceutical cGMPs for the 21st Century Initiative. As part of the Initiative, FDA created a cGMP Harmonization Analysis Working Group to analyze related cGMP requirements in the United States and internationally. The cGMP working group compared 21 CFR parts 210 and 211 with the cGMPs of the European Union, as well as other FDA regulations (such as the Quality Systems Regulation in 21 CFR part 820) to identify differences and consider the value of supplementing or changing the current regulations. Based on the cGMP Working Group's analysis, FDA decided to take an incremental approach to modifying 21 CFR parts 210 and 211. In September of 2008, FDA published a final rule revising the cGMP regulations primarily in the areas of aseptic processing, use of asbestos filters, and verification of operations by a second individual; this final rule represented the culmination of the first increment of modifications to the cGMP regulations. The proposed rule identified on this Unified Agenda would begin the second increment of modifications to the cGMP regulations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* S. Mitchell Weitzman, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6318, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3511, *Fax:* 301 847–8440, *Email: smitchell.weitzman@fda.hhs.gov.*

*RIN:* 0910–AG20

**338. Unique Device Identification**

*Regulatory Plan:* This entry is Seq. No. 35 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AG31

**339. Produce Safety Regulation**

*Regulatory Plan:* This entry is Seq. No. 36 in part II of this issue of the **Federal Register.**

*RIN:* 0910–AG35

**340. Hazard Analysis and Risk-Based Preventive Controls**

*Regulatory Plan:* This entry is Seq. No. 37 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AG36

**341. ''Tobacco Products'' Subject to the Federal Food, Drug, and Cosmetic Act as Amended by the Family Smoking Prevention and Tobacco Control Act**

*Legal Authority:* 21 U.S.C. 301 *et seq.,* The Federal Food, Drug, and Cosmetic Act; Pub. L. 111–31, The Family Smoking Prevention and Tobacco Control Act

*Abstract:* The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. Section 901 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Tobacco Control Act, permits FDA to issue regulations deeming other tobacco products to be subject to the FD&C Act. This proposed rule would deem products meeting the statutory definition of ''tobacco product'' found at section 201(rr) of the FD&C Act to be subject to Chapter IX of the FD&C Act and would clarify additional restrictions under the FD&C Act. The scope of the proposed rule deeming cigars that was previously included in the Unified Agenda is being broadened to encompass products that meet the statutory definition of ''tobacco product.''

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* May Nelson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 9200 Corporate Boulevard, Rockville, MD 20850, *Phone:* 877 287–1373, *Fax:* 240 276–3904, *Email: may.nelson@fda.hhs.gov.*

*RIN:* 0910–AG38

**342. Human Subject Protection; Acceptance of Data From Clinical Studies for Medical Devices**

*Legal Authority:* Not Yet Determined.

*Abstract:* The Food and Drug Administration (FDA) is proposing to amend its regulations on acceptance of data from clinical studies conducted in support of a premarket approval application, humanitarian device exemption application, an investigational device exemption application, or a premarket notification submission for a medical device.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sheila Anne Brown, Policy Analyst, Investigational Device Exemptions Staff, Department of Health and Human Services, Food and Drug Administration, WO 66, Room 1651, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6563, *Fax:* 301 847–8120, *Email: sheila.brown@fda.hhs.gov.*

*RIN:* 0910–AG48

**343. General Hospital and Personal Use Devices: Issuance of Draft Special Controls Guidance for Infusion Pumps**

*Legal Authority:* 21 U.S.C. 351; 21 U.S.C. 360; 21 U.S.C. 360c; 21 U.S.C. 360e; 21 U.S.C. 360j; 21 U.S.C. 371

*Abstract:* Since 2003, FDA has seen a dramatic increase in the number of device recalls, as well as an increase in the number of death and serious injury reports submitted regarding infusion pumps. An analysis of the reports reveals that a majority of the recalls and failures were caused by user error and/or device design flaw. As a result of these incidents, FDA is proposing to change the classification of infusion pumps from class II (performance standards) to class II (special controls). Along with the proposed rule, FDA plans to announce a draft special controls guidance document that, when final, will be a special control for infusion pumps. The agency believes that establishing these special controls for infusion pumps is necessary to provide reasonable assurance of the safety and effectiveness of these devices.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |
| NPRM Comment Period End. | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nancy Pirt, Regulatory Counsel, Department of Health and Human Services, Food and

Drug Administration, Center for Devices and Radiological Health, WO 66 Room 4438, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: nancy.pirt@fda.hhs.gov*.

*RIN:* 0910–AG54

**344. Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives**

*Legal Authority:* Pub. L. 111–31, The Family Smoking Prevention and Tobacco Control Act, sec 101(b)

*Abstract:* Section 915 of the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, requires FDA to promulgate regulations that require the testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents that the agency determines should be tested to protect the public health.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/12 | |
| NPRM Comment Period End. | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Carol Drew, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Rm 240 H, 9200 Corporate Boulevard, Rockville, MD 20850, *Phone:* 877 287–1373, *Fax:* 240 276–3904, *Email: carol.drew@fda.hhs.gov*.

*RIN:* 0910–AG59

**345. Amendments to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Components**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262; 42 U.S.C. 264

*Abstract:* This rule proposes to amend regulations regarding the control over components used in manufacturing finished pharmaceuticals.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brian Hasselbalch, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 4364, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3279, *Email: brian.hasselbalch@fda.hhs.gov*.

Paula Katz, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 1320, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6972, *Email: paula.katz@fda.hhs.gov*.

*RIN:* 0910–AG70

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Food and Drug Administration (FDA)*

Final Rule Stage

**346. Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors**

*Regulatory Plan:* This entry is Seq. No. 40 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AF27

**347. Label Requirement for Food That Has Been Refused Admission Into the United States**

*Legal Authority:* 15 U.S.C. 1453 to 1455; 21 U.S.C. 321; 21 U.S.C. 342 and 343; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 381; 42 U.S.C. 216; 42 U.S.C. 264

*Abstract:* The final rule will require owners or consignees to label imported food that is refused entry into the United States. The label will read, ''UNITED STATES: REFUSED ENTRY.'' The proposal describes the label's characteristics (such as its size) and processes for verifying that the label has been affixed properly. We are taking this action to prevent the introduction of unsafe food into the United States, to facilitate the examination of imported food, and to implement section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/18/08 | 73 FR 54106 |
| NPRM Comment Period End. | 12/02/08 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Daniel Sigelman, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, WO Building 32, Room 4254, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–4706, *Email: daniel.sigelman@fda.hhs.gov*.

*RIN:* 0910–AF61

**348. Food Labeling: Nutrition Labeling for Food Sold in Vending Machines**

*Regulatory Plan:* This entry is Seq. No. 43 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AG56

**349. Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments**

*Regulatory Plan:* This entry is Seq. No. 44 in part II of this issue of the **Federal Register**.

*RIN:* 0910–AG57

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Food and Drug Administration (FDA)*

Long-Term Actions

**350. Food Labeling; Revision of the Nutrition and Supplement Facts Labels**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371

*Abstract:* In the **Federal Register** of July 11, 2003 (68 FR 41507), FDA published an ANPRM (the 2003 ANPRM) to solicit information and data on trans fat labeling and claims made about trans fats. Comments received to the 2003 ANPRM that pertain to the labeling of trans fat will be addressed in this proposed rule. In addition, the Agency published an ANPRM on the prominence of calories on the food label on April 4, 2005 (the 2005 ANPRM) (70 FR 17008), and an ANPRM on the revision of reference values and mandatory nutrients on November 2, 2007 (the 2007 ANPRM) (72 FR 62149). The Agency also intends to address the comments received to the 2005 and 2007 ANPRM's in this proposed rule.

FDA is proposing to amend labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label to assist consumers in maintaining healthy dietary practices. Mandatory nutrition labeling of food was first required in 1993. Much of the information found on the Nutrition Facts label has not been updated since that time. If finalized, this rule will modernize the nutrition information found on the Nutrition Facts label, as well as the format and appearance of the label.

Among the changes proposed, the Agency intends to: (1) Provide updated

Daily Reference values (DRVs) and Reference Daily Intake values (RDIs) that are based on the latest scientific evidence from consensus reports, such as the Institute of Medicine Dietary Reference Intakes; (2) provide DRVs and RDIs, as well as requirements for foods purported to be for children under 4 years of age and pregnant or lactating women; and (3) make changes to the mandatory declaration of specific nutrients. The Agency is also considering revisions to the format and appearance of the Nutrition Facts label and the Supplement Facts label, including the prominence of calories on the label.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 07/11/03 | 68 FR 41507 |
| ANPRM Comment Period End. | 10/09/03 | |
| ANPRM | 04/04/05 | 70 FR 17008 |
| ANPRM Comment Period End. | 06/20/05 | |
| ANPRM | 11/02/07 | 72 FR 62149 |
| ANPRM Comment Period End. | 01/31/08 | |
| NPRM | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Blakeley Fitzpatrick, Interdisciplinary Scientist, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–830), HFS–830, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1450, *Email: blakeley.fitzpatrick@fda.hhs.gov*.

*RIN:* 0910–AF22

**351. Over-the-Counter (OTC) Drug Review—Oral Health Care Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360 to 360a; 21 U.S.C. 371 to 371a

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The NPRM and final action will address oral health care products used to reduce or prevent dental plaque and gingivitis.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM (Plaque Gingivitis). | 05/29/03 | 68 FR 32232 |
| ANPRM Comment Period End. | 08/27/03 | |
| NPRM (Benzocaine). | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Eng, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5487, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–2773, *Fax:* 301 796–9899, *Email: david.eng@fda.hhs.gov*.

*RIN:* 0910–AF40

**352. Pet Food Labeling Requirements**

*Legal Authority:* 21 U.S.C. 343; 21 U.S.C. 371; Pub. L. 110–85, sec 1002(a)(3)

*Abstract:* The President signed into law the Food and Drug Administration Amendments Act of 2007 (FDAAA) on September 27, 2007 (Pub. L. 110–85). Title X of the FDAAA includes several provisions pertaining to food safety, including the safety of pet food. Section 1002(a)(3) of the new law directs FDA to issue new regulations to establish updated standards for the labeling of pet food that include nutritional and ingredient information. This same provision of the law also directs that, in developing these new regulations, FDA consult with the Association of American Feed Control Officials and other relevant stakeholder groups, including veterinary medical associations, animal health organizations, and pet food manufacturers.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Burkholder, Veterinary Medical Officer, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 2642 (MPN–4, HFV–228), 7519 Standish Place, Rockville, MD 20855, *Phone:* 240 453–6865, *Email: william.burkholder@fda.hhs.gov*.

*RIN:* 0910–AG09

**353. Further Amendments to General Regulation of the Food and Drug Administration To Incorporate Tobacco Products**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 333; 21 U.S.C. 371; 21 U.S.C. 381; 21 U.S.C. 387; 21 U.S.C. 387a; 21 U.S.C. 387c; 21 U.S.C. 387f; 21 U.S.C. 387k; 15 U.S.C. 1333; 15 U.S.C. 4402

*Abstract:* The Food and Drug Administration is seeking to amend certain of its general regulations to include tobacco products, where appropriate, in light of FDA's authority to regulate these products under the Family Smoking Prevention and Tobacco Control Act. The final rule will cover revisions to the document reporting requirements and definition of ''product.''

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/14/11 | 76 FR 20901 |
| NPRM Comment Period End. | 06/13/11 | |
| Final Action | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gerie Voss, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 9200 Corporate Boulevard, Rockville, MD 20850, *Phone:* 877 287–1373,*Fax:* 240 276–4193, *Email: gerie.voss@fda.hhs.gov*.

*RIN:* 0910–AG60

**354. • Food Labeling: Hard Candies and Breath Mints**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371

*Abstract:* The Food and Drug Administration is proposing to amend certain provisions of its serving size regulations to change the label serving size for breath mints to one unit. This action is in response to an advanced notice of proposed rulemaking published in 2005, in which FDA requested comment on whether to amend certain provisions of its nutrition labeling regulations concerning serving size and a 1997 proposed rule entitled Food Labeling: Hard Candies and Breath Mints (62 FR 67775).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/30/97 | 62 FR 67775 |
| NPRM Comment Period End. | 03/16/98 | |
| ANPRM | 04/05/05 | 70 FR 17010 |
| ANPRM Comment Period End. | 06/20/05 | |

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mark Kantor, Nutritionist, Department of Health and Human Services, Food and Drug Administration, 5100 Paint Branch Parkway, HFS–830, College Park, MD 20740, *Phone:* 240 402–1450, *Fax:* 301 436–1191, *Email: mark.kantor@fda.hhs.gov*.

*RIN:* 0910–AG82

**355. • Food Labeling; Serving Sizes; Reference Amounts for Candies**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371

*Abstract:* The Food and Drug Administration is proposing to amend certain provisions of its serving size regulations to provide updated Reference Amounts Customarily Consumed for candies. This action is in response to an advance notice of proposed rulemaking published in 2005, in which FDA requested comment on whether to amend certain provisions of its nutrition labeling regulations concerning serving size and a 1998 proposed rule entitled ''Food Labeling: Reference Amounts for Candies'' (63 FR 1078).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/08/98 | 63 FR 1078 |
| NPRM Comment Period End. | 02/09/98 | |
| ANPRM ..... | 04/05/05 | 70 FR 17010 |
| ANPRM Comment Period End. | 06/20/05 | |
| NPRM ..... | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mark Kantor, Nutritionist, Department of Health and Human Services, Food and Drug Administration, 5100 Paint Branch Parkway, HFS–830, College Park, MD 20740, *Phone:* 240 402–1450, *Fax:* 301 436–1191, *Email: mark.kantor@fda.hhs.gov*.

*RIN:* 0910–AG83

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Food and Drug Administration (FDA)*

Completed Actions

**356. Over-the-Counter (OTC) Drug Review—Cough/Cold (Bronchodilator) Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses labeling for single ingredient bronchodilator products.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment—Ephedrine Single Ingredient). | 07/13/05 | 70 FR 40237 |
| NPRM Comment Period End. | 11/10/05 | |
| Final Action (Technical Amendment). | 11/30/07 | 72 FR 67639 |
| Final Action (Amendment—Single Ingredient Labeling). | 07/26/11 | 76 FR 44475 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Chung, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–0260, *Fax:* 301 796–9899, *Email: mary.chung@fda.hhs.gov*.

*RIN:* 0910–AF32

**357. Over-the-Counter (OTC) Drug Review—Poison Treatment Drug Products**

*Legal Authority:* 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

*Abstract:* The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the ingredient ipecac syrup.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/08/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Eng, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5487, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–2773, *Fax:* 301 796–9899, *Email: david.eng@fda.hhs.gov*.

*RIN:* 0910–AF68

**358. Cigarette Warning Label Statements**

*Legal Authority:* Pub. L. 111–31, The Family Smoking Prevention and Tobacco Control Act, sec 201

*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 on cigarette packages and advertisements. 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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/12/10 | 75 FR 69524 |
| NPRM Comment Period End. | 01/11/11 | |
| Final Action ..... | 06/22/11 | 76 FR 36628 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gerie Voss, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 9200 Corporate Boulevard, Rockville, MD 20850, *Phone:* 877 287–1373, *Fax:* 240 276–4193, *Email: gerie.voss@fda.hhs.gov*.

*RIN:* 0910–AG41

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Centers for Medicare & Medicaid Services (CMS)*

Proposed Rule Stage

**359. Covered Outpatient Drugs (CMS–2345–P) (Section 610 Review)**

*Legal Authority:* Pub. L. 111–48, secs 2501 and 2503

*Abstract:* This proposed rule would revise requirements pertaining to Medicaid reimbursement for covered outpatient drugs to implement provisions of the Affordable Care Act. This proposed rule would also revise other requirements related to covered outpatient drugs, including key aspects of Medicaid coverage, payment, and the drug rebate program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Wendy Tuttle, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Mail Stop S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8690, *Email: wendy.tuttle@cms.hhs.gov*.

*RIN:* 0938–AQ41

**360. Medicare and Medicaid Electronic Health Record Incentive Program—Stage 2 (CMS–0044–P)**

*Legal Authority:* Pub. L. 111–5 secs 4101, 4102, and 4202

*Abstract:* The final rule for the Medicare and Medicaid EHR Incentive Programs, which was published in the **Federal Register** on July 28, 2010, specifies that CMS will expand on the criteria for meaningful use established for Stage 1 to advance the use of certified EHR technology by eligible professionals (EPs), eligible hospitals and critical access hospitals (CAHs). This proposed rule would establish the requirements for Stage 2. As stated in the July 28 final rule, ''Our goals for the Stage 2 meaningful use criteria, consistent with other provisions of Medicare and Medicaid law, expand upon the Stage 1 criteria to encourage the use of health IT for continuous quality improvement at the point of care and the exchange of information in the most structured format possible, such as the electronic transmission of orders entered using computerized provider order entry (CPOE) and the electronic transmission of diagnostic test results.''

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Elizabeth Holland, Director, Health Initiatives Group/Office of e-Health Standards and Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop S2–26–17, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–1309, *Email: elizabeth.holland@cms.hhs.gov*.

*RIN:* 0938–AQ84

**361. Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation (CMS–3244–P)**

*Regulatory Plan:* This entry is Seq. No. 45 in part II of this issue of the **Federal Register**.

*RIN:* 0938–AQ89

**362. • Proposed Changes to Hospital OPPS and CY 2013 Payment Rates; ASC Payment System and CY 2013 Payment Rates (CMS–1589–P) (Section 610 Review)**

*Regulatory Plan:* This entry is Seq. No. 47 in part II of this issue of the **Federal Register**.

*RIN:* 0938–AR10

**363. • Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2013 (CMS–1590–P) (Section 610 Review)**

*Regulatory Plan:* This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

*RIN:* 0938–AR11

**364. • Changes to the Hospital Inpatient and Long-Term Care Prospective Payment System for FY 2013 (CMS–1588–P) (Section 610 Review)**

*Regulatory Plan:* This entry is Seq. No. 49 in part II of this issue of the **Federal Register**.

*RIN:* 0938–AR12

**365. • Transparency Reports and Reporting of Physician Ownership of Investment Interests (CMS–5060–F)**

*Legal Authority:* Pub. L. 111–148, sec 6002

*Abstract:* This final rule requires applicable manufacturers of drugs, devices, biologicals, or medical supplies covered by Medicare, Medicaid, or CHIP to report annually to the Secretary certain payments or transfers of value provided to physicians or teaching hospitals (''covered recipients''). In addition, applicable manufacturers and applicable group purchasing organizations (GPOs) are required to report annually certain physician ownership or investment interests. The Secretary is required to publish applicable manufacturers' and applicable GPOs' submitted payment and ownership information on a public Web site.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/19/11 | 76 FR 78742 |
| NPRM Comment Period End. | 02/17/12 | |
| Final Action ..... | 12/00/14 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Niall Brennan, Director, Policy and Data Analysis Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, *Phone:* 202 690–6627, *Email: niall.brennan@cms.hhs.gov*.

*RIN:* 0938–AR33

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

*Centers for Medicare & Medicaid Services (CMS)*

Completed Actions

**366. 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 FY 2012 Rates (CMS–1518–F) (Completion of a Section 610 Review)**

*Legal Authority:* sec 1886(d) of the Social Security Act; Pub. L. 111–148 secs 3004, 3025

*Abstract:* This rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This rule implements changes arising from our continuing experience with these systems.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/05/11 | 76 FR 25788 |
| NPRM Comment Period End. | 06/20/11 | |
| Final Action ..... | 08/18/11 | 76 FR 51476 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ankit Patel, Health Insurance Specialist, Division of Acute Care, Department of Health and Human

Services, Centers for Medicare & Medicaid Services, Hospital and Ambulatory Policy Group, Mail Stop, C4–25–11, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4537, *Email: ankit.patel@cms.hhs.gov.*

*RIN:* 0938–AQ24

**367. Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2012 (CMS–1524–FC) (Completion of a Section 610 Review)**

*Legal Authority:* Social Security Act, sec 1102; Social Security Act, sec 1871; Pub. L. 111–148

*Abstract:* This annual rule revises payment polices under the physician fee schedule, as well as other policy changes to payment under Part B. These changes are applicable to services furnished on or after January 1.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/19/11 | 76 FR 42772 |
| NPRM Comment Period End. | 08/30/11 | |
| Final Action | 11/28/11 | 76 FR 73026 |
| Final Action Effective. | 01/01/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Christina Ritter, Director, Division of Practitioner Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4636, *Email: christina.ritter@cms.hhs.gov.*

*RIN:* 0938–AQ25

**368. Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2012 (CMS–1525–F) (Completion of a Section 610 Review)**

*Legal Authority:* Social Security Act, sec 1833; Pub. L. 111–148 sec 6001

*Abstract:* This rule revises 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 finalizes changes to the Ambulatory Surgical Center Payment System list of services and rates.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/18/11 | 76 FR 42170 |
| NPRM Comment Period End. | 08/30/11 | |
| Final Action | 11/30/11 | 76 FR 74122 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Paula Smith, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop, C4–05–13, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4709, *Email: paula.smith@cms.hhs.gov.*

*RIN:* 0938–AQ26

**369. Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Required Disclosures of Ownership (CMS–1351–F) (Completion of a Section 610 Review)**

*Legal Authority:* Social Security Act, sec 1888(e), Pub. L. 111–148, sec 6101

*Abstract:* This major rule finalizes two options for updating the payment rates used under the prospective payment system (SNFs), for fiscal year 2012. In this context, it examines recent changes in provider behavior relating to the implementation of the Resource Utilization Groups, version 4 (RUG–IV) case-mix classification system, discusses how such changes may affect the objective of maintaining parity in overall expenditures between RUG–IV and the previous case-mix classification system, and considers a possible recalibration of the case-mix indexes so that they more accurately reflect parity in expenditures. It also includes a discussion of a Non-Therapy Ancillary component and outlier research currently under development within CMS. In addition, this rule discusses the impact of certain provisions of the Affordable Care Act, and new programs and initiatives affecting SNFs. It also implements section 3401(b) of the Affordable Care Act, which requires for fiscal year 2012 and subsequent fiscal years that the SNF market basket percentage change be reduced by the multi-factor productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. It also implements section 6101 of the Affordable Care Act, which requires Medicare SNFs and Medicaid nursing facilities to disclose certain information to the Secretary and other entities regarding the ownership and organizational structure of their facilities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/06/11 | 76 FR 26364 |
| NPRM Comment Period End. | 06/27/11 | |
| Final Action | 08/08/11 | 76 FR 48486 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Ullman, Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, Mail Stop C5–06–27, 7500 Security Boulvard, Baltimore, MD 21244, *Phone:* 410 786–5667, *Fax:* 410 786–0765, *Email: bill.ullman@cms.hhs.gov.*

*RIN:* 0938–AQ29

**370. Home Health Prospective Payment System Refinements and Rate Update for CY 2012 (CMS–1353–F) (Section 610 Review)**

*Legal Authority:* Social Security Act, secs 1102 and 1871; 42 U.S.C. 1302 and 1395(hh); Social Security Act, sec 1895; 42 U.S.C. 1395(fff), Pub. L. 111–148 secs 3131, 3401, 6407

*Abstract:* This rule updates the 60-day national episode rate (based on the applicable Home Health Market Basket Update and case-mix adjustment) and would also update the national per-visit rates (used to calculate low utilization payment adjustments (LUPAs) and outlier payments) amounts under the Medicare Prospective Payment System for home health agencies. These changes are applicable to services furnished on or after January 1st.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/12/11 | 76 FR 40988 |
| NPRM Comment Period End. | 09/06/11 | |
| Final Action | 11/04/11 | 76 FR 68526 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kelly Horney, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, Mail Stop C5–07–28, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–0558, *Fax:* 410 786–0765, *Email: kelly.horney@cms.hhs.gov.*

*RIN:* 0938–AQ30

**371. Enhanced Federal Funding for Medicaid Eligibility Determination and Enrollment Activities (CMS–2346–F)**

*Legal Authority:* Pub. L. 111–148, sec 1413

*Abstract:* The Affordable Care Act requires States' residents to apply, enroll, receive determinations, and participate in the State health subsidy programs known as ''the Exchange''.

The Affordable Care Act requires many changes to State eligibility and enrollment systems and each State is responsible for developing a secure, electronic interface allowing the exchange of data. Existing legacy eligibility systems are not able to implement the numerous requirements. This rule is key to informing States about the higher rates that CMS will provide to help them update or build legacy eligibility systems that meet the ACA requirements.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/08/10 | 75 FR 68583 |
| NPRM Comment Period End. | 01/07/11 | |
| Final Action | 04/19/11 | 76 FR 21950 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Richard H. Friedman, Director, Division of State Systems, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop S3–18–13, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4451, *Email: richard.friedman@cms.hhs.gov.*

*RIN:* 0938–AQ53

**372. Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule (CMS–1582–PN)**

*Legal Authority:* SSA, sec 1848(c)(2)(B)(i)

*Abstract:* This proposed notice sets forth proposed revisions to work relative value units (RVUs) affecting payment for physicians' services. The Act requires that we review RVUs no less than every five years. The revised values will be finalized in the CY 2012 Physician Fee Schedule final rule and will be effective for services furnished beginning January 1, 2012.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice | 06/06/11 | 76 FR 32410 |
| Merged With 0938–AQ25. | 07/07/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Rebecca Cole, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–1589, *Email: rebecca.cole@cms.hhs.gov.*

*RIN:* 0938–AQ87

[FR Doc. 2012–1647 Filed 2–10–12; 8:45 am]

BILLING CODE 4150–24–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part IX

## Department of Homeland Security

Semiannual Regulatory Agenda

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Chs. I and II

**[DHS Docket No. OGC–RP–04–001]**

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This regulatory agenda is a semiannual summary of all current and projected rulemakings, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS's regulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

**FOR FURTHER INFORMATION CONTACT:**

**General**

Please direct general comments and inquiries on the agenda to the Regulatory Affairs Law Division, U.S. Department of Homeland Security, Office of the General Counsel, 245 Murray Lane, Mail Stop 0485, Washington, DC 20528–0485.

**Specific**

Please direct specific comments and inquiries on individual regulatory actions identified in this agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

**SUPPLEMENTARY INFORMATION:** DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Sep. 19, 1980) and Executive Order 12866 ''Regulatory Planning and Review'' (Sep. 30, 1993) as incorporated in Executive Order 13563 ''Improving Regulation & Regulatory Review'' (Jan. 18, 2011), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of all current and projected rulemakings, as well as actions completed since the publication of the last regulatory agenda for the Department. DHS's last semiannual regulatory agenda was published on July 7, 2011, at 76 FR 40074.

Beginning in fall 2007, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov.*

As part of the Unified Agenda, Federal agencies are also required to prepare a Regulatory Plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year. As in past years, for fall editions of the Unified Agenda, the entire Regulatory Plan and agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act, are printed in the **Federal Register**.

The Regulatory Flexibility Act (5 U.S.C. 602) requires federal agencies to publish their regulatory flexibility agenda in the **Federal Register**. A regulatory flexibility agenda shall contain, among other things, ''a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities.'' DHS's printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the Internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Dated: September 9, 2011.

**Christina E. McDonald,**

*Associate General Counsel for Regulatory Affairs.*

OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 373 | Secure Handling of Ammonium Nitrate Program (**Reg Plan Seq No. 53**) | 1601–AA52 |
| 374 | Homeland Security Acquisition Regulation, Subcontractor Labor Hour Rates Under Time and Materials Contracts. | 1601–AA65 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 375 | Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Aliens Subject to Numerical Limitations. | 1615–AB71 |

U.S. CITIZENSHIP AND IMMIGRATION SERVICES—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 376 | Commonwealth of the Northern Mariana Islands Transitional Worker Classification | 1615–AB76 |

## U.S. Coast Guard—Prerule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 377 | Claims Procedures Under the Oil Pollution Act of 1990 (USCG–2004–17697) | 1625–AA03 |

## U.S. Coast Guard—Proposed Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 378 | Marine Transportation-Related Facility Response Plans for Hazardous Substances | 1625–AA12 |
| 379 | Numbering of Undocumented Barges | 1625–AA14 |
| 380 | Inspection of Towing Vessels | 1625–AB06 |
| 381 | Updates to Maritime Security | 1625–AB38 |
| 382 | MARPOL Annex 1 Update | 1625–AB57 |

## U.S. Coast Guard—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 383 | Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 (**Reg Plan Seq No. 64**). | 1625–AA16 |
| 384 | Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters | 1625–AA32 |
| 385 | Nontank Vessel Response Plans and Other Vessel Response Plan Requirements (**Reg Plan Seq No. 66**) | 1625–AB27 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## U.S. Coast Guard—Long-Term Actions

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 386 | Commercial Fishing Industry Vessels | 1625–AA77 |

## U.S. Customs and Border Protection—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 387 | Importer Security Filing and Additional Carrier Requirements (**Reg Plan Seq No. 69**) | 1651–AA70 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## Transportation Security Administration—Proposed Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 388 | General Aviation Security and Other Aircraft Operator Security (**Reg Plan Seq No. 73**) | 1652–AA53 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## Transportation Security Administration—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 389 | Aircraft Repair Station Security (**Reg Plan Seq No. 77**) | 1652–AA38 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*Office of the Secretary (OS)*

Proposed Rule Stage

### 373. Secure Handling of Ammonium Nitrate Program

*Regulatory Plan:* This entry is Seq. No. 53 in part II of this issue of the **Federal Register**.

*RIN:* 1601–AA52

### 374. • Homeland Security Acquisition Regulation, Subcontractor Labor Hour Rates Under Time and Materials Contracts

*Legal Authority:* 5 U.S.C. 301; 5 U.S.C. 302; 41 U.S.C. 418b(a); 41 U.S.C. 418b(b); 41 U.S.C. 414; 48 CFR part 1, subpart 1.3; DHS Delegation Number 0700

*Abstract:* The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) parts 3016 and 3052 to require DHS contracts for time and material or labor hours (T&M/LH) to include separate labor hour rates for subcontractors and a description of the method that will be used to record and bill for labor hours for both contractors and subcontractors.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |
| NPRM Comment Period End. | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeremy F. Olson, Senior Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Washington, DC 20528, *Phone:* 202 447–5197, *Fax:* 202 447–5310, *Email: jerry.olson@dhs.gov*.

*RIN:* 1601–AA65

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Citizenship and Immigration Services (USCIS)*

Final Rule Stage

### 375. Registration Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Aliens Subject to Numerical Limitations

*Legal Authority:* 8 U.S.C. 1184(g)

*Abstract:* The Department of Homeland Security will finalize its regulations governing petitions filed on behalf of alien workers subject to annual numerical limitations. This rule proposes to establish an electronic registration program for petitions subject to numerical limitations for the H–1B nonimmigrant classification. This action is necessary because the demand for H–1B specialty occupation workers by U.S. companies may exceed the numerical limitation. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H–1B petitions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/03/11 | 76 FR 11686 |
| NPRM Comment Period End. | 05/02/11 | |
| Final Rule ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Susan Arroyo, Chief of Staff, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1094, *Fax:* 202 272–1543, *Email: susan.arroyo@dhs.gov*.

*RIN:* 1615–AB71

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Citizenship and Immigration Services (USCIS)*

Completed Actions

### 376. Commonwealth of the Northern Mariana Islands Transitional Worker Classification

*Legal Authority:* Pub. L. 110–229

*Abstract:* On October 27, 2009, the Department of Homeland Security published an interim rule 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 CW classification is intended to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system under the immigration laws of the United States, including the Immigration and Nationality Act (INA). This final rule implements the CW classification and establishes that 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 during the five-year transition period. CNMI employers may now petition for such workers. The rule also establishes employment authorization incident to CW status.

*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 Rule ..... | 09/07/11 | 76 FR 55502 |
| Final Rule Effective. | 10/07/11 | |
| Final Rule Correction. | 11/08/11 | 76 FR 69119 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kevin J. Cummings, Chief of Business and Foreign Workers Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: kevin.cummings@dhs.gov*.

*RIN:* 1615–AB76

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Coast Guard (USCG)*

Prerule Stage

### 377. Claims Procedures Under the Oil Pollution Act of 1990 (USCG–2004–17697)

*Legal Authority:* 33 U.S.C. 2713 and 2714

*Abstract:* This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990 (OPA). An interim rule was published in 1992, and provides the basic requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The interim rule also includes the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSLTF) is available, without further appropriation, to pay trustee NRD

claims under the general claims provisions of OPA 90, 33 U.S.C. 2712(a)(4). This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/12/92 | 57 FR 36314 |
| Correction | 09/09/92 | 57 FR 41104 |
| Interim Final Rule Comment Period End. | 12/10/92 | |
| Notice of Inquiry | 11/01/11 | 76 FR 67385 |
| Notice of Inquiry Comment Period End. | 01/30/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Benjamin White, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, NPFC MS 7100, United States Coast Guard, 4200 Wilson Boulevard, Arlington, VA 20598–7100, *Phone:* 202 493–6863, *Email: benjamin.h.white@uscg.mil.*

*RIN:* 1625–AA03

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Coast Guard (USCG)*

Proposed Rule Stage

### 378. Marine Transportation-Related Facility Response Plans for Hazardous Substances

*Legal Authority:* 33 U.S.C. 1321(j); Pub. L. 101–380; Pub. L. 108–293

*Abstract:* This project would implement provisions of the Oil Pollution Act of 1990 (OPA 90) that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. A separate rulemaking, under RIN 1625–AA13, was developed in tandem with this rulemaking and addresses hazardous substances response plan requirements for tank vessels. This project supports the Coast Guard's broad roles and responsibilities of maritime safety and maritime stewardship by reducing the consequence of pollution incidents. This action is considered significant because of substantial public and industry interest.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/03/96 | 61 FR 20084 |
| Notice of Public Hearings. | 07/03/96 | 61 FR 34775 |
| ANPRM Comment Period End. | 09/03/96 | |
| NPRM | 03/31/00 | 65 FR 17416 |
| NPRM Comment Period End. | 06/29/00 | |
| Notice To Reopen Comment Period. | 02/17/11 | 76 FR 9276 |
| Comment Period End. | 05/18/11 | |
| Notice of Availability. | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* CDR Michael Roldan, Project Manager, CG–522, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1420, *Email: luis.m.roldan@uscg.mil.*

*RIN:* 1625–AA12

### 379. Numbering of Undocumented Barges

*Legal Authority:* 46 U.S.C. 12301

*Abstract:* Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges of more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned. This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Request for Comments. | 10/18/94 | 59 FR 52646 |
| Comment Period End. | 01/17/95 | |
| ANPRM | 07/06/98 | 63 FR 36384 |
| ANPRM Comment Period End. | 11/03/98 | |
| NPRM | 01/11/01 | 66 FR 2385 |
| NPRM Comment Period End. | 04/11/01 | |
| NPRM Reopening of Comment Period. | 08/12/04 | 69 FR 49844 |
| NPRM Comment Period End. | 11/10/04 | |
| Supplemental NPRM. | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Denise Harmon, Project Manager, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419, *Phone:* 304 271–2506.

*RIN:* 1625–AA14

### 380. Inspection of Towing Vessels

*Legal Authority:* 46 U.S.C. 3103; 46 U.S.C. 3301; 46 U.S.C. 3306; 46 U.S.C. 3308; 46 U.S.C. 3316; 46 U.S.C. 3703; 46 U.S.C. 8104; 46 U.S.C. 8904; DHS Delegation No 0170.1

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/11/11 | 76 FR 49976 |
| Notice of Public Meetings. | 09/09/11 | 76 FR 55847 |
| NPRM Comment Period End. | 12/09/11 | |
| Final Rule | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Harmon, Program Manager, CG–5222, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1427, *Email: michael.j.harmon@uscg.mil.*

*RIN:* 1625–AB06

### 381. Updates to Maritime Security

*Legal Authority:* 33 U.S.C. 1226; 33 U.S.C. 1231; 46 U.S.C. ch 701; 50 U.S.C. 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

*Abstract:* The Coast Guard proposes certain additions, changes, and amendments to 33 CFR, subchapter H. Subchapter H is comprised of parts 101 through 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 the goals of domestic compliance and international cooperation by incorporating requirements from legislation implemented since the original publication of these regulations, such as the SAFE Port Act, and including

international standards such as STCW security training. This rulemaking has international interest because of the close relationship between subchapter H and the International Ship and Port Security Code (ISPS).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* LCDR Loan O'Brien, Project Manager, Department of Homeland Security, U.S. Coast Guard, Commandant, (CG–5442), 2100 Second Street SW., STOP 7581, Washington, DC 20593–7581, *Phone:* 202 372–1133, *Email: loan.t.o'brien@uscg.mil.*

*RIN:* 1625–AB38

**382. Marpol Annex 1 Update**

*Legal Authority:* 33 U.S.C. 1902; 46 U.S.C. 3306

*Abstract:* In this rulemaking, the Coast Guard would amend the regulations in subchapter O (Pollution) of title 33 of the CFR, including regulations on vessels carrying oil, oil pollution prevention, oil transfer operations, and rules for marine environmental protection regarding oil tank vessels, to reflect changes to international oil pollution standards adopted since 2004. Additionally, this regulation would update shipping regulations in title 46 to require Material Safety Data Sheets, in accordance with international agreements, to protect the safety of mariners at sea.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Harmon, Program Manager, CG–5222, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1427, *Email: michael.j.harmon@uscg.mil.*

*RIN:* 1625–AB57

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Coast Guard (USCG)*

Final Rule Stage

**383. Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978**

*Regulatory Plan:* This entry is Seq. No. 64 in part II of this issue of the **Federal Register.**

*RIN:* 1625–AA16

**384. Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters**

*Legal Authority:* 16 U.S.C. 4711

*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.

*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 ..... | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mr. John C. Morris, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126, *Phone:* 202 372–1433, *Email: john.c.morris@uscg.mil.*

*RIN:* 1625–AA32

**385. Nontank Vessel Response Plans and Other Vessel Response Plan Requirements**

*Regulatory Plan:* This entry is Seq. No. 66 in part II of this issue of the **Federal Register.**

*RIN:* 1625–AB27

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Coast Guard (USCG)*

Long-Term Actions

**386. Commercial Fishing Industry Vessels**

*Legal Authority:* 46 U.S.C. 4502(a) to 4502(d); 46 U.S.C. 4505 and 4506; 46 U.S.C. 6104; 46 U.S.C. 10603; DHS Delegation No. 0170.1(92)

*Abstract:* This rulemaking would amend commercial fishing industry vessel requirements to enhance maritime safety. Commercial fishing remains one of the most dangerous industries in America. The Commercial Fishing Industry Vessel Safety Act of 1988 (the Act, codified in 46 U.S.C. chapter 45) gives the Coast Guard regulatory authority to improve the safety of vessels operating in that industry. Although significant reductions in industry deaths were recorded after the Coast Guard issued its initial rules under the Act in 1991, we believe more deaths and serious injury can be avoided through compliance with new regulations in the following areas: Vessel stability and watertight integrity, vessel maintenance and safety equipment including crew immersion suits, crew training and drills, and improved documentation of regulatory compliance.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 03/31/08 | 73 FR 16815 |
| ANPRM Comment Period End. | 12/15/08 | |
| NPRM ..... | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jack Kemerer, Project Manager, CG–5433, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, *Phone:* 202 372–1249, *Email: jack.a.kemerer@uscg.mil.*

*RIN:* 1625–AA77

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Customs and Border Protection (USCBP)*

Final Rule Stage

### 387. Importer Security Filing and Additional Carrier Requirements

*Regulatory Plan:* This entry is Seq. No. 69 in part II of this issue of the **Federal Register.**

*RIN:* 1651–AA70

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*Transportation Security Administration (TSA)*

Proposed Rule Stage

### 388. General Aviation Security and Other Aircraft Operator Security

Regulatory Plan: This entry is Seq. No. 73 in part II of this issue of the **Federal Register.**

*RIN:* 1652–AA53

## DEPARTMENT OF HOMELAND SECURITY (DHS)

*Transportation Security Administration (TSA)*

Final Rule Stage

### 389. Aircraft Repair Station Security

*Regulatory Plan:* This entry is Seq. No. 77 in part II of this issue of the **Federal Register.**

*RIN:* 1652–AA38

[FR Doc. 2012–1648 Filed 2–10–12; 8:45 am]

BILLING CODE 9110–9B–P

# FEDERAL REGISTER

Vol. 77 Monday,
No. 29 February 13, 2012

Part X

## Department of the Interior

Semiannual Regulatory Agenda

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 25 CFR Ch. I

### 30 CFR Chs. II and VII

### 36 CFR Ch. I

### 43 CFR Subtitle A, Chs. I and II

### 48 CFR Ch. 14

### 50 CFR Chs. I and IV

### Semiannual Regulatory Agenda

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice provides the semiannual agenda of rules scheduled for review or development between fall 2011 and spring 2012. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

**ADDRESSES:** Unless otherwise indicated, all Agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** You should direct all comments and inquiries about these rules to the appropriate Agency Contact. You should direct general comments relating to the agenda to the Office of Executive Secretariat, Department of the Interior, at the address above or at 202–208–3181.

**SUPPLEMENTARY INFORMATION:** With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department's Statement of Regulatory Priorities is included in the Plan.

**Mark Lawyer,**

*Federal Register Liaison Officer.*

UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 390 | National Wildlife Refuge System; Oil and Gas Regulations | 1018–AX36 |

UNITED STATES FISH AND WILDLIFE SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 391 | Injurious Wildlife Evaluation; Constrictor Species From Python, Boa, and Eunectes Genera | 1018–AV68 |

NATIONAL PARK SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 392 | Non-Federal Oil and Gas Rights | 1024–AD78 |

NATIONAL PARK SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 393 | Special Regulation, Winter Use, Yellowstone National Park | 1024–AD92 |

BUREAU OF OCEAN ENERGY MANAGEMENT—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 394 | Revised Requirements for Well Plugging and Platform Decommissioning | 1010–AD61 |

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 395 | Stream Protection Rule | 1029–AC63 |

## DEPARTMENT OF THE INTERIOR (DOI)

*United States Fish and Wildlife Service (FWS)*

Proposed Rule Stage

### 390. National Wildlife Refuge System; Oil and Gas Regulations

*Legal Authority:* 16 U.S.C. 668dd–ee; 42 U.S.C. 7401 *et seq.;* 16 U.S.C. 1131 to 1136; 40 CFR 51.300 to 51.309

*Abstract:* We propose regulations that ensure that all operators conducting oil or gas operations within a National Wildlife Refuge System unit do so in a manner as to prevent or minimize damage to National Wildlife Refuge System resources, visitor values, and management objectives. FWS does not intend these regulations to result in a taking of a property Interest, but rather to impose reasonable controls on operations that affect federally owned or controlled lands and/or waters.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deb Rocque, Chief, Branch of Natural Resources and Conservation Planning, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, *Phone:* 703 358–2106, *Email: deb_rocque@fws.gov*.

Paul Steblein, Refuge Program Specialist, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 670, Arlington, VA 22203, *Phone:* 703 358–2678, *Fax:* 703 358–1929, *Email: paul_steblein@fws.gov*.

*RIN:* 1018–AX36

## DEPARTMENT OF THE INTERIOR (DOI)

*United States Fish and Wildlife Service (FWS)*

Final Rule Stage

### 391. Injurious Wildlife Evaluation; Constrictor Species From Python, Boa, and Eunectes Genera

*Legal Authority:* 18 U.S.C. 42

*Abstract:* We have made a final determination to list nine species of large constrictor snakes as injurious wildlife under the Lacey Act: Indian python (including Burmese python), reticulated python, Northern African python, Southern African python, boa constrictor, yellow anaconda, DeSchauensee's anaconda, green anaconda, and Beni anaconda.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 01/31/08 | 73 FR 5784 |
| ANPRM Comment Period End. | 04/30/08 | |
| NPRM ..... | 03/12/10 | 75 FR 11808 |
| NPRM Comment Period End. | 05/11/10 | |
| NPRM Comment Period Re-opened. | 07/01/10 | 75 FR 38069 |
| NPRM Comment Period End. | 08/02/10 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Art Roybal, Senior Fish and Wildlife Biologist, Department of the Interior, United States Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960, *Phone:* 772 562–3909, *Email: art_roybal@fws.gov*.

Susan Jewell, Fish and Wildlife Biologist, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, MS 770, Arlington, VA 22203, *Phone:* 703 358–2416, *Fax:* 703 358–2044, *Email: susan_jewell@fws.gov*.

*RIN:* 1018–AV68

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR (DOI)

*National Park Service (NPS)*

Proposed Rule Stage

### 392. Non-Federal Oil and Gas Rights

*Legal Authority:* 16 U.S.C. 1 *et seq.;* 16 U.S.C. 1901 *et seq.*

*Abstract:* This rule would accommodate new technology and industry practices, eliminate regulatory exemptions, update requirements, remove caps on bond amounts, and allow NPS to recover administrative costs. The changes make the regulations more effective and efficient and maintain the highest level of protection compatible with park resources and values.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 11/25/09 | 74 FR 61596 |
| ANPRM Comment Period End. | 01/25/10 | |
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ed Kassman, Regulatory Specialist, Department of the Interior, National Park Service, 12795 West Alameda Parkway, Lakewood, CA 80225, *Phone:* 303 969–2146, *Email: edward_kassman@nps.gov*.

*RIN:* 1024–AD78

## DEPARTMENT OF THE INTERIOR (DOI)

*National Park Service (NPS)*

Final Rule Stage

### 393. Special Regulation, Winter Use, Yellowstone National Park

*Legal Authority:* 16 U.S.C. 1; 16 U.S.C. 3; 16 U.S.C. 9a; 16 U.S.C. 462(k)

*Abstract:* The 2009 interim rule allows for managed snowmobile and snow coach use, with restrictions on their use and numbers, through the 2010–2011 winter season. In the absence of a new rule, oversnow vehicles would not be allowed in Yellowstone beginning in the 2011–2012 season. The proposed rule incorporates the preferred alternative from the draft environmental impact statement. To prepare for implementation of the new winter use plan and to manage winter use during the 2011–2012 winter season, we will publish an interim rule by mid-December 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/05/11 | 76 FR 39048 |
| NPRM Comment Period End. | 09/06/11 | |
| Interim Final Rule | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* A J North, Regulatory Specialist, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240, *Phone:* 202 208–5268, *Email: aj_north@nps.gov*.

*RIN:* 1024–AD92

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Ocean Energy Management (BOEM)*

Proposed Rule Stage

### 394. Revised Requirements for Well Plugging and Platform Decommissioning

*Legal Authority:* 31 U.S.C. 9701; 43 U.S.C. 1334

*Abstract:* This rule would establish timely submission requirements for decommissioning and abandonment plans, and establish deadlines for decommissioning permits. The rule

would also implement timeframes and clarify requirements for plugging and abandonment of idle wells and decommissioning idle facilities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |
| NPRM Comment Period End. | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy White, Department of the Interior, 381 Elden Street, Herndon, VA 20170, *Phone:* 703 787–1665, *Fax:* 703 787–1555, *Email: amy.white@boemre.gov.*

*RIN:* 1010–AD61

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR (DOI)

*Office of Surface Mining Reclamation and Enforcement (OSMRE)*

Proposed Rule Stage

### 395. Stream Protection Rule

*Legal Authority:* 30 U.S.C. 1201 *et seq.*

*Abstract:* On August 12, 2009, the U.S. District Court for the District of Columbia denied the Government's request that the court vacate and remand the Excess Spoil/Stream Buffer Zone rule published on December 12, 2008. Therefore, the Department intends to initiate notice and comment rulemaking to address issues arising from previous rulemakings. The agency also intends to prepare a new environmental impact statement.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 11/30/09 | 74 FR 62664 |
| ANPRM Comment Period End. | 12/30/09 | |
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dennis Rice, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, *Phone:* 202 208–2829, *Email: drice@osmre.gov.*

*RIN:* 1029–AC63

[FR Doc. 2012–1649 Filed 2–10–12; 8:45 am]

**BILLING CODE 4310–05–P**

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XI

## Department of Justice

Semiannual Regulatory Agenda

## DEPARTMENT OF JUSTICE

**8 CFR Ch. V**

**21 CFR Ch. I**

**27 CFR Ch. II**

**28 CFR Ch. I, V**

### Regulatory Agenda

**AGENCY:** Department of Justice.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Department of Justice is publishing its fall 2011 regulatory agenda pursuant to Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601 to 612 (1988).

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, 202 514–8059.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department of Justice's Statement of Regulatory Priorities is included in the Plan.

Beginning with the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Justice's regulatory plan.

Dated: September 20, 2011.

**Christopher H. Schroeder,**

*Assistant Attorney General, Office of Legal Policy.*

LEGAL ACTIVITIES—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 396 | National Standards to Prevent, Detect, and Respond to Prison Rape (**Reg Plan Seq No. 85**) | 1105–AB34 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEPARTMENT OF JUSTICE (DOJ)

*Legal Activities (LA)*

Final Rule Stage

### 396. National Standards to Prevent, Detect, and Respond to Prison Rape

*Regulatory Plan:* This entry is Seq. No. 85 in part II of this issue of the **Federal Register**.

*RIN:* 1105–AB34

[FR Doc. 2012–1651 Filed 2–10–12; 8:45 am]

BILLING CODE 4410–BP–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XII

## Department of Labor

Semiannual Regulatory Agenda

## DEPARTMENT OF LABOR

### Office of the Secretary

### 20 CFR Chs. I, IV, V, VI, VII, and IX

### 29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

### 30 CFR Ch. I

### 41 CFR Ch. 60

### 48 CFR Ch. 29

### Semiannual Agenda of Regulations

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Internet has become the means for disseminating the entirety of the Department of Labor's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** notice contains the regulatory flexibility agenda. In addition, the Department's regulatory plan, a subset of the Department's regulatory agenda, is being published in the **Federal Register**. The regulatory plan contains a statement of the Department's regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Franks, Director, Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210; 202 693–5959.

**Note:** Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department's semiannual agenda is available online at *www.reginfo.gov.*

On January 18, 2011, the President issued Executive Order (E.O.) 13563, entitled ''Improving Regulation and Regulatory Review.'' The Department of Labor's fall 2011 regulatory agenda aims to achieve more efficient and less burdensome regulation through our renewed commitment to conduct retrospective reviews of regulations.

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department's Regulatory Flexibility Agenda published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department's semiannual regulatory agenda. At this time, there is only one item, listed below, on the Department's regulatory flexibility agenda.

### Occupational Safety and Health Administration

*Bloodborne Pathogens (RIN 1218–AC34)*

In addition, the Department's regulatory plan, also a subset of the Department's regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department's regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and are invited to participate in and comment on the review or development of the regulations listed on the Department's agenda.

**Hilda L. Solis,**

*Secretary of Labor.*

OFFICE OF WORKERS' COMPENSATION PROGRAMS—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 397 | Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels | 1240–AA02 |

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 398 | Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers. | 1210–AB51 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 399 | Bloodborne Pathogens (**Section 610 Review**) | 1218–AC34 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 400 | Occupational Exposure to Crystalline Silica (**Reg Plan Seq No. 100**) | 1218–AB70 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 401 | Confined Spaces in Construction | 1218–AB47 |
| 402 | Electric Power Transmission and Distribution; Electrical Protective Equipment | 1218–AB67 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 403 | Occupational Exposure to Beryllium | 1218–AB76 |
| 404 | Occupational Exposure to Food Flavorings Containing Diacetyl and Diacetyl Substitutes | 1218–AC33 |

## DEPARTMENT OF LABOR (DOL)

*Office of Workers' Compensation Programs (OWCP)*

Completed Actions

**397. Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels**

*Legal Authority:* 33 U.S.C. 939

*Abstract:* The American Recovery and Reinvestment Act of 2009 amended the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 to 950, to exclude from the Act's coverage certain employees who repair recreational vessels and who dismantle them for repair, regardless of the vessel's length. On August 17, 2010, (republished on Oct. 15, 2010), the Department issued a Notice of Proposed Rulemaking revising the definition of recreational vessel and addressing coverage of those employees who work in both qualifying maritime employment and employment excluded under the amendment. The comment period ended on November 17, 2010.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/17/10 | 75 FR 50718 |
| NPRM Republished. | 10/15/10 | 75 FR 63425 |
| NPRM Comment Period End. | 11/17/10 | |
| Final Action | 12/30/11 | 76 FR 82117 |
| Final Action Effective. | 01/30/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brandon Miller, Chief, Branch of Financial Management, Insurance and Assessment, Department of Labor, Office of Workers' Compensation Programs, 200 Constitution Avenue NW., FP Building, Room C–4315, Washington, DC 20210, *Phone:* 202 693–0925, *Fax:* 202 693–1380, *Email: miller.brandon@dol.gov.*

*RIN:* 1240–AA02

## DEPARTMENT OF LABOR (DOL)

*Employee Benefits Security Administration (EBSA)*

Proposed Rule Stage

**398. • Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers**

*Legal Authority:* sec 6606 of the Patient Protection and Affordable Care Act; Pub. L. 111–148; 124 Stat 119 (2010)

*Abstract:* This is a proposed rule under title I of the Employee Retirement Income Security Act (ERISA) that, upon adoption, would implement reporting requirements for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide health benefits for employees of two or more employers. The proposal amends existing reporting rules to incorporate new requirements enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) and to more clearly address the reporting obligations of MEWAs that are ERISA plans.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/06/11 | 76 FR 76222 |
| NPRM Comment Period End. | 03/05/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy J. Turner, Senior Advisor, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5653, Washington, DC 20210, *Phone:* 202 693–8335, *Fax:* 202 219–1942.

*RIN:* 1210–AB51

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Prerule Stage

**399. Bloodborne Pathogens (Section 610 Review)**

*Legal Authority:* 5 U.S.C. 533; 5 U.S.C. 610; 29 U.S.C. 655(b)

*Abstract:* OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 10/22/09 | |
| Request for Comments Published. | 05/14/10 | 75 FR 27237 |
| Comment Period End. | 08/12/10 | |
| End Review and Issue Findings. | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov.*

*RIN:* 1218–AC34

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Proposed Rule Stage

### 400. Occupational Exposure to Crystalline Silica

*Regulatory Plan:* This entry is Seq. No. 100 in part II of this issue of the **Federal Register**.

*RIN:* 1218–AB70

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Final Rule Stage

### 401. Confined Spaces in Construction

*Legal Authority:* 29 U.S.C. 655(b); 40 U.S.C. 333

*Abstract:* In 1993, OSHA issued a rule to protect employees who enter confined spaces while engaged in general industry work (29 CFR 1910.146). This standard has not been extended to cover employees entering confined spaces while engaged in construction work because of unique characteristics of construction worksites. Pursuant to discussions with the United Steel Workers of America that led to a settlement agreement regarding the general industry standard, OSHA agreed to issue a proposed rule to protect construction workers in confined spaces.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| SBREFA Panel Report. | 11/24/03 | |
| NPRM ..... | 11/28/07 | 72 FR 67351 |
| NPRM Comment Period End. | 01/28/08 | |
| NPRM Comment Period Extended. | 02/28/08 | 73 FR 3893 |
| Public Hearing ..... | 07/22/08 | |
| Close Record ..... | 10/23/08 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jim Maddux, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, Room N–3468, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2020, *Fax:* 202 693–1689, *Email: maddux.jim@dol.gov.*

*RIN:* 1218–AB47

### 402. Electric Power Transmission and Distribution; Electrical Protective Equipment

*Legal Authority:* 29 U.S.C. 655(b); 40 U.S.C. 333

*Abstract:* Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 35 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations. OSHA published an NPRM on June 15, 2005. A public hearing was held from March 6 through March 14, 2006. OSHA reopened the record to gather additional information on minimum approach distances for specific ranges of voltages. The record was reopened a second time to allow more time for comment and to gather information on minimum approach distances for all voltages and on the newly revised Institute of Electrical and Electronics Engineers consensus standard. Additionally, a public hearing was held on October 28, 2009.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| SBREFA Report .. | 06/30/03 | |
| NPRM ..... | 06/15/05 | 70 FR 34821 |
| NPRM Comment Period End. | 10/13/05 | |
| Comment Period Extended to 01/11/2006. | 10/12/05 | 70 FR 59290 |
| Public Hearing To Be Held 03/06/2006. | 10/12/05 | 70 FR 59290 |
| Posthearing Comment Period End. | 07/14/06 | |
| Reopen Record ... | 10/22/08 | 73 FR 62942 |
| Comment Period End. | 11/21/08 | |
| Close Record ..... | 11/21/08 | |
| Second Reopening Record. | 09/14/09 | 74 FR 46958 |
| Comment Period End. | 10/15/09 | |
| Public Hearings ... | 10/28/09 | |
| Posthearing Comment Period End. | 02/10/10 | |
| Final Rule ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov.*

*RIN:* 1218–AB67

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Long-Term Actions

### 403. Occupational Exposure to Beryllium

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 657

*Abstract:* In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage.

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium, including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected worksites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under

the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA completed a scientific peer review of its draft risk assessment.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Request for Information. | 11/26/02 | 67 FR 70707 |
| Request For Information Comment Period End. | 02/24/03 | |
| SBREFA Report Completed. | 01/23/08 | |
| Initiated Peer Review of Health Effects and Risk Assessment. | 03/22/10 | |
| Complete Peer Review. | 11/19/10 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AB76

**404. Occupational Exposure to Food Flavorings Containing Diacetyl and Diacetyl Substitutes**

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 657

*Abstract:* On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products, including microwave popcorn, certain bakery goods, and some snack foods. Evidence indicates that exposure to flavorings containing diacetyl is associated with adverse effects on the respiratory system, including bronchiolitis obliterans, a debilitating and potentially fatal lung disease. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking. OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) on January 21, 2009, but withdrew the ANPRM on March 17, 2009, in order to facilitate timely development of a standard. The Agency subsequently initiated review of the draft proposed standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBREFA Panel Report was completed on July 2, 2009. NIOSH is currently developing a criteria document on occupational exposure to diacetyl. The criteria document will also address exposure to 2,3-pentanedione, a chemical that is structurally similar to diacetyl and has been used as a substitute for diacetyl in some applications. It will include an assessment of the effects of exposure as well as quantitative risk assessment. OSHA intends to rely on these portions of the criteria document for the health effects analysis and quantitative risk assessment for the Agency's diacetyl rulemaking.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Stakeholder Meeting. | 10/17/07 | 72 FR 54619 |
| ANPRM ..... | 01/21/09 | 74 FR 3937 |
| ANPRM Withdrawn. | 03/17/09 | 74 FR 11329 |
| ANPRM Comment Period End. | 04/21/09 | |
| Completed SBREFA Report. | 07/02/09 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N–3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2400, *Fax:* 202 693–1641, *Email: dougherty.dorothy@dol.gov*.

*RIN:* 1218–AC33

[FR Doc. 2012–1652 Filed 2–10–12; 8:45 am]

BILLING CODE 4510–04–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XIII

## Department of Transportation

Semiannual Regulatory Agenda

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Chs. I–III

### 23 CFR Chs. I–III

### 33 CFR Chs. I and IV

### 46 CFR Chs. I–III

### 48 CFR Ch. 12

### 49 CFR Subtitle A, Chs. I–VI and Chs. X–XII

**[OST Docket 99–5129]**

## Department Regulatory Agenda; Semiannual Summary

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Regulatory Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The Agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:**

### General

You should direct all comments and inquiries on the Agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202 366–4723.

### Specific

You should direct all comments and inquiries on particular items in the Agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B. Individuals who use a telecommunications device for the deaf (TDD) may call 202 755–7687.

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**SUPPLEMENTARY INFORMATION:**

### Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). Our regulations should be clear, simple, timely, fair, reasonable, and necessary. They should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed. To view additional information about the Department of Transportation's regulatory activities online, go to *http://regs.dot.gov.* Among other things, this Web site provides a report, updated monthly, on the status of the DOT significant rulemakings listed in the Semiannual Regulatory Agenda.

To help the Department achieve these goals and in accordance with Executive Order (EO) 12866, ''Regulatory Planning and Review,'' (58 FR 51735; Oct. 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979), the Department prepares a Semiannual Regulatory Agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last Agenda.

The Agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last Agenda was published in the **Federal Register** on July 7, 2011 (76 FR 40092). The next one is scheduled for publication in the **Federal Register** in spring 2012.

The Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov*, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), DOT's printed Agenda entries include only:

1. The agency's Agenda preamble;
2. Rules that are in the agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
3. Any rules that the agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list see section heading ''Explanation of Information on the Agenda'') on these entries is available in the Unified Agenda published on the Internet.

### Significant/Priority Rulemakings

The Agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the Agenda if they are, essentially, very costly, beneficial, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decides a rule is subject to its review under Executive Order 12866, we have classified it as significant in the Agenda.

### Explanation of Information on the Agenda

An Office of Management and Budget memorandum, dated June 30, 2011, requires the format for this Agenda.

First, the Agenda is divided by initiating offices. Then, the Agenda is divided into five categories: (1) Prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5) completed actions. For each entry, the Agenda provides the following information: (1) Its ''significance''; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (*e.g.,* NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA)

analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (with minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the Agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled ''Additional Information.''

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the ''Timetable'' column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this Agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the Agenda for the first time.

**Request for Comments**

*General*

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Agenda could be further improved.

*Reviews*

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D. In response to E.O. 13563 ''Retrospective Review and Analysis of Existing Rules,'' we have prepared a retrospective review plan providing more detail on the process we use to conduct reviews of existing rules, including changes in response to E.O. 13563. We provided the public opportunities to comment at regulations.gov and IdeaScale on both our process or any existing DOT rules the public thought needed review. The plan and the results of our review can be found at *regs.dot.gov.*

*Regulatory Flexibility Act*

The Department is especially interested in obtaining information on requirements that have a ''significant economic impact on a substantial number of small entities'' and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (sec. 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

*Consultation With State, Local, and Tribal Governments*

Executive orders 13132 and 13175 require us to develop an accountable process to ensure ''meaningful and timely input'' by State, local, and tribal officials in the development of regulatory policies that have federalism or tribal implications. These policies are defined in the Executive orders to include regulations that have ''substantial direct effects'' on States or Indian tribes, on the relationship between the Federal Government and them, or on the distribution of power and responsibilities between the Federal Government and various levels of government or Indian tribes. Therefore, we encourage State and local governments or Indian tribes to provide us with information about how the Department's rulemakings impact them.

**Purpose**

The Department is publishing this regulatory Agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the Agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: September 26, 2011.

**Ray LaHood,**

*Secretary of Transportation.*

**Appendix A—Instructions for Obtaining Copies of Regulatory Documents**

To obtain a copy of a specific regulatory document in the Agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the Semiannual Regulatory Agenda, are available through the Internet at *http://www.regulations.gov.* See Appendix C for more information.

(Name of contact person), (Name of the DOT agency), 1200 New Jersey Avenue SE., Washington, DC 20590. (For the Federal Aviation Administration, substitute the following address: Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591.)

**Appendix B—General Rulemaking Contact Persons**

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA—Rebecca MacPherson, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone 202 267–3073.

FHWA—Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–0761.

FMCSA—Steven J. LaFreniere, Regulatory Ombudsman, 1200 New

Jersey Avenue SE., Washington, DC 20590; telephone 202 366–0596.

NHTSA—Steve Wood, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–2992.

FRA—Kathryn Shelton, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room W31–214, Washington, DC 20590; telephone 202 493–6063.

FTA—Bonnie Graves, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room E56–306, Washington, DC 20590; telephone 202 366–0944.

SLSDC—Carrie Mann Lavigne, Chief Counsel, 180 Andrews Street, Massena, NY 13662; telephone 315 764–3200.

PHMSA—Patricia Burke, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–4400.

MARAD—Christine Gurland, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–5157.

RITA—Robert Monniere, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–5498.

OST—Neil Eisner, Office of Regulation and Enforcement, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone 202 366–4723.

## Appendix C—Public Rulemaking Dockets

All comments via the Internet are submitted through the Federal Docket Management System (FDMS) at the following address: *http://www.regulations.gov.* The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced Internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, 1 800 647–5527. Working Hours: 9–5.

## Appendix D—Review Plans for Section 610 and Other Requirements

### Part I—The Plan

*General*

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866, ''Regulatory Planning and Review,'' and section 610 of the Regulatory Flexibility Act to conduct such reviews. This includes the use of plain language techniques in new rules and considering its use in existing rules when we have the opportunity and resources to permit its use. We are committed to continuing our reviews of existing rules and, if needed, will initiate rulemaking actions based on these reviews.

In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued by the President on January 18, 2011, the Department has added other elements to its review plan. The Department has decided to improve its plan by adding special oversight processes within the Department; encouraging effective and timely reviews, including providing additional guidance on particular problems that warrant review; and expanding opportunities for public participation. These new actions are in addition to the other steps described in this Appendix.

*Section 610 Review Plan*

Section 610 requires that we conduct reviews of rules that (1): Have been published within the last 10 years, and (2) have a ''significant economic impact on a substantial number of small entities'' (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

*Other Review Plan(s)*

All elements of the Department, except for the Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures and Executive Order 12866.

*Changes to the Review Plan*

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially-mandated review. If there is any change to the review plan, we will note the change in the following Agenda. For any section 610 review, we will provide the required notice prior to the review.

### Part II—The Review Process

*The Analysis*

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Thus, Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010, and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses should be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

*Section 610 Review*

The agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (*e.g.,* ''these rules only establish petition processes that have no cost impact'' or ''these rules do not apply to any small entities''). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which

public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

*Other Reviews*

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

The FAA, in addition to reviewing its rules in accordance with the section 610 Review Plan, has established a tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. The FAA's latest review notice was published November 15, 2007 (72 FR 64170). In that notice, the FAA requested comments from the public to identify those regulations currently in effect that it should amend, remove, or simplify. The FAA also requested the public to provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how it will adjust its regulatory priorities.

**Part III—List of Pending Section 610 Reviews**

The Agenda identifies the pending DOT section 610 Reviews by inserting ''(Section 610 Review),'' after the title for the specific entry. For further information on the pending reviews, see the Agenda entries at *www.reginfo.gov.* For example, to obtain a list of all entries that are section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting ''advanced search'') and, in effect, generate the desired ''index'' of reviews.

*Office of the Secretary*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 91 through 99 and 14 CFR parts 200 through 212 | 2008 | 2009 |
| 2 | 48 CFR parts 1201 through 1253 and new parts and subparts | 2009 | 2010 |
| 3 | 14 CFR parts 213 through 232 | 2010 | 2011 |
| 4 | 14 CFR parts 234 through 254 | 2011 | 2012 |
| 5 | 14 CFR parts 255 through 298 and 49 CFR part 40 | 2012 | 2013 |
| 6 | 14 CFR parts 300 through 373 | 2013 | 2014 |
| 7 | 14 CFR parts 374 through 398 | 2014 | 2015 |
| 8 | 14 CFR part 399 and 49 CFR parts 1 through 11 | 2015 | 2016 |
| 9 | 49 CFR parts 17 through 28 | 2016 | 2017 |
| 10 | 49 CFR parts 29 through 39 and parts 41 through 89 | 2017 | 2018 |

**Year 1 (Fall 2008) List of Rules With Ongoing Analysis**

49 CFR part 91—International Air Transportation Fair Competitive Practices
49 CFR part 92—Recovering Debts to the United States by Salary Offset
49 CFR part 95—Advisory Committees
49 CFR part 98—Enforcement of Restrictions on Post-Employment Activities
49 CFR part 99—Employee Responsibilities and Conduct
14 CFR part 200—Definitions and Instructions
14 CFR part 201—Air Carrier Authority Under Subtitle VII of Title 49 of the United States Code [Amended]
14 CFR part 203—Waiver of Warsaw Convention Liability Limits and Defenses
14 CFR part 204—Data to Support Fitness Determinations
14 CFR part 205—Aircraft Accident Liability Insurance
14 CFR part 206—Certificates of Public Convenience and Necessity: Special Authorizations and Exemptions
14 CFR part 207—Charter Trips by U.S. Scheduled Air Carriers
14 CFR part 208—Charter Trips by U.S. Charter Air Carriers
14 CFR part 211—Applications for Permits to Foreign Air Carriers
14 CFR part 212—Charter Rules for U.S. and Foreign Direct Air Carriers

**Year 3 (Fall 2010) List of Rules With Ongoing Analysis**

14 CFR part 213—Terms, Conditions, and Limitations of Foreign Air Carrier Permits
14 CFR part 214—Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only
14 CFR part 215—Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers
14 CFR part 216—Comingling of Blind Sector Traffic by Foreign Air Carriers
14 CFR part 217—Reporting Traffic Statistics by Foreign Air Carriers in Civilian Scheduled, Charter, and Nonscheduled Services
14 CFR part 218—Lease by Foreign Air Carrier or Other Foreign Person of Aircraft With Crew
14 CFR part 221—Tariffs
14 CFR part 222—Intermodal Cargo Services by Foreign Air Carriers
14 CFR part 223—Free and Reduced-Rate Transportation
14 CFR part 232—Transportation of Mail, Review of Orders of Postmaster General

**Year 4 (Fall 2011) List of Rules To Be Analyzed During the Next Year**

14 CFR part 234—Airline Service Quality Performance Reports
14 CFR part 240—Inspection of Accounts and Property
14 CFR part 241—Uniform System of Accounts and Reports for Large Certificated Air Carriers
14 CFR part 243—Passenger Manifest Information
14 CFR part 247—Direct Airport-to-Airport Mileage Records
14 CFR part 248—Submission of Audit Reports
14 CFR part 249—Preservation of Air Carrier Records
14 CFR part 250—Oversales
14 CFR part 251—Smoking Aboard Aircraft
14 CFR part 253—Notice of Terms of Contract of Carriage

14 CFR part 254—Domestic Baggage Liability

*Federal Aviation Administration*

Section 610 Review Plan

The FAA has elected to use the two-step, two-year process used by most DOT modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the ''*analysis year*''), all rules published during the previous 10 years within a 10% block of the regulations will be *analyzed* to identify those with a SEIOSNOSE. During the second year (the ''*review year*''), each rule identified in the analysis year as having a SEIOSNOSE will be *reviewed* in accordance with section 610(b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT Semiannual Regulatory Agenda.

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 14 CFR parts 119 through 129 and parts 150 through 156 | 2008 | 2009 |
| 2 | 14 CFR parts 133 through 139 and parts 157 through 169 | 2009 | 2010 |
| 3 | 14 CFR parts 141 through 147 and parts 170 through 187 | 2010 | 2011 |
| 4 | 14 CFR parts 189 through 198 and parts 1 through 16 | 2011 | 2012 |
| 5 | 14 CFR parts 17 through 33 | 2012 | 2013 |
| 6 | 14 CFR parts 34 through 39 and parts 400 through 405 | 2013 | 2014 |
| 7 | 14 CFR parts 43 through 49 and parts 406 through 415 | 2014 | 2015 |
| 8 | 14 CFR parts 60 through 77 | 2015 | 2016 |
| 9 | 14 CFR parts 91 through 105 | 2016 | 2017 |
| 10 | 14 CFR parts 417 through 460 | 2017 | 2018 |

**Year 5 (Fall 2012) List of Rules To Be Analyzed During the Next Year**

14 CFR part 17—Procedures for Protests and Contracts Disputes

14 CFR part 21—Certification Procedures for Products and Parts

14 CFR part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes

14 CFR part 25—Airworthiness Standards: Transport Category Airplanes

14 CFR part 26—Continued Airworthiness and Safety Improvements for Transport Category Airplanes

14 CFR part 27—Airworthiness Standards: Normal Category Rotorcraft

14 CFR part 29—Airworthiness Standards: Transport Category Rotorcraft

14 CFR part 31—Airworthiness Standards: Manned Free Balloons

14 CFR part 33—Airworthiness Standards: Aircraft Engines

**Year 4 (Fall 2011) List of Rules Analyzed and Summary of Results**

14 CFR Part 189—Use of Federal Aviation Administration Communications System

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 193—Protection of Voluntarily Submitted Information

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 198—Aviation Insurance

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 1—Definitions and Abbreviations

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 3—General Requirements

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 11—General Rulemaking Procedures

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 13—Investigative and Enforcement Procedures

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 14—Rules Implementing the Equal Access to Justice Act of 1980

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 15—Administrative Claims Under Federal Tort Claims Act

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 16—Rules of Practice for Federally-Assisted Airport Enforcement Proceedings

- Section 610: The agency conducted a section 610 review of this part and found no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's

plain language review of these rules indicates no need for substantial revision.

*Federal Highway Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | None | 2008 | 2009 |
| 2 | 23 CFR parts 1 to 260 | 2009 | 2010 |
| 3 | 23 CFR parts 420 to 470 | 2010 | 2011 |
| 4 | 23 CFR part 500 | 2011 | 2012 |
| 5 | 23 CFR parts 620 to 637 | 2012 | 2013 |
| 6 | 23 CFR parts 645 to 669 | 2013 | 2014 |
| 7 | 23 CFR 710 to 924 | 2014 | 2015 |
| 8 | 23 CFR 940 to 973 | 2015 | 2016 |
| 9 | 23 CFR parts 1200 to 1252 | 2016 | 2017 |
| 10 | New parts and subparts | 2017 | 2018 |

Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. section 145 of title 23 expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for the construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

**Year 3 (Fall 2010) List of Rules Analyzed and a Summary of Results**

23 CFR part 420—Planning and Research Program Administration

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 450—Planning Assistance and Standards

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 460—Public Road Mileage for Apportionment of Highway Safety Funds

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 470—Highway Systems

- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed During the Next Year**

23 CFR part 500—Management and Monitoring Systems

*Federal Motor Carrier Safety Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 372, subpart A, and 381 | 2008 | 2009 |
| 2 | 49 CFR parts 386, 389, and 395 | 2009 | 2010 |
| 3 | 49 CFR parts 325, 388, 350, and 355 | 2010 | 2011 |
| 4 | 49 CFR parts 390 to 393 and 396 to 399 | 2011 | 2012 |
| 5 | 49 CFR parts 380 and 382 to 385 | 2012 | 2013 |
| 6 | 49 CFR parts 356, 367, 369 to 371, 372, subparts B–C | 2013 | 2014 |
| 7 | 49 CFR parts 373, 374, 376, and 379 | 2014 | 2015 |
| 8 | 49 CFR parts 360, 365, 366, and 368 | 2015 | 2016 |
| 9 | 49 CFR parts 377, 378, and 387 | 2016 | 2017 |
| 10 | 49 CFR parts 303, 375, and new parts and subparts | 2017 | 2018 |

**Year 1 (Fall 2008) List of Rules Analyzed and a Summary of Results**

49 CFR part 372, subpart A—Exemptions

- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 381—Waivers, Exemptions, and Pilot Programs

- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: These regulations are cost effective and impose the least

burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

**Year 2 (Fall 2009) List of Rules Analyzed and a Summary of Results**

49 CFR part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

- Section 610: There is SEIOSNOSE, as a significant number of small entities are affected by fees associated with litigation under subpart D (see below). It was found that the cost of a formal hearing to appeal a decision may have a significant impact on small firms.
- Subpart D, ''General Rules and Hearings,'' addresses, in considerable detail, rules and procedures for the conduct of formal hearings. As noted above, formal hearings before an Administrative Law Judge (ALJ) consider medical-disqualification cases under section 391.47, as well as cases where a Notice of Claim (NOC) has been issued, and the respondent has asked for a formal hearing or the Assistant Administrator has ordered one. *The principal economic impact of part 386 is the cost to a small firm of defending itself under these procedures.*
- General: The agency will assess the need for changes once the review of these regulations is complete. FMCSA's plain language review of these regulations indicates no need for substantial revision.

49 CFR part 395—Hours of Service of Drivers

- Based on the legal agreement among the litigants approved by the Court, the final rule is set to publish on October 28, 2011.

**Year 2 (Fall 2009) List of Rules With Ongoing Analysis**

49 CFR part 389—Rulemaking Procedures—Federal Motor Carrier Safety Regulations

**Year 3 (Fall 2010) List of Rules That Will Be Analyzed During the Next Year**

49 CFR part 325—Compliance With Interstate Motor Carrier Noise Emission—amended

49 CFR part 388—Cooperative Agreements With States—in process

49 CFR part 350—Commercial Motor Carrier Safety Assistance Program—in process

49 CFR part 355—Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations—in process

**Year 4 (Fall 2011) List of Rule(s) That Will Be Analyzed This Year**

49 CFR part 390—Definition of Commercial Motor Vehicle (CMV)-Requirements for Operators of Small Passenger—Carrying CMVs.

- This rule has been moved up in the queue, as it was singled out by stakeholders at USDOT's Retrospective Review and Analysis (Executive Order 13563). The rule(s) originally slated for review were moved to the next year.

*National Highway Traffic Safety Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR 571.223 through 571.500, and parts 575 and 579 | 2008 | 2009 |
| 2 | 23 CFR parts 1200 through 1300 | 2009 | 2010 |
| 3 | 49 CFR parts 501 through 526 and 571.213 | 2010 | 2011 |
| 4 | 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 | 2011 | 2012 |
| 5 | 49 CFR 571.101 through 571.110, and 571.135, 571.138 and 571.139 | 2012 | 2013 |
| 6 | 49 CFR parts 529 through 578, except parts 571 and 575 | 2013 | 2014 |
| 7 | 49 CFR 571.111 through 571.129 and parts 580 through 588 | 2014 | 2015 |
| 8 | 49 CFR 571.201 through 571.212 | 2015 | 2016 |
| 9 | 49 CFR 571.214 through 571.219, except 571.217 | 2016 | 2017 |
| 10 | 49 CFR parts 591 through 595 and new parts and subparts | 2017 | 2018 |

**Year 3 (Fall 2010) List of Rules Analyzed and a Summary of the Results**

49 CFR part 501—Organization and Delegation of Powers and Duties

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 509—OMB Control Numbers for Information Collection Requirements

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 510—Information Gathering Powers

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 511—Adjudicative Procedures

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 512—Confidential Business Information

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 520—Procedures for Considering Environmental Impacts

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 523—Vehicle Classification

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 525—Exemptions From Average Fuel Economy Standards

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 526—Petitions and Plans for Relief Under the Automobile Fuel Efficiency Act of 1980

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR 571.213—Child Restraint Systems

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision. This standard is constantly reviewed by NHTSA as well as child restraint manufacturers and child safety activists.

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed During the Next Year**

49 CFR 571.131—School Bus Pedestrian Safety Devices

49 CFR 571.217—Bus Emergency Exits and Window Retention and Release

49 CFR 571.220—School Bus Rollover Protection

49 CFR 571.221—School Bus Body Joint Strength

49 CFR 571.222—School Bus Passenger Seating and Crash Protection

*Federal Railroad Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 200 and 201 | 2008 | 2009 |
| 2 | 49 CFR parts 207, 209, 211, 215, 238, and 256 | 2009 | 2010 |
| 3 | 49 CFR parts 210, 212, 214, 217, and 268 | 2010 | 2011 |
| 4 | 49 CFR part 219 | 2011 | 2012 |
| 5 | 49 CFR parts 218, 221, 241, and 244 | 2012 | 2013 |
| 6 | 49 CFR parts 216, 228, and 229 | 2013 | 2014 |
| 7 | 49 CFR parts 223 and 233 | 2014 | 2015 |
| 8 | 49 CFR parts 224, 225, 231, and 234 | 2015 | 2016 |
| 9 | 49 CFR parts 222, 227, 235, 236, 250, 260, and 266 | 2016 | 2017 |
| 10 | 49 CFR parts 213, 220, 230, 232, 239, 240, and 265 | 2017 | 2018 |

**Year 3 (Fall 2010) List of Rules Analyzed and a Summary of Results**

49 CFR part 210—Railroad Noise Emission Compliance Regulations

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 212—State Safety Participation Regulations

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 214—Railroad Workplace Safety

- Section 610: There is a SEIOSNOSE.
- General: FRA will conduct a formal review to identify measures that may reduce the burden on small railroads without compromising safety standards. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 217—Railroad Operating Rules

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 268—Magnetic Levitation Transportation Technology Deployment Program

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FRA's plain language review of this rule indicates no need for substantial revision.

**Year 4 (Fall 2011) List of Rule(s) That Will Be Analyzed During Next Year**

49 CFR part 219—Control of alcohol and drug use

*Federal Transit Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 604, 605, and 633 | 2008 | 2009 |
| 2 | 49 CFR parts 661 and 665 | 2009 | 2010 |
| 3 | 49 CFR part 633 | 2010 | 2011 |
| 4 | 49 CFR parts 609 and 611 | 2011 | 2012 |
| 5 | 49 CFR parts 613 and 614 | 2012 | 2013 |
| 6 | 49 CFR part 622 | 2013 | 2014 |
| 7 | 49 CFR part 630 | 2014 | 2015 |
| 8 | 49 CFR part 639 | 2015 | 2016 |
| 9 | 49 CFR parts 659 and 663 | 2016 | 2017 |
| 10 | 49 CFR part 665 | 2017 | 2018 |

**Year 3 (Fall 2010) List of Rules Analyzed and Summary of Results**

49 CFR part 633—Capital Project Management

- Section 610: The agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: The agency intends to issue a new rule to articulate the roles and responsibilities of FTA's capital project management contractors. The amended rule will adhere to plain language techniques.

**Year 3 (Fall 2010) List of Rules With Ongoing Analysis**

49 CFR part 605—School Bus Operations

**Year 4 (Fall 2011) List of Rules Analyzed and Summary of Results**

49 CFR part 611—Major Capital Investment Projects

- Section 610: The agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: The agency intends to amend the rule to make it consistent with the current statute. The amended rule will be written in plain language.

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed in the Next Year**

49 CFR part 609—Transportation for Elderly and Handicapped Persons

*Maritime Administration*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 46 CFR parts 201 through 205 | 2008 | 2009 |
| 2 | 46 CFR parts 221 through 232 | 2009 | 2010 |
| 3 | 46 CFR parts 249 through 296 | 2010 | 2011 |
| 4 | 46 CFR parts 221, 298, 308, and 309 | 2011 | 2012 |
| 5 | 46 CFR parts 307 through 309 | 2012 | 2013 |
| 6 | 46 CFR part 310 | 2013 | 2014 |
| 7 | 46 CFR parts 315 through 340 | 2014 | 2015 |
| 8 | 46 CFR parts 345 through 381 | 2015 | 2016 |
| 9 | 46 CFR parts 382 through 389 | 2016 | 2017 |
| 10 | 46 CFR parts 390 through 393 | 2017 | 2018 |

**Year 3 (Fall 2010) List of Rules With Ongoing Analysis**

46 CFR part 381—Cargo Preference—U.S.-Flag Vessels

46 CFR part 383—Cargo Preference—Compromise, Assessment, Mitigation, Settlement & Collection of Civil Penalties

**Year 3 (Fall 2010) List of Rules Analyzed and Summary of Results**

46 CFR part 251—Application for Subsidies and Other Direct Financial Aid

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 252—Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 276—Construction-Differential Subsidy Repayment

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 280—Limitations on the Award and Payment of Operating-Differential Subsidy for Liner Operators

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 281—Information and Procedure Required under Liner Operating-Differential Subsidy Agreements

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 282—Operating-Differential Subsidy for Liner Vessels Engaged in Essential Services in the Foreign Commerce of the United States

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 283—Dividend Policy for Operators Receiving Operating-Differential Subsidy

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is obsolete and should therefore be deleted from the regulations.

46 CFR part 327—Administrative Claims

- Section 610: No SEIOSNOSE. No economic impact to small entities.
- General: Yes, changes are needed. This regulation is being revised to clarify the administrative claims process. It has been drafted using plain language techniques.

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed During the Next Year**

46 CFR part 221—Foreign Transfer Regulations

46 CFR part 249—Approval of Underwriters for Marine Hull Insurance

46 CFR part 272—Requirements and Procedures for Conducting Condition Surveys and Administering Maintenance and Repair Subsidy

46 CFR part 287—Establishment of Construction Reserve Funds

46 CFR part 289—Insurance of Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels, and of Vessels Sold or Adjusted Under the Merchant Ship Sales Act of 1946

46 CFR part 295—Maritime Security Program (MSP)

46 CFR part 296—Maritime Security Program (MSP)

46 CFR part 308—War Risk Insurance

46 CFR part 309—War Risk Ship Valuation

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR part 178 | 2008 | 2009 |
| 2 | 49 CFR parts 178 through 180 | 2009 | 2010 |
| 3 | 49 CFR parts 172 and 175 | 2010 | 2011 |
| 4 | 49 CFR part 171, sections 171.15 and 171.16 | 2011 | 2012 |
| 5 | 49 CFR parts 106, 107, 171, 190, and 195 | 2012 | 2013 |
| 6 | 49 CFR parts 174, 177, 191, and 192 | 2013 | 2014 |
| 7 | 49 CFR parts 176 and 199 | 2014 | 2015 |
| 8 | 49 CFR parts 172 through 178 | 2015 | 2016 |
| 9 | 49 CFR parts 172, 173, 174, 176, 177, and 193 | 2016 | 2017 |
| 10 | 49 CFR parts 173 and 194 | 2017 | 2018 |

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed During the Next Year**

49 CFR section 171.15—Immediate Notice of Certain Hazardous Materials Incidents

49 CFR section 171.16—Detailed Hazardous Materials Incident Reports

**Year 3 (Fall 2010) List of Rules Analyzed and a Summary of Results**

49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans.

- Section 610: There is no SEIOSNOSE. A substantial number of small entities may be affected by this rule, but the economic impact on those entities is not significant.
- Plain Language: PHMSA's plain language review of this rule indicates no need for substantial revision. Where confusing or wordy language has been identified, revisions have been and will be made to simplify.
- General: This rule prescribes minimum requirements for the communication of risks associated with materials classed as hazardous in accordance with the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). The rule also includes security planning and training requirements for the safe and secure transportation of hazardous materials in commerce. On March 9, 2010, PHMSA published a final rule entitled ''Risk-Based Adjustment of Transportation Security Plan Requirements'' (75 FR 10974). PHMSA determined that 10,119 entities would no longer be subject to current security plan and associated in-depth training requirements. The annual benefit resulting from the final rule is estimated to be about $3.6 million–$2.8 million in avoided costs related to development of security plans and $0.8 million in costs savings for associated training. 49 CFR part 175—Carriage by Aircraft
- Section 610: There is no SEIOSNOSE. This rule prescribes minimum safety standards for the transportation of hazardous materials aboard aircraft. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: PHMSA's plain language review of this rule indicates no need for substantial revision.
- General: The requirements in this rule are necessary to protect air transportation workers and the traveling public from the dangers associated with hazardous materials incidents aboard aircraft.

*Research and Innovative Technology Administration (RITA)*

SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 14 CFR part 241, form 41 | 2008 | 2009 |
| 2 | 14 CFR part 241, schedule T–100, and part 217 | 2009 | 2010 |
| 3 | 14 CFR part 298 | 2010 | 2011 |
| 4 | 14 CFR part 241, section 19–7 | 2011 | 2012 |
| 5 | 14 CFR part 291 | 2012 | 2013 |
| 6 | 14 CFR part 234 | 2013 | 2014 |
| 7 | 14 CFR part 249 | 2014 | 2015 |
| 8 | 14 CFR part 248 | 2015 | 2016 |
| 9 | 14 CFR part 250 | 2016 | 2017 |
| 10 | 14 CFR part 374a, ICAO | 2017 | 2018 |

**Year 1 (Fall 2008) List of Rules With Ongoing Analysis**

14 CFR part 241—Uniform System of Accounts and Reports for Large Certificated Air Carriers, Form 41

**Year 3 (Fall 2010) List of Rules With Ongoing Analysis**

14 CFR part 298 subpart f—Exemptions for Air Taxi and Commuter Air Carrier Operations—Reporting Requirements

**Year 4 (Fall 2011) List of Rules That Will Be Analyzed During the Next Year**

14 CFR part 241, section 19–7—Passenger Origin-Destination Survey

*Saint Lawrence Seaway Development Corporation*

## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 33 CFR parts 401 through 403 | 2008 | 2009 |

**Year 1 (Fall 2008) List of Rules With Ongoing Analysis**

33 CFR part 401—Seaway Regulations and Rules

33 CFR part 402—Tariff of Tolls

33 CFR part 403—Rules of Procedure of the Joint Tolls Review Board

## OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 405 | + Enhancing Airline Passenger Protections III (**Reg Plan Seq No. 104**) | 2105–AE11 |

+ DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## OFFICE OF THE SECRETARY—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 406 | + Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft | 2105–AD87 |

+ DOT-designated significant regulation.

## FEDERAL AVIATION ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 407 | + Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (**Reg Plan Seq No. 106**) | 2120–AJ00 |
| 408 | + Operation and Certification of Small Unmanned Aircraft Systems (SUAS) | 2120–AJ60 |
| 409 | + Repair Stations | 2120–AJ61 |
| 410 | + Air Carrier Maintenance Training Program (**Section 610 Review**) | 2120–AJ79 |

+ DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 411 | + Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments (**Reg Plan Seq No. 108**). | 2120–AJ53 |
| 412 | + Safety Management Systems for Certificate Holders (**Section 610 Review**) (**Reg Plan Seq No. 109**) | 2120–AJ86 |

+ DOT-designated significant regulation.
References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 413 | + Regulation Of Flight Operations Conducted By Alaska Guide Pilots | 2120–AJ78 |

+ DOT-designated significant regulation.

## FEDERAL AVIATION ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 414 | + Activation of Ice Protection | 2120–AJ43 |
| 415 | Damage Tolerance and Fatigue Evaluation for Metallic Structures | 2120–AJ51 |
| 416 | + Exiting Icing Conditions | 2120–AJ74 |

+ DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 417 | + Unified Registration System | 2126–AA22 |

+ DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 418 | + Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States. | 2126–AA35 |
| 419 | + Electronic On-Board Recorders and Hours of Service Supporting Documents | 2126–AB20 |

+ DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 420 | + Hours of Service | 2126–AB26 |
| 421 | + Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones (**Section 610 Review**) | 2126–AB29 |

+ DOT-designated significant regulation.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 422 | + Hazardous Materials: Revisions to Requirements for the Transportation of Lithium Batteries | 2137–AE44 |
| 423 | Hazardous Materials: Miscellaneous Amendments (RRR) (**Section 610 Review**) | 2137–AE78 |

+ DOT-designated significant regulation.

MARITIME ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 424 | + Cargo Preference—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties | 2133–AB75 |

+ DOT-designated significant regulation.

## DEPARTMENT OF TRANSPORTATION (DOT)

*Office of the Secretary (OST)*

Proposed Rule Stage

**405. • + Enhancing Airline Passenger Protections III**

*Regulatory Plan:* This entry is Seq. No. 104 in part II of this issue of the **Federal Register**.

*RIN:* 2105–AE11

## DEPARTMENT OF TRANSPORTATION (DOT)

*Office of the Secretary (OST)*

Final Rule Stage

**406. + Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft**

*Legal Authority:* 49 U.S.C. 41705

*Abstract:* This rulemaking would address whether carriers should be allowed to utilize the seat-strapping method to stow a passenger´s wheelchair in the aircraft cabin.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/03/11 | 76 FR 32107 |
| NPRM Comment Period End. | 08/02/11 | |
| Final Rule | 08/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–9342, *TDD Phone:* 202 755–7687, *Fax:* 202 366–7152, *Email: blane.workie@ost.dot.gov*.

*RIN:* 2105–AD87

BILLING CODE 4910– 9X –P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Proposed Rule Stage

**407. + Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers**

*Regulatory Plan:* This entry is Seq. No. 106 in part II of this issue of the **Federal Register**.

*RIN:* 2120–AJ00

**408. + Operation and Certification of Small Unmanned Aircraft Systems (SUAS)**

*Legal Authority:* 49 U.S.C. 44701

*Abstract:* This rulemaking would enable small unmanned aircraft to safely operate in limited portions of the national airspace system (NAS). This action is necessary because it addresses the novel legal or policy issues about the minimum safety parameters for

operating recreational remote control model and toy aircraft in the NAS. The intended effect of this action is to develop requirements and standards to ensure that risks are adequately mitigated, such that safety is maintained for the entire aviation community.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephen A Glowacki, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 385–4898, *Email: stephen.a.glowacki@faa.gov.*

*RIN:* 2120–AJ60

**409. + Repair Stations**

*Legal Authority:* 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44702; 49 U.S.C. 44707; 49 U.S.C. 44709; 49 U.S.C. 44717

*Abstract:* This rulemaking would update and revise the regulations for repair stations. The action is necessary because many portions of the current regulations do not reflect current repair station business practices, aircraft maintenance practices, or advances in aircraft technology.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John J Goodwin, Department of Transportation, Federal Aviation Administration, 950 L'Enfant Plaza North, SW., Washington, DC 20024, *Phone:* 202 385–6417, *Email: john.j.goodwin@faa.gov.*

*RIN:* 2120–AJ61

**410. + Air Carrier Maintenance Training Program (Section 610 Review)**

*Legal Authority:* 49 U.S.C. 44101; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 41706; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709 to 47111; 49 U.S.C. 44713; 49 U.S.C. 44715; 49 U.S.C. 44716; 49 U.S.C. 44717; 49 U.S.C. 44722; 49 U.S.C. 46105

*Abstract:* This rulemaking would require FAA approval of maintenance training programs of air carriers that operate aircraft type certificated for a passenger seating configuration of 10 seats or more (excluding any pilot seat). The intent of this rulemaking is to reduce the number of accidents and incidents caused by human error, improper maintenance, inspection, or repair practices.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John J Hiles, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 950 L'Enfant Plaza North, SW., Washington, DC 20591, *Phone:* 202 385–6421, *Email: john.j.hiles@faa.gov.*

*RIN:* 2120–AJ79

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Final Rule Stage

**411. + Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments**

*Regulatory Plan:* This entry is Seq. No. 108 in part II of this issue of the **Federal Register**.

*RIN:* 2120–AJ53

**412. + Safety Management Systems for Certificate Holders (Section 610 Review)**

*Regulatory Plan:* This entry is Seq. No. 109 in part II of this issue of the **Federal Register**.

*RIN:* 2120–AJ86

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Long-Term Actions

**413. + Regulation of Flight Operations Conducted by Alaska Guide Pilots**

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 1155; 49 U.S.C. 40101 to 40103; 49 U.S.C. 40113; 49 U.S.C. 40120; 49 U.S.C. 44101; 49 U.S.C. 44105 to 44016; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903 to 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 46103; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315 to 46316; 49 U.S.C. 46504; 49 U.S.C. 46506 to 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531; Articles 12 and 29 of 61 Sta 1180

*Abstract:* This rulemaking would establish general operating and flight rules applicable to the flight operations conducted by Alaska guide pilots. The rulemaking would implement legislation.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/13 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20785, *Phone:* 202 385–9615, *Email: jeffrey.smith@faa.gov.*

*RIN:* 2120–AJ78

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Completed Actions

**414. + Activation of Ice Protection**

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 44101; 49 U.S.C. 44701; 49 U.S.C. 44705; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 44716; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44912; 49 U.S.C. 46105; 49 U.S.C. 44702; 49 U.S.C. 44717; 49 U.S.C. 44904

*Abstract:* This rulemaking would amend the regulations applicable to operators of certain airplanes used in air carrier service and certificated for flight in icing conditions. The standards would require either the installation of ice detection equipment or changes to the Airplane Flight Manual to ensure timely activation of the airframe ice protection system. This regulation is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/23/09 | 74 FR 61055 |
| NPRM Comment Period End. | 02/22/10 | |
| Final Rule ..... | 08/22/11 | 76 FR 52241 |
| Final Rule Effective. | 10/21/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jerry Ostronic, Air Carrier Operations Branch, AFS 220, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202–267–8166, *Fax:* 202–267–5229, *Email: jerry.c.ostronic@faa.gov.*

*RIN:* 2120–AJ43

**415. Damage Tolerance and Fatigue Evaluation for Metallic Structures**

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44704; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44704

*Abstract:* The rule addresses advances in structural fatigue tolerance evaluation of transport category rotorcraft metallic structure and provide an increased level of safety by avoiding or reducing catastrophic fatigue failures of metallic rotorcraft structures.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/12/10 | 75 FR 11799 |
| NPRM Comment Period Extended. | 05/05/10 | 75 FR 24501 |
| NPRM Comment Period End. | 06/10/10 | |
| NPRM Comment Period Extended End. | 07/30/10 | |
| Final Rule | 12/02/11 | 76 FR 75435 |
| Final Rule Effective. | 01/31/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sharon Miles, Regulations and Policy Group, Department of Transportation, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137, *Phone:* 817 222–5122, *Email: sharon.y.miles@faa.gov.*

*RIN:* 2120–AJ51

**416. + Exiting Icing Conditions**

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 44101; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709; 49 U.S.C. 44710; 49 U.S.C. 44711; 49 U.S.C. 44713; 49 U.S.C. 44716; 49 U.S.C. 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44912; 49 U.S.C. 46105

*Abstract:* This rulemaking would require operators of certain airplanes used in air carrier service and certificated for flight in icing conditions to: 1. enable the flightcrew to determine when the airplane is in large drop icing conditions, and 2. require follow-on flightcrew action in these conditions for certain airplanes with reversible flight controls for the pitch and/or roll axis. This rulemaking is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions. This rulemaking will be replaced by RIN 2120–AJ95.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Terminated | 06/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert Hettman, ANM–112, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057, *Phone:* 425 227–2683, *Email: robert.hettman@faa.gov.*

*RIN:* 2120–AJ74

BILLING CODE 4910– 13–P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Motor Carrier Safety Administration (FMCSA)*

Proposed Rule Stage

**417. + Unified Registration System**

*Legal Authority:* Pub. L. 104–88; 109 Stat 803, 888 (1995); 49 U.S.C. 13908; Pub. L. 109–159, sec 4304

*Abstract:* This rulemaking would replace three current identification and registration systems: the US DOT number identification system, the commercial registration system, and the financial responsibility system, with an online Federal unified registration system (URS). This program would serve as a clearinghouse and depository of information on, and identification of, brokers, freight forwarders, and others required to register with the Department of Transportation. The Agency is revising this rulemaking to address amendments directed by Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The replacement system for the Single State Registration System, which the ICC Termination Act originally directed be merged under URS, was addressed separately in RIN 2126–AB09. The cargo insurance portion of this rulemaking has been split off into RIN 2126–AB21.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 08/26/96 | 61 FR 43816 |
| ANPRM Comment Period End. | 10/25/96 | |
| NPRM | 05/19/05 | 70 FR 28990 |
| NPRM Comment Period End. | 08/17/05 | |
| Supplemental NPRM. | 10/26/11 | 76 FR 66506 |
| Supplemental NPRM Comment Period End. | 12/27/11 | |
| Analyzing Comments. | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Valerie Height, Management Analyst, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Policy Plans and Regulation (MC–PRR), 1200 New Jersey Ave. SE., Washington, DC 20590, *Phone:* 202 366–0901, *Email: valerie.height@dot.gov.*

*RIN:* 2126–AA22

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Motor Carrier Safety Administration (FMCSA)*

Long-Term Actions

**418. + Safety Monitoring System and Compliance Initiative for Mexico—Domiciled Motor Carriers Operating in the United States**

*Legal Authority:* Pub. L. 107–87, sec 350; 49 U.S.C. 113; 49 U.S.C. 31136; 49 U.S.C. 31144; 49 U.S.C. 31502; 49 U.S.C. 504; 49 U.S.C. 5113; 49 U.S.C. 521(b)(5)(A)

*Abstract:* This rule would implement a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY–2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental

impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003. FMCSA will determine the next steps to be taken after the pilot program on the long haul trucking provisions of NAFTA is completed.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/03/01 | 66 FR 22415 |
| NPRM Comment Period End. | 07/02/01 | |
| Interim Final Rule | 03/19/02 | 67 FR 12758 |
| Interim Final Rule Comment Period End. | 04/18/02 | |
| Interim Final Rule Effective. | 05/03/02 | |
| Notice of Intent To Prepare an EIS. | 08/26/03 | 68 FR 51322 |
| EIS Public Scoping Meetings. | 10/08/03 | 68 FR 58162 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dolores Macias, Acting Division Chief, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–2995, *Email: dolores.macias@dot.gov.*

*RIN:* 2126–AA35

**419. + Electronic On-Board Recorders and Hours of Service Supporting Documents**

*Legal Authority:* 49 U.S.C. 31502; 31136(a); Pub. L. 103.311; 49 U.S.C. 31137(a)

*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 the HMTAA within 60 days after the issuance of the writ and a final rule no later than 6 months after the issuance of the NPRM. The court granted the petition for writ of mandamus on September 30, 2010, ordering FMCSA to issue an NPRM on the supporting document regulations by December 30, 2010. At the request of the agency, the D.C. Circuit extended the deadline to January 31, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/01/11 | 76 FR 5537 |
| NPRM Comment Period End. | 02/28/11 | |
| NPRM Comment Period Extended. | 03/10/11 | 76 FR 13121 |
| Extended NPRM Comment Period End. | 05/23/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–5370, *Email: deborah.freund@dot.gov.*

*RIN:* 2126–AB20

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Motor Carrier Safety Administration (FMCSA)*

Completed Actions

**420. + Hours of Service**

*Legal Authority:* 49 U.S.C. 31502(b)

*Abstract:* This rulemaking changes the hours of service requirements for drivers operating a commercial motor vehicle transporting property. The requirement for this rulemaking was established on October 26, 2009, when 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 was held in abeyance pending the publication of an NPRM reevaluating the Hours of Service rule. Per subsequent agreement, the final rule will be published by October 28, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/29/10 | 75 FR 82170 |
| NPRM Comment Period End. | 02/02/11 | |
| NPRM; Notice of Availability of Supplemental Documents and Corrections; Extension of Comment Period. | 02/16/11 | 76 FR 8990 |
| Extended Comment Period End. | 03/02/11 | |
| NPRM Comment Period Reopened. | 05/29/11 | 76 FR 26681 |
| NPRM Comment Period Reopened End. | 06/08/11 | |
| Final Rule | 12/27/11 | 76 FR 81134 |
| Final Rule Effective. | 02/27/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Thomas Yager, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–4325, *Email: tom.yager@dot.gov.*

*RIN:* 2126–AB26

**421. + Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones (Section 610 Review)**

*Legal Authority:* Pub. L. 98–554

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/21/10 | 75 FR 80014 |
| NPRM Comment Period End. | 03/21/11 | |
| Final Rule | 12/02/11 | 76 FR 75470 |
| Final Rule Effective. | 01/03/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Mike Huntley, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety

Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–9209, *Email: michael.huntley@dot.gov*.

*RIN:* 2126–AB29

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

Proposed Rule Stage

### 422. + Hazardous Materials: Revisions to Requirements for the Transportation of Lithium Batteries

*Legal Authority:* 49 U.S.C. 5101 *et seq.*

*Abstract:* This rulemaking would amend the Hazardous Materials Regulations (HMR) to comprehensively address the safe transportation of lithium cells and batteries. The intent of the rulemaking is to strengthen the current regulatory framework by imposing more effective safeguards. The rulemaking responds to several recommendations issued by the National Transportation Safety Board.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/11/10 | 75 FR 1302 |
| NPRM Comment Period End. | 03/12/10 | |
| Supplemental NPRM. | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kevin Leary, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–8553, *Email: kevin.leary@dot.gov*.

*RIN:* 2137–AE44

### 423. • Hazardous Materials: Miscellaneous Amendments (RRR) (Section 610 Review)

*Legal Authority:* 49 U.S.C. 5101 *et seq.*

*Abstract:* This rulemaking would update and clarify existing requirements by incorporating changes into the Hazardous Materials Regulations (HMR) based on PHMSA's own initiatives through an extensive review of the HMR and previously issued letters of interpretation. Specifically, among other provisions, PHMSA would provide for the continued use of approvals until final administrative action is taken, when a correct and completed application for approval renewal was received 60 days prior to expiration date; update various entries in the hazardous materials table and the corresponding special provisions; clarify the lab pack requirements for temperature controlled materials; correct an error in the HMR with regard to the inspection of cargo tank motor vehicles containing corrosive materials; and revise the training requirements to require that a hazardous materials employer ensure their hazardous materials employee training records are available upon request to an authorized official of the Department of Transportation or the Department of Homeland Security.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Robert Benedict, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–4506, *Email: robert.benedict@dot.gov*.

*RIN:* 2137–AE78

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Maritime Administration (MARAD)*

Completed Actions

### 424. + Cargo Preference—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

*Legal Authority:* Pub. L. 110–417

*Abstract:* This rulemaking would establish part 383 of the Cargo Preference regulations. This rulemaking would cover Public Law 110–417, section 3511, National Defense Authorization Act for FY 2009 statutory changes to the cargo preference rules, which have not been substantially revised since 1971. The rulemaking also would include compromise, assessment, mitigation, settlement, and collection of civil penalties. Originally MARAD had two separate rulemakings in process on cargo preference under RINs 2133–AB74 and 2133–AB75. The agency has decided that it would be more efficient to merge both efforts under one; this action is merged with RIN 2133–AB74.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Merged With RIN 2133–AB74. | 12/21/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Christine Gurland, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–5157, *Email: christine.gurland@dot.gov*.

*RIN:* 2133–AB75

[FR Doc. 2012–1653 Filed 2–10–12; 8:45 am]

BILLING CODE 4910–81–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XIV

## Department of the Treasury

Semiannual Regulatory Agenda

## DEPARTMENT OF THE TREASURY

### 31 CFR Subtitles A and B

### Semiannual Agenda and Fiscal Year 2012 Regulatory Plan

**AGENCY:** Department of the Treasury.

**ACTION:** Semiannual regulatory agenda and annual regulatory plan.

**SUMMARY:** This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order (EO) 12866 ''Regulatory Planning and Review,'' which require the publication by the Department of a semiannual agenda of regulations. EO 12866 also requires the publication by the Department of a regulatory plan for the upcoming fiscal year.

**FOR FURTHER INFORMATION CONTACT:** The Agency contact identified in the item relating to that regulation.

**SUPPLEMENTARY INFORMATION:** The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or bureau review. For this edition of the regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** publication that includes the Unified Agenda.

Beginning with the fall 2007 edition, the Internet has been the primary medium for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov* and *www.regulations.gov,* in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury's printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that have been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years.

The semiannual agenda and The Regulatory Plan of the Department of the Treasury conform to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

Dated: September 9, 2011.

**Brian J. Sonfield,**

*Deputy Assistant General Counsel for General Law and Regulation.*

FINANCIAL CRIMES ENFORCEMENT NETWORK—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 425 | Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access. | 1506–AB07 |

INTERNAL REVENUE SERVICE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 426 | Return Preparer Competency Examination User Fee | 1545–BK24 |
| 427 | Special Rules Under the Additional Medicare Tax | 1545–BK54 |

INTERNAL REVENUE SERVICE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 428 | Indoor Tanning Services; Cosmetic Services Excise Taxes | 1545–BJ40 |
| 429 | Modification of Treasury Regulations Pursuant to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (**Section 610 Review**). | 1545–BK27 |

INTERNAL REVENUE SERVICE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 430 | User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents | 1545–BJ65 |

## DEPARTMENT OF THE TREASURY (TREAS)

*Financial Crimes Enforcement Network (FINCEN)*

Completed Actions

### 425. Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5332

*Abstract:* The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury (Treasury), is proposing to revise the Bank Secrecy Act (BSA) regulations applicable to Money Services Businesses to include stored value or prepaid access. In this proposed rulemaking, we are reviewing the stored value/prepaid access regulatory framework with a focus on developing appropriate BSA regulatory oversight without impeding continued development of the industry, as well as improving the ability of FinCEN, other regulators and law enforcement to safeguard the U.S. financial system from the abuses of terrorist financing, money laundering, and other financial crimes.

The proposed changes are intended to address regulatory gaps that have resulted from the proliferation of prepaid innovations over the last 10 years and their increasing use as an accepted payment method. If these gaps are not addressed, there is increased potential for the use of prepaid access as a means for furthering money laundering, terrorist financing, and other illicit transactions through the financial system. This would significantly undermine many of the efforts previously taken by government and industry to safeguard the financial system through the application of BSA requirements to other areas of the financial sector.

While seeking to address vulnerabilities existing currently in the prepaid industry, FinCEN also intends for this proposed rule to provide the necessary flexibility to address new developments in technology, markets, and consumer behavior. This is important, in order to avoid creating artificial limits on a mechanism that can be an avenue to meet the financial services needs of the unbanked and the underbanked.

This rule proposes to subject certain providers of prepaid access to a comprehensive BSA regime. To make BSA reports and records valuable and meaningful, the proposed changes impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others in a unique position to provide meaningful information to regulators and law enforcement. More specifically, the proposed changes include the following: (1) Renaming ''stored value'' as ''prepaid access'' and defining that term; (2) deleting the terms ''issuer and redeemer'' of stored value; (3) imposing registration, suspicious activity reporting, and customer information recordkeeping requirements on providers of prepaid access, and new transactional recordkeeping requirements on both providers and sellers of prepaid access; and (4) exempting certain categories of prepaid access products and services posing lower risks of money laundering and terrorist financing from certain requirements.

FinCEN recognizes that the Credit CARD Act of 2009 mandated the increased regulation of prepaid access, as well as the consideration of the issue of international transport, and we will address these mandates, either through regulatory text or solicitation of comment in this rulemaking. In the course of our regulatory research into the operation of the prepaid industry, we have encountered a number of distinct issues, such as the appropriate obligations of payment networks and financial transparency at the borders, and we anticipate future rulemakings in these areas. We will seek to phase in any additional requirements, however, as the most prudent course of action for an evolving segment of the money services business (MSB) community.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Action ..... | 07/29/11 | 76 FR 45403 |
| Final Action Effective. | 09/27/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Elizabeth Baltierra, *Phone:* 703 905–5132, *Email: elizabeth.baltierra@fincen.gov*.

Koko (Nettie) Ives, *Phone:* 202 354–6014, *Email: koko.ives@fincen.gov*.

*RIN:* 1506–AB07

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY (TREAS)

*Internal Revenue Service (IRS)*

Proposed Rule Stage

### 426. • Return Preparer Competency Examination User Fee

*Legal Authority:* 26 U.S.C. 7805; 31 U.S.C. 9701

*Abstract:* This regulatory action proposes to establish a user fee to take the registered tax return preparer competency examination and a user fee to be fingerprinted based upon participation in the preparer tax identification number, acceptance agents, or authorized e-file provider programs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Emily M. Lesniak, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Room 5137, Washington, DC 20224, *Phone:* 202 622–4570, *Fax:* 202 622–4500, *Email: emily.m.lesniak@irscounsel.treas.gov*.

*RIN:* 1545–BK24

### 427. • Special Rules Under the Additional Medicare Tax

*Legal Authority:* 26 U.S.C. 3101; 26 U.S.C. 3102; 26 U.S.C. 6402; 26 U.S.C. 1401; 26 U.S.C. 6011; 26 U.S.C. 6205; 26 U.S.C. 6413; 26 U.S.C. 3111; 26 U.S.C. 3121; 26 U.S.C. 7805

*Abstract:* Proposed amendments of sections 31.3101, 31.3102, 31.3111, 31.3121, 1.1401, 31.6205, 31.6011, 31.6205, 31.6402, and 31.6413 of the Employment Tax Regulations provide guidance for employers and employees relating to the implementation of the Additional Medicare Tax, as enacted by the Affordable Care Act, and correction procedures for errors related to the Additional Medicare Tax.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sydney L. Gernstein, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Room 4311, Washington, DC 20224, *Phone:* 202 622–8473, *Fax:* 202 622–5697, *Email: sydney.l.gernstein@irscounsel.treas.gov*.

Ligeia M. Donis, General Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Room 4312, Washington, DC 20224, *Phone:* 202 622–0047, *Fax:* 202 622–5697, *Email:* *ligeia.m.donis@irscounsel.treas.gov*.

*RIN:* 1545–BK54

## DEPARTMENT OF THE TREASURY (TREAS)

*Internal Revenue Service (IRS)*

Final Rule Stage

### 428. Indoor Tanning Services; Cosmetic Services Excise Taxes

*Legal Authority:* 26 U.S.C. 6302(c); 26 U.S.C. 5000B; 26 U.S.C. 7805

*Abstract:* Proposed regulations provide guidance on the indoor tanning services tax made by the Patient Protection and Affordable Care Act of 2010, affecting users and providers of indoor tanning services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/15/10 | 75 FR 33740 |
| NPRM Comment Period End. | 09/13/10 | |
| Public Hearing—10/11/2011. | 03/03/11 | 76 FR 76677 |
| Outlines of Topics Due. | 09/28/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael H. Beker, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Room 5314, Washington, DC 20224, *Phone:* 202 622–3130, *Fax:* 202 622–4537, *Email:* *michael.h.beker@irscounsel.treas.gov*.

*RIN:* 1545–BJ40

### 429. • Modification of Treasury Regulations Pursuant to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 610 Review)

*Legal Authority:* 26 U.S.C. 7805

*Abstract:* The proposed regulations modify Treasury regulations to remove any reference to, or requirements of reliance on, credit ratings in such regulations and substitute in their place other standards of creditworthiness that the Treasury determines to be appropriate for such regulations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/06/11 | 76 FR 39341 |
| NPRM Comment Period End. | 08/30/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Arturo Estrada, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, *Phone:* 202 622–3900.

*RIN:* 1545–BK27

## DEPARTMENT OF THE TREASURY (TREAS)

*Internal Revenue Service (IRS)*

Completed Actions

### 430. User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

*Legal Authority:* 31 U.S.C. 9701

*Abstract:* These proposed regulations update and separate the user fees regarding enrolled agents and enrolled retirement plan agents. These regulations also impose user fees to take the competency examination to become a registered tax return preparer and to provide continuing education programs.

*Completed:*

| Action | Date | FR Cite |
|---|---|---|
| Final Action Completed by TD 9523. | 04/19/11 | 76 FR 21805 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Emily M. Lesniak, *Phone:* 202 622–4570, *Fax:* 202 622–4500, *Email:* *emily.m.lesniak@irscounsel.treas.gov*.

*RIN:* 1545–BJ65

[FR Doc. 2012–1654 Filed 2–10–12; 8:45 am]

BILLING CODE 4830–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XV

## Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Ch. XI

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities which may be conducted by the Agency during the next 12 months. This regulatory agenda may be revised by the Agency during the coming months as a result of action taken by the Board.

**ADDRESSES:** Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

**FOR FURTHER INFORMATION CONTACT:** For information concerning Board regulations and proposed actions, contact James J. Raggio, General Counsel, 202 272–0040 (voice) or 202 272–0034 (TTY).

**James J. Raggio,**

*General Counsel.*

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 431 ..... | Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles: Passenger Vessels. | 3014–AA11 |

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 432 ..... | Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Public Rights-of-Way. | 3014–AA26 |

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

*Proposed Rule Stage*

### 431. Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles: Passenger Vessels

*Legal Authority:* 42 U.S.C. 12204, Americans With Disabilities Act of 1990

*Abstract:* This regulation will amend the Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles to include additional requirements for ferries, excursion boats, and other passenger vessels.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent to Establish Advisory Committee. | 03/30/98 | 63 FR 15175 |
| Establishment of Advisory Committee. | 08/12/98 | 63 FR 43136 |
| Availability of Draft Guidelines. | 11/26/04 | 69 FR 69244 |
| ANPRM ..... | 11/26/04 | 69 FR 69246 |
| Comment Period Extended. | 03/22/05 | 70 FR 14435 |
| ANPRM Comment Period End. | 07/28/05 | |
| Availability of Draft Guidelines. | 07/07/06 | 71 FR 38563 |
| Notice of Intent to Establish Advisory Committee. | 06/25/07 | 72 FR 34653 |
| Establishment of Advisory Committee. | 08/13/07 | 72 FR 45200 |
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111, *Phone:* 202 272–0040, TDD *Phone:* 202 272–0062, *Fax:* 202 272–0081, *Email: raggio@access-board.gov.*

*RIN:* 3014–AA11

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

*Long-Term Actions*

### 432. Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Public Rights-of-Way

*Legal Authority:* 42 U.S.C. 12204, Americans With Disabilities Act; 29 U.S.C. 792, Rehabilitation Act

*Abstract:* This regulation will amend the accessibility guidelines for the Americans With Disabilities Act (ADA) and the Architectural Barriers Act to include requirements for public rights-of-way.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent to Form Advisory Committee. | 08/12/99 | 64 FR 43980 |
| Notice of Appointment of Advisory Committee Members. | 10/20/99 | 64 FR 56482 |
| Availability of Draft Guidelines. | 06/17/02 | 67 FR 41206 |
| Availability of Draft Guidelines. | 11/23/05 | 70 FR 70734 |
| NPRM ..... | 07/26/11 | 76 FR 44664 |
| NPRM Comment Period End. | 11/23/11 | |
| Final Action ..... | 12/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111, *Phone:* 202 272–0040, TDD *Phone:* 202 272–0062, *Fax:* 202 272–0081, *Email: raggio@access-board.gov.*

*RIN:* 3014–AA26

[FR Doc. 2012–1655 Filed 2–10–12; 8:45 am]

BILLING CODE 8150–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XVI

## Environmental Protection Agency

Semiannual Regulatory Agenda

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Ch. I

**[9467–6; EPA–HQ–OW–2010–0728]**

### Fall 2011 Regulatory Agenda

**AGENCY:** Environmental Protection Agency.

**ACTION:** Semiannual regulatory flexibility agenda and semiannual regulatory agenda.

**SUMMARY:** The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-Agenda) at *http://www.reginfo.gov* and at *www.regulations.gov* to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Rules and major policymakings completed or canceled since the last agenda.

*Definitions:*

''E-Agenda,'' ''online regulatory agenda,'' and ''semiannual regulatory agenda'' all refer to the same comprehensive collection of information that, until 2007, was published in the **Federal Register** but that now is only available through an online database.

''Regulatory Flexibility Agenda'' refers to a document that contains information about regulations that may have a significant impact on a substantial number of small entities. We continue to publish it in the **Federal Register** because that is what is required by the Regulatory Flexibility Act of 1980.

''Monthly Action Initiation List'' (AIL) refers to a list that EPA posts online each month of the regulations newly approved for development.

''Unified Regulatory Agenda'' refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center.

''Regulatory Agenda Preamble'' refers to the document you are reading now. It appears as part of the Regulatory Flexibility Agenda and introduces both the Regulatory Flexibility Agenda and the e-Agenda.

''Regulatory Development and Retrospective Review Tracker'' refers to an online portal to EPA's priority rules and retrospective reviews of existing regulations. More information about the Regulatory Development and Retrospective Review Tracker appears in section H of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the semiannual regulatory agenda, please contact: Caryn Muellerleile (*muellerleile.caryn@epa.gov;* 202 564–2855) or Phil Schwartz (*schwartz.philip@epa.gov;* 202 564–6564).

*To Be Placed on or Removed From a Mailing List for Updated Information on Rules Under Development:* If you would like to receive or discontinue receiving an email with a link to new semiannual regulatory agendas as soon as they are published, please send an email message with your name and address to: *Regulatory_Agenda@epa.gov* and state ''EPA E-Agenda: Add'' or ''EPA E-Agenda: Remove'' as appropriate in the subject line.

If you would like to regularly receive information about the rules newly approved for development, sign up for our monthly Action Initiation List by going to *http://www.epa.gov/lawsregs/regulations/ail.html#notification* and completing the steps listed there.

You can track progress on various aspects of EPA's priority rulemakings by signing up for RSS feeds from the Regulatory Development and Retrospective Review Tracker at *http://yosemite.epa.gov/opei/RuleGate.nsf/content/getalerts.html?opendocument.*

**SUPPLEMENTARY INFORMATION:**

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### A. Map of Regulatory Agenda Information

| Type of Information | Online Locations | **Federal Register** Location |
|---|---|---|
| Semiannual Regulatory Agenda | *www.reginfo.gov/ and www.regulations.gov* | Not in FR. |
| Semiannual Regulatory Flexibility Agenda | *www.reginfo.gov/ and http://www.regulations.gov* | Part XVI of today's issue. |
| Monthly Action Initiation List | *http://www.regulations.gov/#!docketDetail;D=EPA-HQ-O-2008-0265* and *http://www.epa.gov/lawsregs/regulations/ail.html.* | Not in FR. |
| Regulatory Development and Retrospective Review Tracker. | *www.epa.gov/regdarrt/* | Not in FR. |

### B. What Key Statutes and Executive Orders Guide EPA's Rule and Policymaking Process?

A number of environmental laws authorize EPA's actions, including but not limited to:

- Clean Air Act (CAA),
- Clean Water Act (CWA),
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund),
- Emergency Planning and Community Right-to-Know Act (EPCRA),
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
- Resource Conservation and Recovery Act (RCRA),
- Safe Drinking Water Act (SDWA), and
- Toxic Substances Control Act (TSCA).

Not only must EPA comply with environmental laws, but also administrative legal requirements that apply to the issuance of regulations, such as: the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the

National Technology Transfer and Advancement Act (NTTAA), and the Congressional Review Act (CRA).

EPA also meets a number of requirements contained in numerous Executive Orders: 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993), as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, Jan. 21, 2011); 12898, ''Environmental Justice'' (59 FR 7629, Feb. 16, 1994); 13045, ''Children's Health Protection'' (62 FR 19885, Apr. 23, 1997); 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999); 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000); 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition to meeting its mission goals and priorities as described above, EPA has begun reviewing its existing regulations under Executive Order (EO) 13563, ''Improving Regulation and Regulatory Review.'' This EO provides for periodic retrospective review of existing significant regulations and is intended to determine whether any such regulations should be modified, streamlined, expanded, or repealed, so as to make the Agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. More information about this review is described in EPA's Statement of Priorities in the Regulatory Plan.

**C. How Can You Be Involved in EPA's Rule and Policymaking Process?**

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. EPA encourages you to participate as early in the process as possible. You may also participate by commenting on proposed rules published in the **Federal Register** (FR).

Instructions on how to submit your comments are provided in each Notice of Proposed Rulemaking (NPRMs). To be most effective, comments should contain information and data that support your position, and you also should explain why EPA should incorporate your suggestion in the rule or nonregulatory action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

EPA believes its actions will be more cost effective and protective if the development process includes stakeholders working with us to help identify the most practical and effective solutions to problems. Democracy gives real power to individual citizens, but with that power comes responsibility. EPA encourages you to become involved in its rule and policymaking process. For more information about public involvement in EPA activities, please visit *www.epa.gov/open.*

**D. What Actions Are Included in the E-Agenda and the Regulatory Flexibility Agenda?**

EPA includes regulations and certain major policy documents in the e-Agenda. However, there is no legal significance to the omission of an item from the agenda, and EPA generally does not include the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers;
- Under the CAA: Revisions to state implementation plans; equivalent methods for ambient air quality monitoring; deletions from the new source performance standards source categories list; delegations of authority to states; area designations for air quality planning purposes;
- Under FIFRA: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins;
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations;
- Under RCRA: Authorization of State solid waste management plans; hazardous waste delisting petitions;
- Under the CWA: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States;
- Under SDWA: Actions on State underground injection control programs.

The Regulatory Flexibility Agenda includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the RFA. EPA is closing the 610 review for one rule in fall 2011.

**E. How Is the E-Agenda Organized?**

You can now choose how both the *www.reginfo.gov* and *www.regulations.gov* versions of the e-Agenda are organized. Current choices include: EPA subagency; stage of rulemaking, which is explained below; alphabetically by title; and by the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

*Stages of rulemaking include:*

1. Prerulemaking—Prerulemaking actions are generally intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as Advance Notices of Proposed Rulemaking (ANPRMs), studies or analyses of the possible need for regulatory action, announcement of reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals.

2. Proposed Rule—This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings [NPRMs]).

3. Final Rule—This section includes rules that will be issued as a final rule within a year.

4. Long-Term Actions—This section includes rulemakings for which the next scheduled regulatory action is after December 2012. We urge you to explore becoming involved even if an action is listed in the Long-Term category. By the time an action is listed in the Proposed Rules category you may have missed the opportunity to participate in certain public meetings or policy dialogues.

5. Completed Actions—This section contains actions that have been promulgated and published in the **Federal Register** since publication of the spring 2011 Agenda. It also includes actions that EPA is no longer considering. If an action appears in the completed section, it will not appear in future agendas unless the Agency decides to initiate the action again, in which case it will appear as a new entry. EPA also announces the results of the RFA section 610 reviews in this section of the agenda.

**F. What Information Is in the Regulatory Flexibility Agenda and the E-Agenda?**

The Regulatory Flexibility Agenda entries include only the nine categories of information that are required by the Regulatory Flexibility Act of 1980 and by **Federal Register** Agenda printing requirements: Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule and Contact Person. The e-Agenda has much more extensive information on these actions, including such things as email addresses and

Internet URLs for additional information.

E-Agenda entries include:

*Title:* Titles for new entries (those that have not appeared in previous agendas) are preceded by a bullet (•). The notation ''Section 610 Review'' follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the RFA (5 U.S.C. 610).

*Priority:* Entries are placed into one of five categories described below. OMB reviews all significant rules including both of the first two categories, ''economically significant'' and ''other significant.''

Economically Significant: Under Executive Order 12866, a rulemaking 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.

Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or

3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance Exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under EO 12866, then we would classify the action as either ''Economically Significant'' or ''Other Significant.''

Informational/Administrative/Other: An action that is primarily informational or pertains to an action outside the scope of EO 12866.

Also, if a rule may be ''Major'' as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.*) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, appears under the ''Priority'' heading with the statement ''Major under 5 U.S.C. 801.''

*Legal Authority:* The sections of the United States Code (U.S.C.), Public Law (PL), Executive Order (EO), or common name of the law that authorizes the regulatory action

*CFR Citation:* The sections of the Code of Federal Regulations that would be affected by the action.

*Legal Deadline:* An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

*Abstract:* A brief description of the problem the action will address.

*Timetable:* The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of developing an action. The projections in the agenda are best estimates as of the date we submit the agenda for publication. For some entries, the timetable indicates that the date of the next action is ''to be determined.''

*Regulatory Flexibility Analysis Required:* Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

*Small Entities Affected:* Indicates whether the rule is anticipated to have any effect on small businesses, small governments or small nonprofit organizations.

*Government Levels Affected:* Indicates whether the rule may have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

*Federalism Implications:* Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Unfunded Mandates:* Section 202 of UMRA generally requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If it is anticipated to exceed this $100 million threshold, we note it in this section.

*Energy Impacts:* Indicates whether the action is a significant energy action under EO 13211.

*Sectors Affected:* Indicates the main economic sectors regulated by the action. The regulated parties are identified by their North American Industry Classification System (NAICS) codes. These codes were created by the Census Bureau for collecting, analyzing, and publishing statistical data on the U.S. economy. There are more than 1,000 NAICS codes for sectors in agriculture, mining, manufacturing, services, and public administration.

*International Trade Impacts:* Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

*Agency Contact:* The name, address, phone number, and email address, if available, of a person who is knowledgeable about the regulation.

*Additional Information:* Other information about the action including docket information.

*URLs:* For some actions, the Internet addresses are included for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part. (Note: To submit comments on proposals, you can go to the associated electronic docket, which is housed at *www.regulations.gov.* Once there, follow the online instructions to access the docket in question and submit comments. A docket identification [ID] number will assist in the search for materials. EPA includes the docket number in most of the agenda entries of rulemakings that have already been proposed.)

*RIN:* The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action

## G. How Can You Find Out About Rulemakings That Start Up After the Regulatory Agenda Is Signed?

EPA posts monthly information of new rulemakings that the Agency's senior managers have decided that we should develop. This list is also distributed via email. You can see the current list, known as the Action Initiation List, at *http://www.epa.gov/lawsregs/regulations/ail.html* where you will also find information about how to

get an email notification when a new list is posted.

**H. What Tools for Mining Regulatory Agenda Data and for Finding More About EPA Rules and Policies Are Available at *Reginfo.gov, EPA.gov,* and *Regulations.gov?***

*1. The http://www.reginfo.gov/ Searchable Database*

The Regulatory Information Service Center and Office of Information and Regulatory Affairs have a Federal regulatory dashboard that allows users to view the Regulatory Agenda database (*http://www.reginfo.gov/public/do/eAgendaMain*), which includes powerful search, display, and data transmission options. At that site you can:

a. *See the preamble.* At the URL listed above for the Unified Agenda and Regulatory Plan, find ''Current Agenda Agency Preambles.'' Environmental Protection Agency is listed alphabetically under ''Other Executive Agencies.''

b. *Get a complete list of EPA's entries in the current edition of the Agenda.* Use the drop-down menu in the ''Select Agency'' box to find Environmental Protection Agency and ''Submit.''

c. *View the contents of all of EPA's entries in the current edition of the Agenda.* Choose ''Search'' from the ''Unified Agenda'' selection in the toolbar at the top of the page. Within the ''Search of Agenda/Regulatory Plan'' screen, open ''Advanced Search,'' then ''Continue.'' Select ''Environmental Protection Agency'' and ''Continue.'' Select ''Search,'' then ''View All RIN Data (Max 350).''

d. *Get a listing of entries with specified characteristics.* Follow the procedure described immediately above for viewing the contents of all entries, but on the screen entitled ''Advanced Search—Select Additional Fields,'' choose the characteristics you are seeking before ''Search.'' For example, if you wish to see a listing of all economically significant actions that may have a significant economic impact on a substantial number of small businesses, you would check ''Economically Significant'' under ''Priority'' and ''Business'' under ''Regulatory Flexibility Analysis Required.''

e. *Download the results of your searches in XML format.*

*2. Subject Matter EPA Web Sites*

Some actions listed in the Agenda include a URL that provides additional information.

*3. Public Dockets*

When EPA publishes either an Advance Notice of Proposed Rulemaking (ANPRM) or a NPRM in the **Federal Register**, the Agency typically establishes a docket to accumulate materials throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to a particular Agency action or activity. EPA most commonly uses dockets for rulemaking actions, but dockets may also be used for RFA section 610 reviews of rules with significant economic impacts on a substantial number of small entities and for various non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the PRA, and other non-rule activities. Docket information should be in that action's agenda entry. All of EPA's public dockets can be located at *www.regulations.gov.*

*4. EPA's Regulatory Development and Retrospective Review Tracker*

EPA's Regulatory Development and Retrospective Review Tracker (*www.epa.gov/regdarrt/*) serves as a portal to EPA's priority rules, providing you with earlier and more frequently updated information about Agency regulations than is provided by the Regulatory Agenda. It also provides information about retrospective reviews of existing regulations.

The Regulatory Development and Retrospective Review Tracker (Reg DaRRT) provides information as soon as work begins and provides updates on a monthly basis as new information becomes available. Time-sensitive information, such as notice of a public meeting, is updated on a daily basis. Not all of EPA's Regulatory Agenda entries appear on Reg DaRRT; only priority rulemakings can be found on this Web site.

**I. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities**

Section 610 of the RFA requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. EPA is closing the 610 review for one rule in fall 2011.

| Rule Reviewed | RIN | Docket ID No. |
|---|---|---|
| National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Section 610 Review). | 2040–AF24 | EPA–HQ–OW–2010–0728 |

EPA established an official public dockets for the 610 Review under the docket identification (ID) number indicated above. All documents in the dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available; e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202 566–1744.

**J. What Other Special Attention Does EPA Give to the Impacts of Rules on Small Businesses, Small Governments, and Small Nonprofit Organizations?**

For each of EPA's rulemakings, consideration is given whether there will be any adverse impact on any small entity. EPA attempts to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under RFA as amended by SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's

policy and practice with respect to implementing RFA/SBREFA, please visit the RFA/SBREFA Web site at *http://www.epa.gov/sbrefa/.*

For a list of the rules under development for which a Regulatory Flexibility Analysis will be required, go to *http://www.regulations.gov/public/component/main?main=UnifiedAgenda* and click on Regulatory Flexibility Analysis—Required toward the bottom of the page.

**K. Thank You for Collaborating With Us**

Finally, we would like to thank those of you who choose to join with us in making progress on the complex issues involved in protecting human health and the environment. Collaborative efforts such as EPA's open rulemaking process are a valuable tool for addressing the problems we face, and the regulatory agenda is an important part of that process.

Dated: September 9, 2011.

**Shannon Kenny,**

*Acting Principal Deputy Associate Administrator, Office of Policy.*

## Clean Air Act—Proposed Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 433 | Revision of New Source Performance Standards for New Residential Wood Heaters | 2060–AP93 |
| 434 | National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review (RTR) for the Mineral Wool and Wool Fiberglass Industries. | 2060–AQ90 |
| 435 | National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration (**Reg Plan Seq No. 128**). | 2060–AR13 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## Clean Air Act—Final Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 436 | Implementation of the 1997 8-Hr Ozone NAAQS: Classification of Subpart 1 Areas and Revision to Anti-Backsliding Provisions; Deletion of Obsolete 1-Hr Ozone Standard Provisions. | 2060–AO96 |
| 437 | National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (**Reg Plan Seq No. 143**). | 2060–AP52 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## Clean Air Act—Long-Term Actions

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 438 | SAN No. 5367 NESHAP: Brick and Structural Clay Products and Clay Products | 2060–AP69 |

## Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Long-Term Actions

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 439 | Pesticides; Reconsideration of Exemptions for Insect Repellents | 2070–AJ45 |

## Toxic Substances Control Act (TSCA)—Proposed Rule Stage

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 440 | Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings (**Reg Plan Seq No. 136**). | 2070–AJ56 |
| 441 | Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products (**Reg Plan Seq No. 134**). | 2070–AJ44 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## Toxic Substances Control Act (TSCA)—Completed Actions

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 442 | Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program | 2070–AJ57 |

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 443 ..... | Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry. | 2050–AG61 |

CLEAN WATER ACT—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 444 ..... | Stormwater Regulations Revision To Address Discharges From Developed Sites (**Reg Plan Seq No. 138**) | 2040–AF13 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

SAFE DRINKING WATER ACT (SDWA)—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 445 ..... | National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Section 610 Review) (**Completion of a Section 610 Review**). | 2040–AF24 |

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Clean Air Act*

Proposed Rule Stage

### 433. Revision of New Source Performance Standards for New Residential Wood Heaters

*Legal Authority:* CAA sec 111(b)(1)(B)

*Abstract:* EPA is revising the New Source Performance Standards (NSPS) for new residential wood heaters. This action is necessary because it updates the 1988 NSPS to reflect significant advancements in wood heater technologies and design, broaden the range of residential wood heating appliances covered by the regulation, and improve and streamline implementation procedures. This rule is expected to require manufacturers to redesign wood heaters to be cleaner and lower emitting. In general, the design changes would also make the heaters perform better and be more efficient. The revisions are also expected to retain the requirement for manufacturers to contract for testing of model lines by third-party independent laboratories, report the results to EPA, and label the models accordingly. New residential hydronic heaters and forced-air furnaces and new residential masonry heaters would also be regulated by this action. These standards would apply only to new residential wood heaters and not to existing residential wood heating appliances.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/00/12 | |
| Final Action ..... | 07/00/13 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gil Wood, Environmental Protection Agency, Air and Radiation, C404–05, Research Triangle Park, NC 27711, *Phone:* 919 541–5272, *Fax:* 919 541–0242, *Email: wood.gil@epa.gov.*

David Cole, Environmental Protection Agency, Air and Radiation, C404–05, Research Triangle Park, NC 27711, *Phone:* 919 541–5565, *Fax:* 919 541–0242, *Email: cole.david@epa.gov.*

*RIN:* 2060–AP93

### 434. National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review (RTR) for the Mineral Wool and Wool Fiberglass Industries

*Legal Authority:* 42 U.S.C. 7401

*Abstract:* The Maximum Achievable Control Technology (MACT) standard for Mineral Wool Production was promulgated on June 1, 1999, and the MACT for Wool Fiberglass Production was promulgated on June 14, 1999. The Clean Air Act requires EPA to evaluate the risk remaining to human health within eight years of promulgation of each MACT standard. Along with risk, the EPA is also required to review new technology in the industry that can reduce hazardous air pollutant (HAP) emissions from regulated sources in the industry, and may consider costs under this technology review. EPA is addressing these Clean Air Act requirements under a combined risk and technology review (RTR).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/25/11 | 76 FR 72770 |
| NPRM Comment Period End. | 01/24/12 | |
| Final Action ..... | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Susan Fairchild, Environmental Protection Agency, Air and Radiation, D–243–04, Research Triangle Park, NC 27711, *Phone:* 919 541–5167, *Fax:* 919 541–3207, *Email: fairchild.susan@epamail.epa.gov.*

Keith Barnett, Environmental Protection Agency, Air and Radiation, 1200 Pennsylvania Ave, Research Triangle Park, NC 20460, *Phone:* 919 541–5605, *Fax:* 919 541–3720, *Email: barnett.keith@epa.gov.*

*RIN:* 2060–AQ90

### 435. • National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Reconsideration

*Regulatory Plan:* This entry is Seq. No. 128 in part II of this issue of the **Federal Register**.

*RIN:* 2060–AR13

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Clean Air Act*

Final Rule Stage

### 436. Implementation of the 1997 8-Hr Ozone NAAQS: Classification of Subpart 1 Areas and Revision to Anti-Backsliding Provisions; Deletion of Obsolete 1-Hr Ozone Standard Provisions

*Legal Authority:* 42 U.S.C. 7410; 42 U.S.C. 7511 to 7511f; 42 U.S.C. 7601(a)(1)

*Abstract:* This final action would revise the rule for implementation of the 1997 8-hour ozone national ambient air quality standard (NAAQS) to address several issues vacated by the U.S. Circuit Court of Appeals for the District of Columbia Circuit. The rulemaking would remove the portions of the regulatory text vacated by the Court. The rule would also address: (1) The classification system for nonattainment areas that the implementation rule originally covered under Clean Air Act (CAA) title I, part D, subpart 1; and (2) contingency measures that apply as anti-backsliding measures under the now-revoked 1-hour standard. The rule would also remove an obsolete provision in the 1-hour ozone standard itself (40 CFR 50.9(c)).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/16/09 | 74 FR 2936 |
| NPRM Comment Period End. | 02/17/09 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lynn Dail, Environmental Protection Agency, Air and Radiation, C539–01, Research Triangle Park, NC 27711, *Phone:* 919 541–2363, *Fax:* 919 541–0824, *Email: dail.lynn@epamail.epa.gov.*

Rich Damberg, Environmental Protection Agency, Air and Radiation, C539–01, Research Triangle Park, NC 20460, *Phone:* 919 541–5592, *Fax:* 919 541–0824, *Email: damberg.rich@epamail.epa.gov.*

*RIN:* 2060–AO96

### 437. National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units

*Regulatory Plan:* This entry is Seq. No. 143 in part II of this issue of the **Federal Register**.

*RIN:* 2060–AP52

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Clean Air Act*

Long-Term Actions

### 438. NESHAP: Brick and Structural Clay Products and Clay Products

*Legal Authority:* Not Yet Determined

*Abstract:* This rulemaking will establish emission limits for hazardous air pollutants (HF, HCl and metals) emitted from brick and clay ceramics kilns and glazing operations at clay ceramics production facilities. The brick and structural clay products industry primarily includes facilities that manufacture brick, clay, pipe, roof tile, extruded floor and wall tile, and other extruded dimensional clay products from clay, shale, or a combination of the two. The manufacturing of brick and structural clay products involves mining, raw material processing (crushing, grinding, and screening), mixing, forming, cutting or shaping, drying, and firing. Ceramics are defined as a class of inorganic, nonmetallic solids that are subject to high temperature in manufacture and/or use. The clay ceramics manufacturing source category includes facilities that manufacture traditional ceramics, which include ceramic tile, dinnerware, sanitary ware, pottery, and porcelain. The primary raw material used in the manufacture of these traditional ceramics is clay. The manufacturing of clay ceramics involves raw material processing (crushing, grinding, and screening), mixing, forming, shaping, drying, glazing, and firing.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | To Be Determined | |
| Final Action ..... | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Telander, Environmental Protection Agency, Air and Radiation, D243–02, Research Triangle Park, NC 27711, *Phone:* 919 541–5427, *Fax:* 919 541–5600, *Email: telander.jeff@epamail.epa.gov.*

Steve Fruh, Environmental Protection Agency, Air and Radiation, D243–02, Research Triangle Park, NC 27711, *Phone:* 919 541–2837, *Fax:* 919 541–4991, *Email: fruh.steve@epa.gov.*

*RIN:* 2060–AP69

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*

Long-Term Actions

### 439. Pesticides; Reconsideration of Exemptions for Insect Repellents

*Legal Authority:* 7 U.S.C. 136(a); 7 U.S.C. 136(w)

*Abstract:* EPA is developing rulemaking to modify the minimum risk pesticides exemption under 40 CFR 152.25(f) to exclude personally applied insect repellents from the exemption and require an abbreviated data set for such products. EPA is taking this action because these pesticides claim to control pests of significant public health importance.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 02/00/13 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kathryn Boyle, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7506P, Washington, DC 20460, *Phone:* 703 305–6304, *Fax:* 703 305–5884, *Email: boyle.kathryn@epa.gov.*

Niva Kramek, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7506P, Washington, DC 20460, *Phone:* 703 605–1193, *Fax:* 703 305–5884, *Email: kramek.niva@epa.gov.*

*RIN:* 2070–AJ45

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Toxic Substances Control Act (TSCA)*

Proposed Rule Stage

### 440. Lead; Renovation, Repair, And Painting Program for Public and Commercial Buildings

*Regulatory Plan:* This entry is Seq. No. 136 in part II of this issue of the **Federal Register**.

*RIN:* 2070–AJ56

### 441. Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products

*Regulatory Plan:* This entry is Seq. No. 134 in part II of this issue of the **Federal Register**.

*RIN:* 2070–AJ44

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Toxic Substances Control Act (TSCA)*

Completed Actions

**442. Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program**

*Legal Authority:* 15 U.S.C. 2601(c); 15 U.S.C. 2682(c)(3); 15 U.S.C. 2684; 15 U.S.C. 2686; 15 U.S.C. 2687

*Abstract:* On May 6, 2010, EPA proposed a number of 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. For the final rule that was promulgated on August 5, 2011, EPA decided not to promulgate dust wipe testing and clearance requirements as proposed. However, EPA promulgated several other revisions to the RRP rule, including a provision allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis in lieu of using a lead test kit, minor changes to the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators. EPA also promulgated clarifications to the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the requirements for high-efficiency particulate air (HEPA) vacuums.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/06/10 | 75 FR 25038 |
| NPRM Extension of Comment Period. | 07/07/10 | 75 FR 38959 |
| Final Action | 08/05/11 | 76 FR 47918 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Cindy Wheeler, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, Washington, DC 20460, *Phone:* 202 566–0484, *Email: wheeler.cindy@epa.gov*.

Michelle Price, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, Washington, DC 20460, *Phone:* 202 566–0744.

*RIN:* 2070–AJ57

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Comprehensive Environmental Response, Compensation and Liability Act*

Long-Term Actions

**443. Financial Responsibility Requirements Under Cercla Section 108(B) for Classes of Facilities in the Hard Rock Mining Industry**

*Legal Authority:* 42 U.S.C. 9601 *et seq.;* 42 U.S.C. 9608 (b)

*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.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Priority Notice | 07/28/09 | 74 FR 37213 |
| NPRM | 04/00/13 | |
| Final Action | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ben Lesser, Environmental Protection Agency, Solid Waste and Emergency Response, 5302P, Washington, DC 20460, *Phone:* 703 308–0314, *Email: lesser.ben@epa.gov*.

David Hockey, Environmental Protection Agency, Solid Waste and Emergency Response, 5303P, Washington, DC 20460, *Phone:* 703 308–8846, *Email: hockey.david@epa.gov*.

*RIN:* 2050–AG61

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Clean Water Act*

Proposed Rule Stage

**444. Stormwater Regulations Revision to Address Discharges From Developed Sites**

*Regulatory Plan:* This entry is Seq. No. 138 in part II of this issue of the **Federal Register**.

*RIN:* 2040–AF13

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

*Safe Drinking Water Act (SDWA)*

Completed Actions

**445. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Section 610 Review) (Completion of a Section 610 Review)**

*Legal Authority:* 5 U.S.C. 610

*Abstract:* On January 22, 2001, EPA revised the Maximum Contaminant Level (MCL) for arsenic to 0.010 mg/L (10.0 μg/L). This regulation applies to non-transient non-community water systems and to community water systems (66 FR 6976). While EPA took steps to evaluate and mitigate impacts on small entities as part of the promulgation of the Arsenic Rule, EPA reviewed the National Primary Drinking Water Rule (NPDWR) for arsenic pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA considered and solicited comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. EPA has reviewed comments received in response to this review, which identified concerns related to the cost associated with treatment, disposal of waste streams, compliance determinations for the maximum contaminant level (MCL), risk communication and difficulty using alternative treatment technologies. EPA identified available resources to address these concerns and has made a determination not to revise the regulation at this time. See EPA's report summarizing the results of this review in the docket EPA–OW–2010–0728. This docket can be accessed at www.regulations.gov.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 01/22/01 | 66 FR 6976 |
| Initiate 610 Review. | 12/20/10 | 75 FR 79856 |
| End Comment Period. | 02/18/11 | |

| Action | Date | FR Cite |
|---|---|---|
| Completion of 610 Review. | 08/16/11 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Stephanie Flaharty, Environmental Protection Agency, Water, Environmental Protection Agency, Water, Mail Code 4601M, Washington, DC 20460, *Phone:* 202 564–5072, *Email:* *flaharty.stephanie@epa.gov*.

*RIN:* 2040–AF24

[FR Doc. 2012–1656 Filed 2–10–12; 8:45 am]

**BILLING CODE 6560–50–P**

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XVII

## General Services Administration

Semiannual Regulatory Agenda

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chs. 101, 102, 300, 301, and 302

### 48 CFR Ch. 5

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** General Services Administration (GSA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the spring 2011 edition. This agenda was developed under the guidelines of Executive Order 12866 ''Regulatory Planning and Review.'' GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. Proposed rules may be reviewed in their entirety at the Government's rulemaking Web site at *www.regulations.gov*.

Since the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov,* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA's regulatory plan.

**FOR FURTHER INFORMATION CONTACT:** Hada Flowers, Director, Regulatory Secretariat Division at 202 208–7282.

Dated: September 16, 2011.

**Kathleen M. Turco,**

*Associate Administrator, Office of Governmentwide Policy.*

Dated: September 8, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

Dated: September 6, 2011.

**Janet Dobbs,**

*Director, Office of Travel, Transportation & Asset Management.*

GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 446 | GSAR Case 2008–G517, Cooperative Purchasing—Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules. | 3090–AI68 |
| 447 | GSAR Case 2011–G503, Implementation of Information Technology Security Provision | 3090–AJ15 |

GENERAL SERVICES ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 448 | General Services Administration Acquisition Regulation; GSAR Case 2006–G507, Rewrite of Part 538, Federal Supply Schedule Contracting. | 3090–AI77 |

## GENERAL SERVICES ADMINISTRATION (GSA)

*Office of Acquisition Policy*

Final Rule Stage

### 446. GSAR Case 2008–G517, Cooperative Purchasing—Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules

*Legal Authority:* 40 U.S.C. 121(c); 40 U.S.C. 502(c)(1)(B)

*Abstract:* The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Public Law 110–248, The Local Preparedness Acquisition Act. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/19/08 | 73 FR 54334 |
| Interim Final Rule Comment Period End. | 11/18/08 | |
| Final Rule | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark, Procurement Analyst, General Services Administration, 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219–1813, *Email: william.clark@gsa.gov.*

*RIN:* 3090–AI68

*Office of Governmentwide Policy*

**447. GSAR Case 2011–G503, Implementation of Information Technology Security Provision**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration is issuing an interim rule amending the General Services Administration Acquisition Regulation (GSAR), part 507, Acquisition Planning; part 511.1, Selecting and Developing Requirement Documents; part 539, Acquisition of Information Technology; and part 552, Solicitation Provisions and Contract Clauses to implement policy and guidelines for contracts and orders that include information technology (IT) supplies, services and systems with security requirements.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/15/11 | 76 FR 34886 |
| Interim Final Rule Comment Period End. | 08/15/11 | |
| Final Action ..... | 01/06/12 | 77 FR 749 |
| Final Action Effective. | 01/06/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deborah Lague, Procurement Analyst, General Services Administration, 1275 First Street, NE., Washington, DC 20417, *Phone:* 202 694–8149, *Email: deborah.lague@gsa.gov.*

*RIN:* 3090–AJ15

## GENERAL SERVICES ADMINISTRATION (GSA)

*Office of Acquisition Policy*

Long-Term Actions

**448. General Services Administration Acquisition Regulation; GSAR Case 2006–G507, Rewrite of Part 538, Federal Supply Schedule Contracting**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 538 that provide requirements for Federal Supply Schedule Contracting actions. Areas included in the rewrite include the following: Subpart 538.1, Definitions; subpart 538.4, Administrative Matters; subpart 538.7, Acquisition Planning; subpart 538.9, Contractor Qualifications; subpart 538.12, Acquisition of Commercial Items-FSS; subpart 538.15, Negotiation and Award of Contracts; subpart 538.17, Administration of Evergreen Contracts; subpart 538.19, FSS and Small Business Programs; subpart 538.25, Requirements for Foreign Entities; subpart 538.42, Contract Administration and subpart 538.43, Contract Modifications.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/26/09 | 74 FR 4596 |
| NPRM Comment Period End. | 03/27/09 | |
| Final Rule ..... | 10/00/13 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deborah Lague, Procurement Analyst, General Services Administration, 1275 First Street NE., Washington, DC 20417, *Phone:* 202 694–8149, *Email: deborah.lague@gsa.gov.*

*RIN:* 3090–AI77

[FR Doc. 2012–1658 Filed 2–10–12; 8:45 am]

BILLING CODE 6820–34–P

# FEDERAL REGISTER

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Part XVIII

## National Aeronautics and Space Administration

Semiannual Regulatory Agenda

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Ch. V

### Regulatory Agenda

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** NASA's regulatory agenda describes those regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of the knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported.

**ADDRESSES:** Assistant Administrator for Internal Controls and Management Systems, Office of Institutions and Management, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Cheryl E. Parker, 202 358–0252.

**SUPPLEMENTARY INFORMATION:** OMB guidelines dated June 30, 2011; ''Fall 2011 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions'' require a regulatory agenda of those regulations under development and review to be published in the **Federal Register** each April and October. This edition of the Unified Agenda includes NASA's Statement of Regulatory Priorities, which appears in Part II of this issue of the **Federal Register**. The complete Unified Agenda will be published at *www.reginfo.gov.*

Dated: September 19, 2011.

**Lou Becker,**

*Assistant Administrator, for Internal Controls and Management Systems.*

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 449 ..... | Accessibility Standards for New Construction and Alterations in Federally-Assisted Programs (**Section 610 Review**). | 2700–AD85 |

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

*Final Rule Stage*

### 449. • Accessibility Standards for New Construction and Alterations in Federally-Assisted Programs (Section 610 Review)

*Legal Authority:* 29 U.S.C. 794—sec 504 of the Rehabilitation Act of 1973, amended

*Abstract:* The purpose of this rulemaking action is to update NASA's regulation (14 CFR 1251) implementing the federally-assisted provisions of section 504 of the Rehabilitation Act of 1973 (section 504), as amended, 29 U.S.C. section 794 which prohibits discrimination on the basis of disability by recipients of Federal Financial Assistance from NASA. Under Executive Order No. 12250, the United States Attorney General has the authority to coordinate the implementation and enforcement of a variety of civil rights statutes by Federal agencies such as NASA, including section 504. Recent rulemaking from the U.S. Department of Justice (DOJ) that revised the standards that determine whether structural elements of buildings and facilities are accessible to individuals with disabilities requires NASA to revise its section 504 regulations in alignment with DOJ's implementing regulations incorporating the new accessibility standards.

On September 15, 2010, DOJ issued revised regulations under title II (28 CFR part 35) and title III (28 CFR part 36) of the Americans with Disabilities Act (ADA), including the promulgation of revised Standards for Accessible Design (commonly referred to as ''2010 Standards''). See 75 FR 56164 and 56236. On March 11, 2011, DOJ published certain corrections to the revised regulations. See 75 FR 13385 and 13286. The revised ADA title II and title III regulations became effective on March 15, 2011, and are published in the 2011 edition of the Code of Federal Regulations. However, the 2010 Standards are not required for new construction and alteration projects until March 15, 2012. See 28 CFR sections 35.151(c)(2) and 36.406(a)(2). On March 15, 2012, the 2010 Standards will replace the Uniform Federal Accessibility Standards (UFAS) as the accessibility standards for new construction, alterations, program accessibility, and barrier removal under the ADA, and consequently, for section 504. Currently, the accessibility standard implemented by NASA for its federally assisted programs under section 504 is UFAS, which is located at 14 CFR 1251.302. As a result of DOJ's rulemaking actions, NASA proposes to: (1) Replace UFAS with the 2010 Standards as the accessibility standard under section 504; and (2) clarify the applicability of accessibility standards according to the time period when a recipient starts new construction or alterations on buildings and facilities. Accordingly, NASA proposes to revise 14 CFR 1251.302 and adopt the 2010 Standards effective March 15, 2012 as the only enforceable accessibility standard. NASA also proposes to revise 14 CFR 1251.302 to clarify that (1) any new construction or alterations commenced by a recipient before September 15, 2010, shall comply with UFAS; (2) any new construction or alterations commenced by a recipient on and after September 15, 2010, and before March 15, 2012, may comply with either UFAS or the 2010 standards; and (3) any new construction or alterations commenced by a recipient on or after March 15, 2012, shall comply with the 2010 Standards.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Final Rule ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Robert W. Cosgrove, External Compliance Manager, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546, *Phone:* 202 358–0446, *Fax:* 202 358–3336, *Email: robert.cosgrove@nasa.gov.*

*RIN:* 2700–AD85

[FR Doc. 2012–1659 Filed 2–10–12; 8:45 am]

BILLING CODE 7510–13–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XIX

## Small Business Administration

Semiannual Regulatory Agenda

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Ch. I

### Semiannual Regulatory Agenda

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This Regulatory Agenda is a semiannual summary of all current and projected rulemakings, existing regulations, and completed actions of the Small Business Administration (SBA). This agenda provides the public with information about SBA's regulatory activity. SBA expects that this information will enable the public to be more aware of, and effectively participate in, the SBA's regulatory activity. SBA invites the public to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:**

**General**

Please direct general comments or inquiries to Martin ''Sparky'' Conrey, Assistant General Counsel for Legislation and Appropriations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, 202 619–0638, *martin.conrey@sba.gov.*

**Specific**

Please direct specific comments and inquiries on individual regulatory activities identified in this agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

**SUPPLEMENTARY INFORMATION:** SBA provides this notice under the requirements of the Regulatory Flexibility Act, 5 U.S.C. sections 601 to 612 and Executive Order 12866, ''Regulatory Planning and Review,'' which require each agency to publish a semiannual agenda of regulations. The regulatory agenda is a summary of all current and projected rulemakings, as well as actions completed since the publication of the last Regulatory Agenda for the agency. SBA's last semiannual regulatory agenda was published on July 7, 2011, at 76 FR 40136. The semiannual agenda of the SBA conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Beginning with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov in a format that greatly enhances a user's ability to obtain information about the rules in the agency's Agenda.

The Regulatory Flexibility Act requires federal agencies to publish their regulatory flexibility agendas in the **Federal Register**. Therefore, SBA's printed agenda entries include regulatory actions that are in the SBA's regulatory flexibility agenda. A regulatory flexibility agenda contains, among other things, ''a brief description of the subject area of any rule, which is likely to have a significant economic impact on a substantial number of small entities.'' Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

Dated: September 9, 2011.

**Karen G. Mills,**

*Administrator.*

SMALL BUSINESS ADMINISTRATION—PRERULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 450 | Small Business Development Centers (SBDC) Program Revisions | 3245–AE05 |

SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 451 | Small Business Technology Transfer (STTR) Policy Directive (**Reg Plan Seq No. 148**) | 3245–AF45 |
| 452 | Small Business Innovation Research (SBIR) Program Policy Directive (**Reg Plan Seq No. 149**) | 3245–AF84 |
| 453 | SBA Express Loan Program; Export Express Program | 3245–AF85 |
| 454 | Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Expedited Disaster Assistance Program. | 3245–AF88 |
| 455 | Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Private Loan Disaster Program. | 3245–AF99 |
| 456 | 504 Regulatory Enhancements | 3245–AG04 |
| 457 | Small Business Jobs Act: Small Business Size Standards; Alternative Size Standard for 7(a) and 504 Business Loan Programs. | 3245–AG16 |
| 458 | Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation (**Reg Plan Seq No. 150**). | 3245–AG20 |
| 459 | Small Business Jobs Act: Subcontract Integrity | 3245–AG22 |
| 460 | Small Business Jobs Act: Small Business Size and Status Integrity | 3245–AG23 |
| 461 | Small Business Jobs Act: Small Business Mentor-Protégé Programs (**Reg Plan Seq No. 151**) | 3245–AG24 |
| 462 | Small Business Size Standards for Utilities Industries | 3245–AG25 |
| 463 | Small Business Size Standards; Information | 3245–AG26 |
| 464 | Small Business Size Standards; Administrative and Support, Waste Management and Remediation Services Industries. | 3245–AG27 |
| 465 | Small Business Size Standards: Real Estate, Rental and Leasing Industries | 3245–AG28 |
| 466 | Small Business Size Standards: Educational Services Industries | 3245–AG29 |
| 467 | Small Business Size Standards: Health Care and Social Assistance Services Industries | 3245–AG30 |
| 468 | Small Business Investment Companies—Early Stage SBICs | 3245–AG32 |
| 469 | Small Business Size Standards: Arts, Entertainment, and Recreation | 3245–AG36 |
| 470 | Small Business Size Standards: Construction | 3245–AG37 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 471 | Lender Oversight Program | 3245–AE14 |
| 472 | Small Business Size Standards: Professional, Scientific, and Technical Services | 3245–AG07 |
| 473 | Small Business Size Standards: Transportation and Warehousing Industries | 3245–AG08 |

SMALL BUSINESS ADMINISTRATION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 474 | Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008. | 3245–AF87 |
| 475 | Interest Rate—Resetting Fixed Interest Rate | 3245–AG03 |
| 476 | Small Business Size Standards for Loan, Investment, and Surety Programs | 3245–AG05 |
| 477 | Statement of Personal History (Form 912) Modification | 3245–AG11 |
| 478 | Small Business Jobs Act: Bundling and Contract Consolidation | 3245–AG21 |
| 479 | Small Business Size Standards: Application of Nonmanufacturer Rule to Processors and other Producers | 3245–AG31 |

## SMALL BUSINESS ADMINISTRATION (SBA)

*Prerule Stage*

### 450. Small Business Development Centers (SBDC) Program Revisions

*Legal Authority:* 15 U.S.C. 634(b)(6); 15 U.S.C. 648

*Abstract:* This rule would update Small Business Development Center (SBDC) program regulations by amending among things, the (1) procedures for approving and funding of SBDCs; (2) approval procedures for travel outside the continental U.S. and U.S. territories; (3) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (4) requirements for new and renewal applications for SBDC awards, including the requirements for electronic submission through the approved electronic Government submission facility; and (5) provisions regarding the collection and use of individual SBDC client data.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jean Z. Smith, Acting Associate Administrator, Office of Small Business Development Centers, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7262, *Fax:* 202 205–7272, *Email: jean.smith@sba.gov*.

*RIN:* 3245–AE05

## SMALL BUSINESS ADMINISTRATION (SBA)

*Proposed Rule Stage*

### 451. Small Business Technology Transfer (STTR) Policy Directive

*Regulatory Plan:* This entry is Seq. No. 148 in part II of this issue of the **Federal Register**.

*RIN:* 3245–AF45

### 452. Small Business Innovation Research (SBIR) Program Policy Directive

*Regulatory Plan:* This entry is Seq. No. 149 in part II of this issue of the **Federal Register**.

*RIN:* 3245–AF84

### 453. SBA Express Loan Program; Export Express Program

*Legal Authority:* 15 U.S.C. 636(a)(31) and (35)

*Abstract:* SBA plans to issue regulations for the SBA Express loan program codified in section 7(a)(31) of the Small Business Act. The SBA Express loan program reduces the number of Government mandated forms and procedures, streamlines the processing and reduces the cost of smaller, less complex SBA loans. Particular features of the SBA Express loan program include: (1) SBA Express loans carry a maximum SBA guaranty of 50 percent; (2) a response to an SBA Express loan application will be given within 36 hours; (3) lenders and borrowers can negotiate the interest rate, which may not exceed SBA maximums; and (4) qualified lenders may be granted authorization to make eligibility determinations. SBA also plans to issue regulations for the Export Express Program codified at 7(a)(35) of the Small Business Act. The Export Express Program, made permanent by the Small Business Jobs Act, makes guaranteed financing available for export development activities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov*.

*RIN:* 3245–AF85

### 454. Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Expedited Disaster Assistance Program

*Legal Authority:* 15 U.S.C. 636(j)

*Abstract:* This proposed rule would establish and implement an expedited disaster assistance business loan program under which the SBA will guarantee short-term loans made by private lenders to eligible small businesses located in a catastrophic disaster area. The maximum loan amount is $150,000, and SBA will guarantee timely payment of principal and interest to the lender. The maximum loan term will be 180 days, and the interest rate will be limited to 300 basis points over the Federal funds rate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov.*

*RIN:* 3245–AF88

**455. Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Private Loan Disaster Program**

*Legal Authority:* 15 U.S.C. 636

*Abstract:* This proposed rule would establish and implement a private disaster loan program under which SBA will guarantee loans made by qualified lenders to eligible small businesses and homeowners located in a catastrophic disaster area. Private disaster loans made under this program will have the same terms and conditions as SBA's direct disaster loans. In addition, SBA will guarantee timely payment of principal and interest to the lender. SBA may guarantee up to 85 percent of any loan under this program and the maximum loan amount is $2 million.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov.*

*RIN:* 3245–AF99

**456. 504 Regulatory Enhancements**

*Legal Authority:* 15 U.S.C. 695 *et seq.*

*Abstract:* SBA proposes to revise the regulations for the Agency's 504 Certified Development Company (CDC) Loan Program in order to (1) simplify processes and reduce the regulatory burdens on program participants while maintaining appropriate controls to mitigate risk; (2) increase opportunities for other nonprofit economic development entities to participate in the program either as independent CDCs or affiliates of CDCs, especially in communities not currently served; (3) expand the area of operations for CDCs from statewide to regional; (4) hold CDC Board of Directors more accountable for the CDCs economic development, financial strength, executive compensation and portfolio performance; (5) clarify current regulations; and (6) update the regulations with statutory requirements.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Andrew B. McConnell Jr., Chief, 504 Loan Program, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7238, *Email: andrew.mcconnell@sba.gov.*

*RIN:* 3245–AG04

**457. Small Business Jobs Act: Small Business Size Standards; Alternative Size Standard for 7(A) and 504 Business Loan Programs**

*Legal Authority:* Pub. L. 111–240, sec 1116

*Abstract:* SBA will amend its size eligibility criteria for Business Loans and for development company loans under title V of the Small Business Investment Act (504). For the SBA 7(a) Business Loan Program, the amendments will provide an alternative size standard for loan applicants that do not meet the small business size standards for their industries. For the 504 Program, the amendments will increase the current alternative standard for applicants for 504 loans. The Small Business Jobs Act of 2010 (Jobs Act) established alternative size standards that apply to both of these programs until the SBA's Administrator establishes other alternative size standards. This interim final rule will be effective when published because the alternative size standards that the Jobs Act established were effective September 27, 2010, the date of its enactment. These alternative size standards do not affect other Federal government programs, including Federal procurement.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG16

**458. Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation**

*Regulatory Plan:* This entry is Seq. No. 150 in part II of this issue of the **Federal Register**.

*RIN:* 3245–AG20

**459. Small Business Jobs Act: Subcontract Integrity**

*Legal Authority:* Pub. L. 111–240, secs 1321 and 1322, 1334

*Abstract:* The U.S. Small Business Administration is proposing regulations that address subcontracting compliance and the interrelationship between contracting offices, small business offices and program offices relating to oversight and review activities. The proposed regulation will also address the statutory requirement that a large business prime contractor must represent that it will make good faith efforts to award subcontracts to small businesses at the same percentage as indicated in the subcontracting plan submitted as part of its proposal for a contract and that if the percentage is not met, the large business prime contractor must provide a written justification and explanation to the contracting officer. Finally, the proposed regulation may also address the statutory requirement that a prime contractor must notify the contracting officer in writing if it has paid a reduced price to a subcontractor for goods and services or if the payment to the subcontractor is more than 90 days past due.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 10/05/11 | 76 FR 61626 |
| NPRM Comment Period End. | 12/05/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7322, *Fax:* 202 481–1540, *Email: dean.koppel@sba.gov.*

*RIN:* 3245–AG22

**460. Small Business Jobs Act: Small Business Size and Status Integrity**

*Legal Authority:* Pub. L. 111–240, sec 1341 and 1343

*Abstract:* The U.S. Small Business Administration is proposing regulations that will address the intentional misrepresentations of small business status as a ''presumption of loss against the Government.'' In addition, the

proposed rule will address the statutory requirement that no business may continue to certify itself as small on the Online Representation and Certifications Application (ORCA) without first providing an annual certification.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/07/11 | 76 FR 62313 |
| NPRM Comment Period End. | 11/07/11 | |
| NPRM Comment Period Extended. | 11/08/11 | 76 FR 69154 |
| NPRM Extended Comment Period End. | 12/08/11 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7322, *Fax:* 202 481–1540, *Email: dean.koppel@sba.gov.*

*RIN:* 3245–AG23

**461. Small Business Jobs Act: Small Business Mentor-Protégé Programs**

*Regulatory Plan:* This entry is Seq. No. 151 in part II of this issue of the **Federal Register**.

*RIN:* 3245–AG24

**462. Small Business Size Standards for Utilities Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 22, Utilities Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG25

**463. Small Business Size Standards; Information**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 51, Information Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/12/11 | 76 FR 63216 |
| NPRM Comment Period End. | 12/12/11 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG26

**464. Small Business Size Standards; Administrative and Support, Waste Management and Remediation Services Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/12/11 | 76 FR 63510 |
| NPRM Comment Period End. | 12/12/11 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG27

**465. Small Business Size Standards: Real Estate, Rental and Leasing Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 53, Real Estate, Rental and Leasing Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/15/11 | 76 FR 70680 |
| NPRM Comment Period End. | 01/17/12 | |
| Final Action | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG28

**466. Small Business Size Standards: Educational Services Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 61, Educational Services Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector.

SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 11/15/11 | 76 FR 70667 |
| NPRM Comment Period End. | 01/17/12 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG29

**467. Small Business Size Standards: Health Care and Social Assistance Services Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As part of this effort, SBA has evaluated each industry NAICS Sector 62, Health Care and Social Assistance Services Industries, and revised size standards for certain industries in the sector. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this purposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG30

**468. Small Business Investment Companies—Early Stage SBICS**

*Legal Authority:* 15 U.S.C. 636(a)(32)

*Abstract:* To address a critical market need for early stage equity financing, SBA proposes to license a limited number of Small Business Investment Companies (SBICs) each year that are focused on providing equity capital to seed and early stage small businesses. These SBICs would be designated as ''Innovation Funds.'' SBA leverage is available to SBICs through a debenture instrument, the structure of which was not designed to address the needs or circumstances of early stage investors, and thus presents certain repayment risks for such investors. However, with certain regulatory changes, the risk associated with providing debenture leverage to Innovation Funds may be significantly reduced. This rule would establish a number of regulatory provisions applicable to Innovation Funds for the purpose of managing overall program risk, including lower limits on maximum leverage eligibility and special distribution rules.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/09/11 | 76 FR 76907 |
| NPRM Comment Period End. | 02/07/12 | |
| Final Action ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Carol Fendler, Systems Accountant, Office of Investment, Small Business Administration, 409 Third Street SW., 6th Floor, Washington, DC 20416, *Phone:* 202 205–7559, *Email: carol.fendler@sba.gov*

*RIN:* 3245–AG32

**469. • Small Business Size Standards: Arts, Entertainment, and Recreation**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As a part of this effort, SBA has evaluated each industry NAICS Sector 71, Arts, Entertainment, and Recreation, and revised size standards for center industries in the sector. This is one of a series of proposed rules that will examine industries grouped by NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6390, *Fax:* 202 205–6390,

*RIN:* 3245–AG36

**470. • Small Business Size Standards: Construction**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA is conducting a comprehensive review of all small business size standards to determine whether the existing size standards should be retained or revised. As a part of this effort, SBA has evaluated each industry NAICS Sector 23, Construction, and revised size standards for center industries in the sector. This is one of a series of proposed rules that will examine industries grouped by NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6390, *Fax:* 202 205–6390.

*RIN:* 3245–AG37

## SMALL BUSINESS ADMINISTRATION (SBA)

*Final Rule Stage*

**471. Lender Oversight Program**

*Legal Authority:* 15 U.S.C. 634(5)(b)(6),(b)(7),(b)(14),(h) and note; 687(f),697(e)(c)(8), and 650

*Abstract:* This rule implements the Small Business Administration's (SBA) statutory authority under the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) to regulate Small Business Lending Companies (SBLCs) and non-federally regulated lenders (NFRLs). It also conforms SBA rules for the section 7(a) Business Loan Program and the Certified Development Company (CDC) Program.

In particular, this rule: (1) Defines SBLCs and NFRLs; (2) clarifies SBA's authority to regulate SBLCs and NFRLs; (3) authorizes SBA to set certain minimum capital standards for SBLCs, to issue cease and desist orders, and revoke or suspend lending authority of SBLCs and NFRLs; (4) establishes the Bureau of Premier Certified Lender

Program Oversight in the Office of Credit Risk management; (5) transfers existing SBA enforcement authority over CDCs from the Office of Financial Assistance to the appropriate official in the Office of Capital Access; and (6) defines SBA's oversight and enforcement authorities relative to all SBA lenders participating in the 7(a) and CDC programs and intermediaries in the Microloan program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/31/07 | 72 FR 61752 |
| NPRM Comment Period Extended. | 12/20/07 | 72 FR 72264 |
| NPRM Comment Period End. | 02/29/08 | |
| Interim Final Rule | 12/11/08 | 73 FR 75498 |
| Interim Final Rule Comment Period End. | 03/11/09 | |
| Interim Final Rule Effective. | 01/12/09 | |
| Final Action | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Eugene D Stewman, Acting Director, Office of Credit Risk Management, Small Business Administration, 409 3rd Street SW., Washington, DC 20416, *Phone:* 202 205–3049, *Email: eugene.stewman@sba.gov.*

*RIN:* 3245–AE14

**472. Small Business Size Standards: Professional, Scientific, and Technical Services**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The U.S. Small Business Administration (SBA) proposes to modify small business size standards for industries in the North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services. As part of its ongoing initiative to review all size standards, SBA will evaluate each industry in Sector 54 to determine whether the existing size standards should be retained or revised. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/16/11 | 76 FR 14323 |
| NPRM Comment Period End. | 05/16/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG07

**473. Small Business Size Standards: Transportation and Warehousing Industries**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The U.S. Small Business Administration (SBA) proposes to modify small business size standards for industries in the North American Industry Classification System (NAICS) Sector 48–49, Transportation and Warehousing Industries. As part of its ongoing initiative to review all size standards, SBA will evaluate each industry in Sector 48–49 to determine whether the existing size standards should be retained or revised. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/13/11 | 76 FR 27935 |
| NPRM Comment Period End. | 07/12/11 | |
| Final Action | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG08

## SMALL BUSINESS ADMINISTRATION (SBA)

*Completed Actions*

**474. Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008**

*Legal Authority:* 15 U.S.C. 632(q); 15 U.S.C. 636(j)

*Abstract:* SBA plans to issue regulations to implement section 205 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act. This Act provides that any time limitation on any qualification, certification, or period of participation imposed under the Small Business Act on any program that is available to small business concerns shall be extended for a small business concern that is owned and controlled by a veteran who was called or ordered to active duty or a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military duty. These regulations will provide guidance on tolling of time limitations for veteran-owned small businesses.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn | 10/24/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* LeAnn Delaney, *Phone:* 202 205–6731, *Email: leann.delaney@sba.gov.*

*RIN:* 3245–AF87

**475. Interest Rate—Resetting Fixed Interest Rate**

*Legal Authority:* 15 U.S.C. 634

*Abstract:* SBA currently offers either a fixed or variable interest rate for 7(a) loans. In addition to these rates, the Agency is working to develop a shorter term fixed interest rate with the ability to be re-set at periodic intervals. This type of rate is currently available in the commercial market place and will help provide additional options for small business borrowers. By authorizing this option, SBA is recognizing a need to allow lenders to utilize market opportunities.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn | 09/09/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov.*

*RIN:* 3245–AG03

**476. Small Business Size Standards for Loan, Investment, and Surety Programs**

*Legal Authority:* 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, 662(5)

*Abstract:* SBA currently sets different size standards for participation in its financial assistance programs. 7(a) borrowers use the standards set out for procurement programs or a temporary alternate standard; 504 borrowers may use the 7(a) standards or an alternate standard; SBIC investment may be made to small businesses that qualify through

another standard; and Surety Bond program participants must meet still different requirements. As part of an overall Agency program, SBA will review financial program eligibility regulations in order to update size eligibility requirements among these programs.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/09/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov.*

*RIN:* 3245–AG05

**477. Statement of Personal History (Form 912) Modification**

*Legal Authority:* 15 U.S.C. 634

*Abstract:* Form 912, Statement of Personal History, is required of certain responsible parties that have an interest in an SBA loan. Contained on this form among other information are various questions concerning past arrest records and or convictions. SBA will modify and clarify regulations concerning who needs to complete this form in an effort to simplify and accelerate the loan approval process.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/09/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Grady Hedgespeth, *Phone:* 202 205–7562, *Fax:* 202 481–0248, *Email: grady.hedgespeth@sba.gov.*

*RIN:* 3245–AG11

**478. Small Business Jobs Act: Bundling and Contract Consolidation**

*Legal Authority:* Pub. L. 111–240, sec 1312, 1313

*Abstract:* The U.S. Small Business Administration is proposing regulations that will set forth a government-wide policy on bundling, which will address teams and joint ventures of small businesses and the requirement that each federal agency must publish on its Web site the rationale for any bundled contract. In addition, the proposed regulations will address contract consolidation and the limitations on the use of such consolidation in Federal procurement to include ensuring that the head of a Federal agency may not carry out a consolidated contract over $2 million unless the Senior Procurement Executive or Chief Acquisition Officer ensures that market research has been conducted and determines that the consolidation is necessary and justified. Further, the proposed regulations will address two new pilot programs: the three year pilot program called the ''Electronic Procurement Center Representative (ePCR) Program'' and the Small Business Teaming Pilot Program for teaming and joint ventures involving small businesses.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/09/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dean R. Koppel, *Phone:* 202 205–7322, *Fax:* 202 481–1540, *Email: dean.koppel@sba.gov.*

*RIN:* 3245–AG21

**479. Small Business Size Standards: Application of Nonmanufacturer Rule to Processors and Other Producers**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* SBA will clarify that contracting officers may not categorize a Federal government procurement using a North American Industry Classification System (NAICS) code that designates a public entity (NAICS Sector 92) when they will award or anticipate awarding the contract to a private entity. Entities in Sector 92 cannot qualify as small business concerns because they are not organized for profit. SBA intends to further clarify how the non-manufacturer rule applies to supply contracts.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 09/09/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

*RIN:* 3245–AG31

[FR Doc. 2012–1660 Filed 2–10–12; 8:45 am]

BILLING CODE 8025–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XX

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

Semiannual Regulatory Agenda

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Ch. 1

## Semiannual Regulatory Agenda

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 ''Regulatory Planning and Review.'' This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking Web site at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Hada Flowers, Director, Regulatory Secretariat Division, Room 783E, 1275 First Street NE., Washington, DC 20417, (202) 501–4755.

**SUPPLEMENTARY INFORMATION:** DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs). The electronic version of the FAR, including changes, can be accessed on the FAR Web site at *http://www.acquisition.gov/far.*

Dated: September 9, 2011.

**Joseph A. Neurauter,**

*Director, Office of Acquisition Policy and Senior Procurement Executive.*

### DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 480 | FAR Case 2010–013, Privacy Training | 9000–AM02 |
| 481 | Basic Safeguarding of Contractor Information Systems | 9000–AM10 |
| 482 | FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements. | 9000–AL21 |
| 483 | FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures | 9000–AL63 |
| 484 | FAR Case 2008–039, Reporting Executive Compensation and First-Tier Subcontract Awards | 9000–AL66 |
| 485 | FAR Case 2011–004, Socioeconomic Program Parity | 9000–AL88 |
| 486 | FAR Case 2010–015, Woman-Owned Small Business Program | 9000–AL97 |
| 487 | FAR Case 2010–004, Biobased Procurements | 9000–AM03 |
| 488 | FAR Case 2009–016, Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses. | 9000–AM05 |
| 489 | FAR Case 2011–015, Extension of Sunset Date for Protests of Task and Delivery Orders | 9000–AM08 |
| 490 | FAR Case 2011–024, Set-Asides for Small Business | 9000–AM12 |

### DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 491 | FAR Case 2010–011, Standard Form 330 for Architect-Engineer Services | 9000–AM04 |

## DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

*Proposed Rule Stage*

### 480. FAR Case 2010–013, Privacy Training

*Legal Authority:* 5 U.S.C. 552a; 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA will publish a proposed rule. This rule develops a new FAR clause to ensure that all contractors are required to complete training in the protection of privacy and the handling and safeguarding of Personally Identifiable Information (PII). A number of agencies currently require that contractors who handle personally identifiable information or operate a system of records on behalf of the Federal Government complete agency-provided privacy training. However, in some circumstances an agency may provide a contractor the Privacy Act requirements, and the contractor will train its own employees, and shall upon request, provide evidence of privacy training for all applicable employees. The proposed FAR language provides flexibility for agencies to conduct the privacy training or require the contractor to conduct the privacy training.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/14/11 | 76 FR 63896 |
| NPRM Comment Period End. | 12/13/11 | |
| Final Rule | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AM02

### 481. • Basic Safeguarding of Contractor Information Systems

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA proposes to amend the Federal Acquisition Regulation (FAR) to add a new subpart for the safeguarding of unclassified Government information within contractor information systems. The amendment would also add a contract clause to address requirements for the safeguarding of unclassified Government information.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219–1813, *Email: william.clark@gsa.gov.*

*RIN:* 9000–AM10

## DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

*Final Rule Stage*

### 482. FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (The Recovery Act)—Reporting Requirements

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* This final rule amends the Federal Acquisition Regulation to implement section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 03/31/09 | 74 FR 14639 |
| Interim Final Rule Comment Period End. | 06/01/09 | |
| Final Rule ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219–1813, *Email: william.clark@gsa.gov.*

*RIN:* 9000–AL21

### 483. FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* This final rule will amend the Federal Acquisition Regulation to include the clause at 52.204–11 to require first-tier subcontractors to report the number of jobs resulting from Recovery Act funded subcontracts to their prime contractor. The final rule will not require the renegotiation of contracts that included the FAR clause 52.204–11 dated March 2009.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 07/02/10 | 75 FR 38684 |
| Interim Final Rule Comment Period End. | 08/31/10 | |
| Final Rule ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AL63

### 484. FAR Case 2008–039, Reporting Executive Compensation and First-Tier Subcontract Awards

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA will adopt as final, with changes, the interim rule that amended the Federal Acquisition Regulation (FAR) to implement section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, which requires the Office of Management and Budget (OMB) to establish a free, public, Web site containing full disclosure of all Federal contract award information. This rule requires contractors to report executive compensation and first-tier subcontractor awards on contracts expected to be $25,000 or more, except classified contracts, and contracts with individuals.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 07/08/10 | 75 FR 39414 |
| Interim Final Rule Comment Period End. | 09/07/10 | |
| Final Rule ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219–1813, *Email: william.clark@gsa.gov.*

*RIN:* 9000–AL66

### 485. FAR Case 2011–004, Socioeconomic Program Parity

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA will issue a final rule amending the Federal Acquisition Regulation (FAR) to implement section 1347 of the ''Small Business Jobs Act of 2010.'' Section 1347 clarifies there is no order of precedence among the small business socioeconomic programs. Accordingly, this final rule clarifies the existence of socioeconomic parity and that contracting officers may exercise discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a) Business Development Program, Historically Underutilized Business Zones (HUBZone) Program, Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 03/16/11 | 76 FR 14566 |
| Interim Final Rule Effective. | 03/16/11 | |
| Interim Final Rule Comment Period End. | 05/16/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AL88

### 486. FAR Case 2010–015, Woman-Owned Small Business Program

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA will issue a final rule amending the Federal Acquisition Regulation (FAR) to implement section 8(m) of the Small Business Act, 15 U.S.C. 637(m) to provide a tool for Federal agencies to increase Federal procurement opportunities to Women-owned Small Business (WOSB) concerns. The objective of the final rule is to assist Federal agencies in eliminating barriers to the participation by WOSBs in Federal contracting, thereby achieving the Federal Government's goal of awarding five percent of Federal contract dollars to WOSBs, as provided in the Federal Acquisition Streamlining Act of 1994.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/01/11 | 76 FR 18304 |
| Interim Final Rule Effective. | 04/01/11 | |
| Interim Final Rule Comment Period End. | 05/31/11 | |
| Final Action ..... | 02/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AL97

**487. FAR Case 2010–004, Biobased Procurements**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to 7 U.S.C. 8102, as amended by Public Law 110–246. The rule proposes to change the definition of ''biobased product'' and require contractors to report annually the product types and dollar value of any biobased products purchased during the preceding fiscal year on service and construct contracts where such products may be purchased.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 07/13/11 | 76 FR 41179 |
| NPRM Comment Period End. | 09/12/11 | |
| Final Action ..... | 03/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* William Clark, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 219–1813, *Email: william.clark@gsa.gov.*

*RIN:* 9000–AM03

**488. Far Case 2009–016, Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* This rule implements the decision of the Rothe case. The Rothe case concerns the constitutionality of 10 U.S.C. 2323, section 1207 as enacted in 2006, that sets a 5 percent goal of DOD contracting dollars to small businesses, incorporating minorities and the award of contracts to SDBs at prices up to 10 percent above the fair market price. The Rothe case found that section 1207 is ''facially unconstitutional'' and impacts not only SDBs but certain institutions of higher learning (i.e., HBCUs/MIs).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 09/09/11 | 76 FR 55849 |
| NPRM Comment Period End. | 11/08/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street, NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AM05

**489. FAR Case 2011–015, Extension of Sunset Date for Protests of Task and Delivery Orders**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 825 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. The statute extends the sunset date for protests against the award of task or delivery orders by DoD, NASA, and the Coast Guard from May 27, 2011 to September 30, 2016.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 07/05/11 | 76 FR 39238 |
| Interim Final Rule Effective. | 07/05/11 | |
| Interim Final Rule Comment Period End. | 09/06/11 | |
| Final Action ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deborah Lague, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 694–8149, *Email: deborah.lague@gsa.gov.*

*RIN:* 9000–AM08

**490. • FAR Case 2011–024, Set-Asides for Small Business**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1331 of the Small Business Jobs Act of 2010 (Jobs Act). Section 1331 addresses set-asides of task and delivery orders under multiple-award contracts, partial set-asides under multiple-award contracts, and the reserving of one or more multiple-award contracts that are awarded using full and open competition. Within this same context, section 1331 also addresses the Federal Supply Schedules Program managed by the General Services Administration. DoD, GSA, and NASA are coordinating with the Small Business Administration (SBA) on the development of an SBA proposed rule that will provide greater detail regarding implementation of section 1331 authorities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 11/02/11 | 76 FR 68032 |
| Interim Final Rule Comment Period End. | 01/03/12 | |
| Final Rule ..... | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karlos Morgan, Procurement Analyst, DOD/GSA/NASA (FAR), 1275 First Street NE., Washington, DC 20417, *Phone:* 202 501–2364, *Email: karlos.morgan@gsa.gov.*

*RIN:* 9000–AM12

## DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

*Completed Actions*

**491. FAR Case 2010–011, Standard Form 330 for Architect-Engineer Services**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 42 U.S.C. 2473(c)

*Abstract:* This rule deletes 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 A&E vendors at the time they complete the other representations and certifications in ORCA.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn by Agency Request. | 10/26/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Curtis Glover, *Phone:* 202 501–1448, *Email:* *curtis.glover@gsa.gov.*

*RIN:* 9000–AM04

[FR Doc. 2012–1661 Filed 2–10–12; 8:45 am]

BILLING CODE 6820–27–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXI

## Bureau of Consumer Financial Protection

Semiannual Regulatory Agenda

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Ch. X

### Semiannual Regulatory Agenda and Fiscal Year 2011 Regulatory Plan

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Semiannual regulatory agenda and annual regulatory plan.

**SUMMARY:** The Bureau of Consumer Financial Protection (CFPB) is publishing this agenda as part of the Fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions. The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from October 1, 2011, to October 1, 2012. The next agenda will be published in spring 2012 and will update this agenda through October 1, 2012. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**DATES:** This information is current as of September 9, 2011.

**ADDRESSES:** Consumer Financial Protection Bureau, 1801 L Street NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** A staff contact is included for each regulatory item listed herein.

**SUPPLEMENTARY INFORMATION:** The CFPB is publishing its fall 2011 agenda as part of the Fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The CFPB's participation in the Unified Agenda is voluntary. The complete Unified Agenda will be available to the public at the following Web site: *www.reginfo.gov.*

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376) (Dodd-Frank Act), the CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services.[1] These authorities include the ability to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the CFPB from seven Federal agencies on July 21, 2011. The CFPB is working on a wide range of initiatives to address issues in markets for consumer financial products and services that are not reflected in this notice because the Unified Agenda is limited to rulemaking activities.

The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from October 1, 2011, to October 1, 2012.[2] They include various rulemakings mandated by the Dodd-Frank Act and resolution of a handful of proposals that had been issued by the transferor agencies prior to July 21, 2011. In addition, the CFPB must issue a number of procedural rules relating to the stand-up of the CFPB as an independent regulatory agency.

Because the CFPB is at an early stage of its operations, it is still in the process of assessing the need and resources available for additional rulemakings. The CFPB expects to include any such projects that it reasonably anticipates considering before October 2012 in its spring 2012 agenda.

**Leonard J. Kennedy,**

*General Counsel, Consumer Financial Protection Bureau.*

CONSUMER FINANCIAL PROTECTION BUREAU—PRERULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 492 | Business Lending Data (Regulation B) | 3170–AA09 |

CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 493 | TILA/RESPA Mortgage Disclosure Integration (Regulation X; Regulation Z) | 3170–AA19 |

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 494 | Disclosure Rules for Remittance Transactions (Regulation E) | 3170–AA15 |
| 495 | Requirements for Escrow Accounts (Regulation Z) | 3170–AA16 |
| 496 | TILA Ability to Repay (Regulation Z) | 3170–AA17 |

## CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

*Prerule Stage*

### 492. • Business Lending Data (Regulation B)

*Legal Authority:* 15 U.S.C. 1691c–2

*Abstract:* Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information concerning credit applications made by women- or minority-owned businesses and small businesses. The amendments made by the Dodd-Frank Act require that certain data be collected and maintained under ECOA, including the number and date the application was

[1] Some of the CFPB's authorities may depend upon appointment of a Director.

[2] The listing does not include certain administrative matters relating to agency organization, management, and personnel. Further, certain of the information fields for the listing are not applicable to independent regulatory agencies, including the CFPB, and, accordingly, the CFPB has indicated responses of ''no'' for such fields.

received, the type and purpose of loan applied for, the amount of credit applied for and approved, the type of action taken with regard to each application and the date of such action, the census tract of the principal place of business, the gross annual revenue, and the race, sex, and ethnicity of the principal owners of the business. The CFPB expects to begin developing proposed regulations concerning the data to be collected and appropriate procedures, information safeguards, and privacy protections for information-gathering under this section.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| CFPB Expects Further Action. | 10/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kelly Thompson Cochran, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170–AA09

## CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

*Proposed Rule Stage*

### 493. • TILA/RESPA Mortgage Disclosure Integration (Regulation X; Regulation Z)

*Legal Authority:* 12 U.S.C. 2617; 12 U.S.C. 3806; 15 U.S.C. 1604; 15 U.S.C. 1637(c)(5); 15 U.S.C. 1639(l); 12 U.S.C. 5532

*Abstract:* The CFPB will publish a proposed rule and model mortgage disclosure forms that will integrate the disclosure requirements of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA), as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule would amend and integrate portions of Regulation Z (Truth in Lending) and Regulation X (Real Estate Settlement Procedures Act), which currently require mortgage lenders and brokers to provide separate sets of disclosures to consumers. The proposed model forms will be designed to enhance consumer understanding and provide guidance to lenders and brokers on compliance with the amended disclosure requirements. The project may address some new disclosure requirements imposed by title XIV of the Dodd-Frank Act and address some elements of the Federal Reserve Board's August 2009 and September 2010 proposals concerning closed-end mortgages. See RINs 7100–AD33, 7100–AD52.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ben Olson, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170–AA19

## CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

*Final Rule Stage*

### 494. • Disclosure Rules for Remittance Transactions (Regulation E)

*Legal Authority:* 15 U.S.C. 1693o–1

*Abstract:* The Federal Reserve Board (Board) published in the **Federal Register** on May 23, 2011, a proposed rule to implement section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which added a new section 919 to the Electronic Fund Transfer Act (EFTA). Consistent with the statute, the proposed rule requires that remittance transfer providers give senders of remittance transfers certain disclosures, including information about fees, the applicable exchange rate, and the amount of currency to be received by the recipient. The proposal also implements two statutory exceptions that permit remittance transfer providers to disclose estimates of the amount of currency to be received, rather than the actual amount. In addition, the proposed rule provides error resolution rights for senders of remittance transfers and promulgates standards for resolving errors and recordkeeping rules. The proposed rule also provides senders specified cancellation and refund rights. Pursuant to the Dodd-Frank Act, the rulemaking authority for the EFTA transferred from the Board to the CFPB on July 21, 2011. The CFPB is working to issue a final rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/23/11 | 76 FR 29902 |
| NPRM Comment Period End. | 07/22/11 | |
| Final Rule | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Vivian Wong, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170–AA15

### 495. • Requirements for Escrow Accounts (Regulation Z)

*Legal Authority:* 15 U.S.C. 1639

*Abstract:* The Federal Reserve Board (Board) published in the **Federal Register** on March 2, 2011, a proposed rule to implement certain amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. In addition, the Board's proposal would implement the Dodd-Frank Act's disclosure requirements regarding escrow accounts. The Board's proposal also would exempt certain loans from the statute's escrow requirement, pursuant to authority in the Dodd-Frank Act. The primary exemption would apply to mortgage loans extended by creditors that operate predominantly in rural or underserved areas and meet certain other prerequisites. Pursuant to the Dodd-Frank Act, the rulemaking authority for the TILA transferred from the Board to the CFPB on July 21, 2011. The CFPB is working to issue a final rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/02/11 | 76 FR 11598 |
| NPRM Comment Period End. | 05/02/11 | |
| Final Rule | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Paul Mondor, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170–AA16

### 496. • TILA Ability To Repay (Regulation Z)

*Legal Authority:* 12 U.S.C. 5512; 15 U.S.C. 1604; 15 U.S.C. 1639C

*Abstract:* The Federal Reserve Board published for public comment on May 11, 2011, a proposed rule amending Regulation Z to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Regulation Z currently prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The proposal would

implement statutory changes made by the Dodd-Frank Act that expand the scope of the ability-to-repay requirement to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan). In addition, the proposal would establish standards for complying with the ability-to-repay requirement, including by making a ''qualified mortgage.'' The proposal also implements the Dodd-Frank Act's limits on prepayment penalties. Finally, the proposal would require creditors to retain evidence of compliance with this rule for three years after a loan is consummated. Pursuant to the Dodd-Frank Act, the rulemaking authority for the TILA transferred from the Board to the CFPB on July 21, 2011. The CFPB is working to issue a final rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 05/11/11 | 76 FR 27390 |
| NPRM Comment Period End. | 07/22/11 | |
| Final Rule ..... | 04/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brent Lattin, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170–AA17

[FR Doc. 2012–1663 Filed 2–10–12; 8:45 am]

**BILLING CODE 4810–AM–P**

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXII

## Federal Communications Commission

Semiannual Regulatory Agenda

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Ch. I

### Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2011

**AGENCY:** Federal Communications Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. *See* 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, 202 418–0990.

**SUPPLEMENTARY INFORMATION:**

### Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

*Docket Number*—assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.,* Docket No. 96–1 or Docket No. 99–1). The abbreviation for the responsible bureau usually precedes the docket number, as in ''MM Docket No. 96–222,'' which indicates that the responsible bureau is the Mass Media Bureau (now the Media Bureau). A docket number consisting of only five digits (*e.g.,* Docket No. 29622) indicates that the docket was established before January 1, 1978.

*Notice of Inquiry (NOI)*—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

*Notice of Proposed Rulemaking (NPRM)*—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

*Further Notice of Proposed Rulemaking (FNPRM)*—issued by the Commission when additional comment in the proceeding is sought.

*Memorandum Opinion and Order (MO&O)*—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

*Rulemaking (RM) Number*—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

*Report and Order (R&O)*—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 497 | Implementation of the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities. | 3060–AG58 |
| 498 | Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278). | 3060–AI14 |
| 499 | Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123). | 3060–AI15 |
| 500 | Consumer Information and Disclosure and Truth in Billing and Billing Format | 3060–AI61 |
| 501 | Closed Captioning of Video Programming (Section 610 Review) | 3060–AI72 |
| 502 | Accessibility of Programming Providing Emergency Information | 3060–AI75 |
| 503 | Empowering Consumers to Avoid Bill Shock (Docket No. 10–207) | 3060–AJ51 |

OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 504 | New Advanced Wireless Services (ET Docket No. 00–258) | 3060–AH65 |
| 505 | Exposure to Radiofrequency Electromagnetic Fields | 3060–AI17 |
| 506 | Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186) | 3060–AI52 |
| 507 | Fixed and Mobile Services in the Mobile Satellite Service (ET Docket No. 10–142) | 3060–AJ46 |
| 508 | Innovation in the Broadcast Television Bands; ET Docket No. 10–235 | 3060–AJ57 |
| 509 | Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules; ET Docket No. 10–236. | 3060–AJ62 |
| 510 | Operation of Radar Systems in the 76–77 GHz Band; ET Docket No. 11–90 | 3060–AJ68 |

## INTERNATIONAL BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 511 | Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band (IB Docket No. 95–91; GEN Docket No. 90–357). | 3060–AF93 |
| 512 | Space Station Licensing Reform (IB Docket No. 02–34) | 3060–AH98 |
| 513 | Reporting Requirements for U.S. Providers of International Telecommunications Services (IB Docket No. 04–112). | 3060–AI42 |
| 514 | Amendment of the Commission's Rules To Allocate Spectrum and Adopt Service Rules and Procedures To Govern the Use of Vehicle-Mounted Earth Stations (IB Docket No. 07–101). | 3060–AI90 |

## MEDIA BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 515 | Competitive Availability of Navigation Devices (CS Docket No. 97–80) | 3060–AG28 |
| 516 | Second Periodic Review of Rules and Policies Affecting the Conversion to DTV (MB Docket 03–15) | 3060–AH54 |
| 517 | Broadcast Ownership Rules | 3060–AH97 |
| 518 | Establishment of Rules for Digital Low Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185). | 3060–AI38 |
| 519 | Joint Sales Agreements in Local Television Markets (MB Docket No. 04–256) | 3060–AI55 |
| 520 | Program Access Rules—Sunset of Exclusive Contracts Prohibition and Examination of Programming Tying Arrangements (MB Docket Nos. 07–29, 07–198). | 3060–AI87 |
| 521 | Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07–91). | 3060–AI89 |
| 522 | Broadcast Localism (MB Docket No. 04–233) | 3060–AJ04 |
| 523 | Creating a Low Power Radio Service (MM Docket No. 99–25) | 3060–AJ07 |
| 524 | Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures (MB Docket No. 09–52). | 3060–AJ23 |
| 525 | Promoting Diversification of Ownership in the Broadcast Services (MB Docket No. 07–294) | 3060–AJ27 |
| 526 | Amendment of the Commission's Rules Related to Retransmission Consent; MB Docket No. 10–71 | 3060–AJ55 |
| 527 | Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; MB Docket No.11–43. | 3060–AJ56 |

## OFFICE OF MANAGING DIRECTOR—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 528 | Assessment and Collection of Regulatory Fees | 3060–AI79 |
| 529 | Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System; MD Docket No. 10–234. | 3060–AJ54 |

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 530 | Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems | 3060–AG34 |
| 531 | Enhanced 911 Services for Wireline | 3060–AG60 |
| 532 | In the Matter of the Communications Assistance for Law Enforcement Act | 3060–AG74 |
| 533 | Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements. | 3060–AG85 |
| 534 | Implementation of 911 Act | 3060–AH90 |
| 535 | Commission Rules Concerning Disruptions to Communications | 3060–AI22 |
| 536 | E911 Requirements for IP–Enabled Service Providers | 3060–AI62 |
| 537 | Stolen Vehicle Recovery System (SVRS) | 3060–AJ01 |
| 538 | Commercial Mobile Alert System | 3060–AJ03 |
| 539 | Emergency Alert System | 3060–AJ33 |
| 540 | Wireless E911 Location Accuracy Requirements; PS Docket No. 07–114 | 3060–AJ52 |

## WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 541 | Amendment of Parts 13 and 80 of the Commission's Rules Governing Maritime Communications | 3060–AH55 |
| 542 | Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers | 3060–AH83 |
| 543 | Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01–289) | 3060–AI35 |

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS—Continued

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 544 | Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05–211). | 3060–AI88 |
| 545 | Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands. | 3060–AJ12 |
| 546 | Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04–344) | 3060–AJ16 |
| 547 | Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band | 3060–AJ19 |
| 548 | Service Rules for Advanced Wireless Services in the 1915 to 1920 MHz, 1995 to 2000 MHz, 2020 to 2025 MHz, and 2175 to 2180 MHz Bands. | 3060–AJ20 |
| 549 | Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band, WT Docket No. 08–166; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary. | 3060–AJ21 |
| 550 | Amendment of the Commission's Rules To Improve Public Safety Communications in the 800 MHz Band, and To Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels. | 3060–AJ22 |
| 551 | Amendment of Part 101 to Accommodate 30 MHz Channels in the 6525–6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8–22.0 and 23.0–23.2 GHz Band (WT Docket No. 04–114). | 3060–AJ28 |
| 552 | In the Matter of Service Rules for the 698 to 746, 747 to 762 and 777 to 792 MHz Bands | 3060–AJ35 |
| 553 | National Environmental Act Compliance for Proposed Tower Registrations; In the Matter of Effects on Migratory Birds. | 3060–AJ36 |
| 554 | Amendment of Part 90 of the Commission's Rules | 3060–AJ37 |
| 555 | Amendment of Part 101 of the Commission's Rules for Microwave Use and Broadcast Auxiliary Service Flexibility. | 3060–AJ47 |
| 556 | 2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of the Commission's Rules Governing Construction, Marking, and Lighting of Antenna Structures. | 3060–AJ50 |
| 557 | Universal Service Reform Mobility Fund (WT Docket No. 10–208) | 3060–AJ58 |
| 558 | Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz. | 3060–AJ59 |

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 559 | Implementation of the Universal Service Portions of the 1996 Telecommunications Act | 3060–AF85 |
| 560 | 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements | 3060–AH72 |
| 561 | Access Charge Reform and Universal Service Reform | 3060–AH74 |
| 562 | National Exchange Carrier Association Petition | 3060–AI47 |
| 563 | IP-Enabled Services | 3060–AI48 |
| 564 | Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07–135) | 3060–AJ02 |
| 565 | Jurisdictional Separations | 3060–AJ06 |
| 566 | Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering (WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21). | 3060–AJ14 |
| 567 | Form 477; Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans. | 3060–AJ15 |
| 568 | Preserving the Open Internet; Broadband Industry Practices | 3060–AJ30 |
| 569 | Local Number Portability Porting Interval and Validation Requirements (WC Docket No 07–244) | 3060–AJ32 |
| 570 | Electronic Tariff Filing System (ETFS); WC Docket No. 10–141 | 3060–AJ41 |
| 571 | Implementation of Section 224 of the Act; A National Broadband Plan for Our Future; WC Docket No. 07–245, GN Docket No. 09–51. | 3060–AJ64 |

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Consumer and Governmental Affairs Bureau*

Long-Term Actions

### 497. Implementation of the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment By Persons With Disabilities

*Legal Authority:* 47 U.S.C. 255; 47 U.S.C. 251(a)(2)

*Abstract:* These proceedings implement the provisions of sections 255 and 251(a)(2) of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| R&O | 08/14/96 | 61 FR 42181 |
| NOI | 09/26/96 | 61 FR 50465 |
| NPRM | 05/22/98 | 63 FR 28456 |
| R&O | 11/19/99 | 64 FR 63235 |
| Further NOI | 11/19/99 | 64 FR 63277 |
| Public Notice | 01/07/02 | 67 FR 678 |
| R&O | 08/06/07 | 72 FR 43546 |
| NPRM | 11/21/07 | 72 FR 65494 |
| R&O | 05/07/08 | 73 FR 25566 |
| R&O | 06/12/08 | 73 FR 33324 |
| Public Notice | 08/01/08 | 73 FR 45008 |
| Policy Statement and 2nd R&O. | 09/08/10 | 75 FR 54508 |
| FNPRM | 09/08/10 | 75 FR 54546 |
| Final Rule Announcement of Effective Date. | 12/14/10 | 75 FR 77781 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Cheryl J. King, Deputy Chief, Disability Rights Office, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2284, *TDD Phone:* 202 418–0416, *Fax:* 202 418–0037, *Email: cheryl.king@fcc.gov.*

*RIN:* 3060–AG58

**498. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278)**

*Legal Authority:* 47 U.S.C. 227

*Abstract:* On July 3, 2003, the Commission released a Report and Order establishing, along with the FTC, a national do-not-call registry. The Commission's Report and Order also adopted rules on the use of predictive dialers, the transmission of caller ID information by telemarketers, and the sending of unsolicited fax advertisements.

On September 21, 2004, the Commission released an Order amending existing safe harbor rules for telemarketers subject to the do-not-call registry to require such telemarketers to access the do-not-call list every 31 days, rather than every 3 months.

On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration amending its facsimile advertising rules to implement the Junk Fax Protection Act of 2005. On October 14, 2008, the Commission released an Order on Reconsideration addressing certain issues raised in petitions for reconsideration and/or clarification of the Report and Order and Third Order on Reconsideration.

On January 4, 2008, the Commission released a Declaratory Ruling, clarifying that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the ''prior express consent'' of the called party.

Following a December 4, 2007 NPRM, on June 17, 2008, the Commission released a Report and Order amending its rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, unless the registration is cancelled by the consumer or the number is removed by the database administrator.

On January 22, 2010, the Commission released an NPRM proposing to require sellers and telemarketers to obtain express written consent from recipients before making prerecorded telemarketing calls, commonly known as ''robocalls,'' even when the caller has an established business relationship with the consumer. The proposals also, among other things, would require that prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may ''opt out'' of receiving future prerecorded messages from a seller or telemarketer.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/08/02 | 67 FR 62667 |
| FNPRM | 04/03/03 | 68 FR 16250 |
| Order | 07/25/03 | 68 FR 44144 |
| Order Effective | 08/25/03 | |
| Order on Recon | 08/25/03 | 68 FR 50978 |
| Order | 10/14/03 | 68 FR 59130 |
| FNPRM | 03/31/04 | 69 FR 16873 |
| Order | 10/08/04 | 69 FR 60311 |
| Order | 10/28/04 | 69 FR 62816 |
| Order on Recon | 04/13/05 | 70 FR 19330 |
| Order | 06/30/05 | 70 FR 37705 |
| NPRM | 12/19/05 | 70 FR 75102 |
| Public Notice | 04/26/06 | 71 FR 24634 |
| Order | 05/03/06 | 71 FR 25967 |
| NPRM | 12/14/07 | 72 FR 71099 |
| Declaratory Ruling | 02/01/08 | 73 FR 6041 |
| R&O | 07/14/08 | 73 FR 40183 |
| Order on Recon | 10/30/08 | 73 FR 64556 |
| NPRM | 03/22/10 | 75 FR 13471 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kurt Schroeder, Deputy Chief, Consumer Policy Div., Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0966, *Email: kurt.schroeder@fcc.gov.*

*RIN:* 3060–AI14

**499. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

*Abstract:* This proceeding established a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98–67. This proceeding continues the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/25/03 | 68 FR 50993 |
| R&O, Order on Recon. | 09/01/04 | 69 FR 53346 |
| FNPRM | 09/01/04 | 69 FR 53382 |
| Public Notice | 02/17/05 | 70 FR 8034 |
| Declaratory Ruling/Interpretation. | 02/25/05 | 70 FR 9239 |
| Public Notice | 03/07/05 | 70 FR 10930 |
| Order | 03/23/05 | 70 FR 14568 |
| Public Notice/Announcement of Date. | 04/06/05 | 70 FR 17334 |
| Order | 07/01/05 | 70 FR 38134 |
| Order on Recon | 08/31/05 | 70 FR 51643 |
| R&O | 08/31/05 | 70 FR 51649 |
| Order | 09/14/05 | 70 FR 54294 |
| Order | 09/14/05 | 70 FR 54298 |
| Public Notice | 10/12/05 | 70 FR 59346 |
| R&O/Order on Recon. | 12/23/05 | 70 FR 76208 |
| Order | 12/28/05 | 70 FR 76712 |
| Order | 12/29/05 | 70 FR 77052 |
| NPRM | 02/01/06 | 71 FR 5221 |
| Declaratory Ruling/Clarification. | 05/31/06 | 71 FR 30818 |
| FNPRM | 05/31/06 | 71 FR 30848 |
| FNPRM | 06/01/06 | 71 FR 31131 |
| Declaratory Ruling/Dismissal of Petition. | 06/21/06 | 71 FR 35553 |
| Clarification | 06/28/06 | 71 FR 36690 |
| Declaratory Ruling on Recon. | 07/06/06 | 71 FR 38268 |
| Order on Recon | 08/16/06 | 71 FR 47141 |
| MO&O | 08/16/06 | 71 FR 47145 |
| Clarification | 08/23/06 | 71 FR 49380 |
| FNPRM | 09/13/06 | 71 FR 54009 |
| Final Rule; Clarification. | 02/14/07 | 72 FR 6960 |
| Order | 03/14/07 | 72 FR 11789 |
| R&O | 08/06/07 | 72 FR 43546 |
| Public Notice | 08/16/07 | 72 FR 46060 |
| Order | 11/01/07 | 72 FR 61813 |
| Public Notice | 01/04/08 | 73 FR 863 |
| R&O/Declaratory Ruling. | 01/17/08 | 73 FR 3197 |
| Order | 02/19/08 | 73 FR 9031 |
| Order | 04/21/08 | 73 FR 21347 |
| R&O | 04/21/08 | 73 FR 21252 |
| Order | 04/23/08 | 73 FR 21843 |
| Public Notice | 04/30/08 | 73 FR 23361 |
| Order | 05/15/08 | 73 FR 28057 |
| Declaratory Ruling | 07/08/08 | 73 FR 38928 |
| FNPRM | 07/18/08 | 73 FR 41307 |
| R&O | 07/18/08 | 73 FR 41286 |
| Public Notice | 08/01/08 | 73 FR 45006 |
| Public Notice | 08/05/08 | 73 FR 45354 |
| Public Notice | 10/10/08 | 73 FR 60172 |
| Order | 10/23/08 | 73 FR 63078 |
| 2nd R&O and Order on Recon. | 12/30/08 | 73 FR 79683 |
| Order | 05/06/09 | 74 FR 20892 |
| Public Notice | 05/07/09 | 74 FR 21364 |
| NPRM | 05/21/09 | 74 FR 23815 |
| Public Notice | 05/21/09 | 74 FR 23859 |
| Public Notice | 06/12/09 | 74 FR 28046 |
| Order | 07/29/09 | 74 FR 37624 |
| Public Notice | 08/07/09 | 74 FR 39699 |

| Action | Date | FR Cite |
|---|---|---|
| Order | 09/18/09 | 74 FR 47894 |
| Order | 10/26/09 | 74 FR 54913 |
| Public Notice | 05/12/10 | 75 FR 26701 |
| Order Deying Stay Motion (Release Date). | 07/09/10 | |
| Order | 08/13/10 | 75 FR 49491 |
| Order | 09/03/10 | 75 FR 54040 |
| NPRM | 11/02/10 | 75 FR 67333 |
| NPRM | 05/02/11 | 76 FR 24442 |
| Order | 07/25/11 | 76 FR 44326 |
| Order (Release Date). | 08/04/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2388, *Email: karen.strauss@fcc.gov.*

*RIN:* 3060–AI15

**500. Consumer Information and Disclosure and Truth in Billing and Billing Format**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 258

*Abstract:* In 1999, the Commission adopted truth-in-billing rules to address concerns that there is consumer confusion relating to billing for telecommunications services. On March 18, 2005, the Commission released an Order and FNPRM to further facilitate the ability of telephone consumers to make informed choices among competitive service offerings.

On August 28, 2009, the Commission released a Notice of Inquiry which asks questions about information available to consumers at all stages of the purchasing process for all communications services, including (1) choosing a provider; (2) choosing a service plan; (3) managing use of the service plan; and (4) deciding whether and when to switch an existing provider or plan.

On October 14, 2010, the Commission released a Notice of Proposed Rulemaking proposing rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.

On July 12, 2011, the Commission released an NPRM that would assist Consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice, commonly referred to as ''cramming.''

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 05/25/05 | 70 FR 30044 |
| R&O | 05/25/05 | 70 FR 29979 |
| NOI | 08/28/09 | |
| Public Notice | 05/20/10 | 75 FR 28249 |
| Public Notice | 06/11/10 | 75 FR 33303 |
| NPRM | 11/26/10 | 75 FR 72773 |
| NPRM | 08/23/11 | 76 FR 52625 |
| NPRM Comment Period End. | 11/21/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Richard D. Smith, Special Counsel, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 717 338–2797, *Fax:* 717 338–2574, *Email: richard.smith@fcc.gov.*

*RIN:* 3060–AI61

**501. Closed Captioning of Video Programming (Section 610 Review)**

*Legal Authority:* 47 U.S.C. 613

*Abstract:* The Commission's closed captioning rules are designed to make video programming more accessible to deaf and hard of hearing Americans. This proceeding resolves some issues regarding the Commission's closed captioning rules that were raised for comment in 2005, and also seeks comment on how a certain exemption from the closed captioning rules should be applied to digital multicast broadcast channels.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/03/97 | 62 FR 4959 |
| R&O | 09/16/97 | 62 FR 48487 |
| Order on Recon | 10/28/98 | 63 FR 55959 |
| NPRM | 09/26/05 | 70 FR 56150 |
| Order and Declaratory Ruling. | 01/13/09 | 74 FR 1594 |
| NPRM | 01/13/09 | 74 FR 1654 |
| Final Rule Correction. | 09/11/09 | 74 FR 46703 |
| Final Rule Announcement of Effective Date. | 02/19/10 | 75 FR 7370 |
| Order | 02/19/10 | 75 FR 7368 |
| Order Suspending Effective Date. | 02/19/10 | 75 FR 7369 |
| Waiver Order | 10/04/10 | 75 FR 61101 |
| Public Notice | 11/17/10 | 75 FR 70168 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Eliot Greenwald, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov.*

*RIN:* 3060–AI72

**502. Accessibility of Programming Providing Emergency Information**

*Legal Authority:* 47 U.S.C. 613.

*Abstract:* In this proceeding, the Commission adopted rules detailing how video programming distributors must make emergency information accessible to persons with hearing and visual disabilities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 01/21/98 | 63 FR 3070 |
| NPRM | 12/01/99 | 64 FR 67236 |
| NPRM Correction | 12/22/99 | 64 FR 71712 |
| Second R&O | 05/09/00 | 65 FR 26757 |
| R&O | 09/11/00 | 65 FR 54805 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Eliot Greenwald, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov.*

*RIN:* 3060–AI75

**503. Empowering Consumers To Avoid Bill Shock (Docket No. 10–207)**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 303; 47 U.S.C. 332

*Abstract:* On October 14, 2010, the Commission released a Notice of Proposed Rulemaking which proposes rule that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Public Notice | 05/20/10 | 75 FR 28249 |
| NPRM | 11/26/10 | 75 FR 72773 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Richard D. Smith, Special Counsel, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 717 338–2797, *Fax:* 717 338–2574, *Email: richard.smith@fcc.gov.*

*RIN:* 3060–AJ51

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Office of Engineering and Technology*

Long-Term Actions

### 504. New Advanced Wireless Services (ET Docket No. 00–258)

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303(c); 47 U.S.C. 303(f); 47 U.S.C. 303(g); 47 U.S.C. 303(r)

*Abstract:* This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Third Notice of Proposed Rulemaking discusses the frequency bands that are still under consideration in this proceeding and invites additional comments on their disposition. Specifically, it addresses the Unlicensed Personal Communications Service (UPCS) band at 1910–1930 MHz, the Multipoint Distribution Service (MDS) spectrum at 2155–2160/62 MHz bands, the Emerging Technology spectrum, at 2160–2165 MHz, and the bands reallocated from MSS 91990–2000 MHz, 2020–2025 MHz, and 2165–2180 MHz. We seek comment on these bands with respect to using them for paired or unpaired Advance Wireless Service (AWS) operations or as relocation spectrum for existing services.

The 7th Report and Order facilitates the introduction of Advanced Wireless Service (AWS) in the band 1710–1755 MHz—an integral part of a 90 MHz spectrum allocation recently reallocated to allow for such new and innovative wireless services. We largely adopt the proposals set forth in our recent AWS Fourth NPRM in this proceeding that are designed to clear the 1710–1755 MHz band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions are consistent with previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration (NTIA) 2002 Viability Assessment, which addressed relocation and reaccommodation options for Federal Government operations in the band.

The 8th Report and Order reallocated the 2155–2160 MHz band for Fixed and Mobile services and designates the 2155–2175 MHz band for Advanced Wireless Service (AWS) use. This proceeding continues the Commission's ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services.

The Order requires Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be the subject of relocation.

The Notice of Proposed Rule Making requested comments on the specific relocation procedures applicable to Broadband Radio Service (BRS) operations in the 2150–2160/62 MHz band, which the Commission recently decided will be relocated to the newly restructured 2495–2690 MHz band. The Commission also requested comments on the specific relocation procedures applicable to Fixed Microwave Service (FS) operations in the 2160–2175 MHz band.

The Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) set forth the specific data that Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band must file along with the deadline date and procedures for filing this data on the Commission's Universal Licensing System (ULS). The data will assist in determining future AWS licensee's relocation obligations.

The 9th Report and Order established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150–2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160–2175 MHz band, and modified existing relocation procedures for the 2110–2150 MHz and 2175–2180 MHz bands. It also established cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. The Commission continues its ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. The Order dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot.

Two petitions for Reconsideration were filed in response to the 9th Report and Order.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/23/01 | 66 FR 7438 |
| NPRM Comment Period End. | 03/09/01 | |
| Final Report | 04/11/01 | 66 FR 18740 |
| FNPRM | 09/13/01 | 66 FR 47618 |
| MO&O | 09/13/01 | 66 FR 47591 |
| First R&O | 10/25/01 | 66 FR 53973 |
| Petition for Recon | 11/02/01 | 66 FR 55666 |
| Second R&O | 01/24/03 | 68 FR 3455 |
| Third NPRM | 03/13/03 | 68 FR 12015 |
| Seventh R&O | 12/29/04 | 69 FR 7793 |
| Petition for Recon | 04/13/05 | 70 FR 19469 |
| Eighth R&O | 10/26/05 | 70 FR 61742 |
| Order | 10/26/05 | 70 FR 61742 |
| NPRM | 10/26/05 | 70 FR 61752 |
| Public Notice | 12/14/05 | 70 FR 74011 |
| Ninth R&O and Order. | 05/24/06 | 71 FR 29818 |
| Petition for Recon | 07/19/06 | 71 FR 41022 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Rodney Small, Economist, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2452, *Fax:* 202 418–1944, *Email: rodney.small@fcc.gov.*

*RIN:* 3060–AH65

### 505. Exposure to Radiofrequency Electromagnetic Fields

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 302 and 303; 47 U.S.C. 309(j); 47 U.S.C. 336

*Abstract:* The Notice of Proposed Rulemaking (NPRM) proposed amendments to the FCC rules relating to compliance of transmitters and facilities with guidelines for human exposure to radio frequency (RF) energy.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/08/03 | 68 FR 52879 |
| NPRM Comment Period End. | 12/08/03 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ira Keltz, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0616, *Fax:* 202 418–1944, *Email: ikeltz@fcc.gov.*

*RIN:* 3060–AI17

**506. Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186)**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 302; 47 U.S.C. 303(e) and 303(f); 47 U.S.C. 303(r); 47 U.S.C. 307

*Abstract:* The Commission adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed ''white spaces''). This action will make a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The actions taken are a conservative first step that includes many safeguards to prevent harmful interference to incumbent communications services. Moreover, the Commission will closely oversee the development and introduction of these devices to the market and will take whatever actions may be necessary to avoid, and if necessary correct, any interference that may occur.

The Second Memorandum Opinion and Order finalizes rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices. This particular spectrum has excellent propagation characteristics that allow signals to reach farther and penetrate walls and other structures. Access to this spectrum could enable more powerful public Internet connections—super Wi-Fi hot spots—with extended range, fewer dead spots, and improved individual speeds as a result of reduced congestion on existing networks. This type of ''opportunistic use'' of spectrum has great potential for enabling access to other spectrum bands and improving spectrum efficiency. The Commission's actions here are expected to spur investment and innovation in applications and devices that will be used not only in the TV band but eventually in other frequency bands as well.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/18/04 | 69 FR 34103 |
| First R&O | 11/17/06 | 71 FR 66876 |
| FNPRM | 11/17/06 | 71 FR 66897 |
| R&O and MO&O | 02/17/09 | 74 FR 7314 |
| Petitions for Reconsideration. | 04/13/09 | 74 FR 16870 |
| Second MO&O | 12/06/10 | 75 FR 75814 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email: hugh.vantuyl@fcc.gov.*

*RIN:* 3060–AI52

**507. Fixed and Mobile Services in the Mobile Satellite Service (ET Docket No. 10–142)**

*Legal Authority:* 47 U.S.C. 154 (i) and 301; 47 U.S.C. 303(c) and 303(f); 47 U.S.C. 303(r) and 303(y); 47 U.S.C. 310

*Abstract:* The Notice of Proposed Rule Making proposed to take a number of actions to further the provision of terrestrial broadband services in the MSS bands. In the 2 GHz MSS band, the Commission proposed to add co-primary Fixed and Mobile allocations to the existing Mobile-Satellite allocation. This would lay the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. The Commission also proposed to apply the terrestrial secondary market spectrum leasing rules and procedures to transactions involving terrestrial use of the MSS spectrum in the 2 GHz, Big LEO, and L-bands in order to create greater certainty and regulatory parity with bands licensed for terrestrial broadband service.

The Commission also asked, in a Notice of Inquiry, about approaches for creating opportunities for full use of the 2 GHz band for stand-alone terrestrial uses. The Commission requested comment on ways to promote innovation and investment throughout the MSS bands while also ensuring market-wide mobile satellite capability to serve important needs like disaster recovery and rural access.

In the Report and Order the Commission amended its rules to make additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust mobile satellite service capabilities. First, the Commission adds co-primary Fixed and Mobile allocations to the Mobile Satellite Service (MSS) 2 GHz band, consistent with the International Table of Allocations, allowing more flexible use of the band, including for terrestrial broadband services, in the future. Second, to create greater predictability and regulatory parity with the bands licensed for terrestrial mobile broadband service, the Commission extends its existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of an MSS system.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding concerning Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz and published pursuant to 47 CFR 1.429(e). See 1.4(b)(1) of the Commission's rules.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/16/10 | 75 FR 49871 |
| NPRM Comment Period End. | 09/15/10 | |
| Reply Comment Period End. | 09/30/10 | |
| R&O | 05/31/11 | 76 FR 31252 |
| Petitions for Recon. | 08/10/11 | 76 FR 49364 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nicholas Oros, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0636, *Email: nicholas.oros@fcc.gov.*

*RIN:* 3060–AJ46

**508. Innovation in the Broadcast Television Bands; ET Docket No. 10–235**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303(e); 47 U.S.C. 303(f); 47 U.S.C. 303(r)

*Abstract:* The Commission initiated this proceeding to further its ongoing commitment to addressing America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by making a significant amount of new spectrum available for broadband. The approach proposed is consistent with the goal set forth in the National Broadband Plan (the Plan) to repropose up to 120 megahertz from the broadcast television bands for new wireless broadband uses through, in part, voluntary contributions of spectrum to an incentive auction. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of these new applications.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/01/11 | 76 FR 5521 |

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End. | 03/18/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alan Stillwell, Deputy Chief, OET, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2925, *Email: alan.stillwell@fcc.gov.*

*RIN:* 3060–AJ57

**509. Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules; ET Docket No. 10–236**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 301 and 303

*Abstract:* The Commission initiated this proceeding to promote innovation and efficiency in spectrum use in the Experimental Radio Service (ERS). For many years, the ERS has provided fertile ground for testing innovative ideas that have led to new services and new devices for all sectors of the economy. The Commission proposes to leverage the power of experimental radio licensing to accelerate the rate at which these ideas transform from prototypes to consumer devices and services. Its goal is to inspire researchers to dream, discover and deliver the innovations that push the boundaries of the broadband ecosystem. The resulting advancements in devices and services available to the American public and greater spectrum efficiency over the long term will promote economic growth, global competitiveness, and a better way of life for all America

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/08/11 | 76 FR 6928 |
| NPRM Comment Period End. | 03/10/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* James Burtle, Chief, Experimental Licensing Branch, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2445, *Email: james.burtle@fcc.gov.*

*RIN:* 3060–AJ62

**510. • Operation of Radar Systems in the 76–77 GHz Band; ET Docket No. 11–90**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303(f)

*Abstract:* The Commission proposes to amend its rules to enable enhanced vehicular radar technologies in the 76–77 GHz band to improve collision avoidance and driver safety. Vehicular radars can determine the exact distance and relative speed of objects in front of, beside, or behind a car to improve the driver's ability to perceive objects under bad visibility conditions or objects that are in blind spots. These modifications to the rules will provide more efficient use of spectrum, and enable the automotive and fixed radar application industries to develop enhanced safety measures for drivers and the general public. The Commission takes this action in response to petitions for rulemaking filed by Toyota Motor Corporation (''TMC'') and Era Systems Corporation (''Era'').

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/16/11 | 76 FR 35176 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Aamer Zain, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2437, *Email: aamer.zain@fcc.gov.*

*RIN:* 3060–AJ68

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*International Bureau*

Long-Term Actions

**511. Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band (IB Docket No. 95–91; Gen Docket No. 90–357)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 151(i); 47 U.S.C. 154(j); 47 U.S.C. 157; 47 U.S.C. 309(j)

*Abstract:* In 1997, the Commission adopted service rules for the satellite digital audio radio service (SDARS) in the 2320–2345 MHz frequency band and sought further comment on proposed rules governing the use of complementary SDARS terrestrial repeaters. The Commission released a second further notice of proposed rulemaking in January 2008, to consider new proposals for rules to govern terrestrial repeaters operations. The Commission released a Second Report and Order on May 20, 2010, which adopted rules governing the operation of SDARS terrestrial repeaters, including establishing a blanket licensing regime for repeaters operating up to 12 kilowatts average equivalent isotropically radiated power.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/15/95 | 60 FR 35166 |
| R&O | 03/11/97 | 62 FR 11083 |
| FNPRM | 04/18/97 | 62 FR 19095 |
| Second FNPRM | 01/15/08 | 73 FR 2437 |
| FNPRM Comment Period End. | 03/17/08 | |
| 2nd R&O | 05/20/10 | 75 FR 45058 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jay Whaley, Attorney, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7184, *Fax:* 202 418–0748, *Email: jwhaley@fcc.gov.*

*RIN:* 3060–AF93

**512. Space Station Licensing Reform (IB Docket No. 02–34)**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 303(c); 47 U.S.C. 303(g); * * *

*Abstract:* The Commission adopted a Notice or Proposed Rulemaking (NPRM) to streamline its procedures for reviewing satellite license applications. Before 2003, the Commission used processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issued a public notice establishing a cut-off date for other mutually exclusive satellite applications, and then considered all those applications together. In cases where sufficient spectrum to accommodate all the application was not available, the Bureau directed the applicants to negotiate a mutually agreeable solution. Those negotiations took a long time, and delayed provision of satellite services to the public.

The NPRM invited comment on two alternatives for expediting the satellite application process. One alternative was to replace the processing round procedure with a ''first-come, first-served'' procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative was to streamline the processing round

procedure by adopting one or more of the following proposals: (1) Place a time limit on negotiations; (2) established criteria to select among competing applicants; (3) divide the available spectrum evenly among the applicants.

In the First Report and Order in this proceeding, the Commission determined that different procedures were better-suited for different kinds of satellite applications. For most geostationary orbit (GSO) satellite applications, the Commission adopted a first-come, first-served approach. For most non-geostationary orbit (NGSO) satellite applications, the Commission adopted a procedure in which the available spectrum is divided evenly among the qualified applicants. The Commission also adopted measures to discourage applicants from filing speculative applications, including a bond requirement, payable if a licensee misses a milestone. The bond amounts originally were $5 million for each GSO satellite, and $7.5 million for each NGSO satellite system. These were interim amounts. Concurrently with the First Report and Order, the Commission adopted an FNPRM to determine whether to revise the bond amounts on a long-term basis.

In the Second Report and Order, the Commission adopted a streamlined procedure for certain kinds of satellite license modification requests.

In the Third Report and Order, the Commission adopted a standardized application form for satellite licenses, and adopted a mandatory electronic filing requirement for certain satellite applications.

In the Fourth Report and Order, the Commission revised the bond amounts based on the record developed in response to FNPRM. The bond amounts are now $3 million for each GSO satellite, and $5 million for each NGSO satellite system.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/19/02 | 67 FR 12498 |
| NPRM Comment Period End. | 07/02/02 | |
| Second R&O (Release Date). | 06/20/03 | 68 FR 62247 |
| Second FNPRM (Release Date). | 07/08/03 | 68 FR 53702 |
| Third R&O (Release Date). | 07/08/03 | 68 FR 63994 |
| FNPRM | 08/27/03 | 68 FR 51546 |
| First R&O | 08/27/03 | 68 FR 51499 |
| FNPRM Comment Period End. | 10/27/03 | |
| Fourth R&O (Release Date). | 04/16/04 | 69 FR 67790 |
| Fifth R&O, First Order on Recon (Release Date). | 07/06/04 | 69 FR 51586 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Fern Jarmulnek, Associate Chief, Satellite and Radio Communication Division, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0751, *Fax:* 202 418–0748, *Email: fjarmuln@fcc.gov*.

*RIN:* 3060–AH98

**513. Reporting Requirements for U.S. Providers of International Telecommunications Services (IB Docket No. 04–112)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 161; 47 U.S.C. 201 to 205; * * *

*Abstract:* FCC is reviewing the reporting requirements to which carriers providing U.S.-international services are subject under 47 CFR part 43. The FCC adopted a First Report and Order that eliminated certain of those requirements. Specifically, it eliminated the quarterly reporting requirements for large carriers and foreign-affiliated switched resale carriers, 47 CFR 43.61(b), (c); the circuit addition report, 47 CFR 63.23(e); the division of telegraph tolls report, 47 CFR 43.53; and, requirement to report separately for U.S off-shore points, 43.61(a), 43.82(a). The FCC also adopted a Further Notice of Proposed Rulemaking that seeks comment additional reforms to further streamline and modernize the reporting requirements. The FCC also seeks comments on whether providers of interconnected Voice over Internet Protocol (VoIP) should submit data regarding their provision of international telephone services and whether non-common carrier international circuits should be reported.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/12/04 | 69 FR 29676 |
| First R&O | 05/12/11 | 76 FR 42567 |
| FNPRM | 05/12/11 | 76 FR 42613 |
| FNPRM Comment Period End. | 09/02/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Krech, Attorney Advisor, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1460, *Fax:* 202 418–2824, *Email: david.krech@fcc.gov*.

*RIN:* 3060–AI42

**514. Amendment of the Commission's Rules To Allocate Spectrum and Adopt Service Rules and Procedures To Govern the Use of Vehicle-Mounted Earth Stations (IB Docket No. 07–101)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 157(a); 47 U.S.C. 301; 47 U.S.C. 303 (c); 47 U.S.C. 303 (f); 47 U.S.C. 303 (g); 47 U.S.C. 303 (r); 47 U.S.C. 303 (y); 47 U.S.C. 308

*Abstract:* The Commission seeks comment on the proposed amendment of parts 2 and 25 of the Commission's rules to allocate spectrum for use with Vehicle-Mounted Earth Stations (VMES) in the Fixed-Satellite Service in the Ku-band uplink at 14.0–14.5 GHz and Ku-band downlink 11.72–12.2 GHz on a primary basis, and in the extended Ku-band downlink at 10.95–11.2 GHz and 11.45–11.7 GHz on a non-protected basis, and to adopt Ku-band VMES licensing and service rules modeled on the FCC's rules for Ku-band Earth Stations on Vessels (ESVs). The record in this proceeding will provide a basis for Commission action to facilitate introduction of this proposed service.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/08/07 | 72 FR 39357 |
| NPRM Comment Period End. | 09/04/07 | |
| R&O | 11/04/09 | 74 FR 57092 |
| Petition for Reconsideration. | 04/14/10 | 75 FR 19401 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Howard Griboff, Deputy Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0657, *Fax:* 202 418–1414, *Email: howard.griboff@fcc.gov*.

*RIN:* 3060–AI90

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Media Bureau*

Long-Term Actions

**515. Competitive Availability of Navigation Devices (CS Docket No. 97–80)**

*Legal Authority:* 47 U.S.C. 549

*Abstract:* The Commission has adopted rules to address the mandate

expressed in section 629 of the Communications Act to ensure the commercial availability of ''navigation devices,'' the equipment used to access video programming and other services from multichannel video programming systems.

Specifically, the Commission required MVPDs to make available by, a security element (known as a ''cablecard'') separate from the basic navigation device (*e.g.,* cable set-top boxes, digital video recorders, and television receivers with navigation capabilities). The separation of the security element from the host device required by this rule (referred to as the ''integration ban'') was designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. Also, in this proceeding, the Commission adopted unidirectional ''plug and play'' rules, to govern compatibility between MVPDs and navigation devices manufactured by consumer electronics manufacturers not affiliated with cable operators.

In the most recent action, the Commission made rule changes to improve the operation of the CableCard regime.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/05/97 | 62 FR 10011 |
| R&O | 07/15/98 | 63 FR 38089 |
| Order on Recon | 06/02/99 | 64 FR 29599 |
| FNPRM & Declaratory Ruling. | 09/28/00 | 65 FR 58255 |
| FNPRM | 01/16/03 | 68 FR 2278 |
| Order and FNPRM. | 06/17/03 | 68 FR 35818 |
| Second R&O | 11/28/03 | 68 FR 66728 |
| FNPRM | 11/28/03 | 68 FR 66776 |
| Order on Recon | 01/28/04 | 69 FR 4081 |
| Second R&O | 06/22/05 | 70 FR 36040 |
| Third FNPRM | 07/25/07 | 72 FR 40818 |
| 4th FNPRM | 05/14/10 | 75 FR 27256 |
| 3rd R&O | 07/08/11 | 76 FR 40263 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brendan Murray, Attorney Advisor, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1573, *Email: brendan.murray@fcc.gov*.

*RIN:* 3060–AG28

**516. Second Periodic Review of Rules and Policies Affecting the Conversion to DTV (MB Docket 03–15)**

*Legal Authority:* 47 U.S.C. 4(i) and 4(j); 47 U.S.C. 303(r); 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 336

*Abstract:* On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. The Second Report and Order resolved several major technical issues including the issue of receiver performance standards, DTV tuners, and revisions to certain components of the DTV transmission standard. A subsequent NPRM commenced the Commission's second periodic review of the progress of the digital television conversion. The resulting R&O adopted a multi-step process to create a new DTV table of allotments and authorizations. Also in the R&O, the Commission adopted replication and maximization deadlines for DTV broadcasters and updated rules in recognition revisions to broadcast transmission standards.

The Second R&O adopts disclosure requirements for televisions that do not include a digital tuner.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/23/00 | 65 FR 15600 |
| R&O | 02/13/01 | 66 FR 9973 |
| MO&O | 12/18/01 | 66 FR 65122 |
| Third MO&O and Order on Recon. | 10/02/02 | 67 FR 61816 |
| Second R&O and Second MO&O. | 10/11/02 | 67 FR 63290 |
| NPRM | 02/18/03 | 68 FR 7737 |
| R&O | 10/04/04 | 69 FR 59500 |
| Second R&O | 05/10/07 | 72 FR 26554 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7142, *Email: evan.baranoff@fcc.gov*.

*RIN:* 3060–AH54

**517. Broadcast Ownership Rules**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 309 and 310

*Abstract:* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its ownership rules every four years and determine whether any such rules are necessary in the public interest as the result of competition.

In 2002, the Commission undertook a comprehensive review of its broadcast multiple and cross-ownership limits examining: cross-ownership of TV and radio stations; local TV ownership limits; national TV cap; and dual network rule.

The Report and Order replaced the newspaper/broadcast cross-ownership and radio and TV rules with a tiered approach based on the number of television stations in a market. In June 2006, the Commission adopted a Further Notice of Proposed Rulemaking initiating the 2006 review of the broadcast ownership rules. The further notice also sought comment on how to address the issues raised by the Third Circuit. Additional questions are raised for comment in a Second Further Notice of Proposed Rulemaking.

In the Report and Order and Order on Reconsideration, the Commission adopted rule changes regarding newspaper/broadcast cross-ownership, but otherwise generally retained the other broadcast ownership rules currently in effect.

For the 2010 quadrennial review, five of the Commission's media are the subject of review: The local TV ownership rule; the local radio ownership rule; the newspaper broadcast cross-ownership rule; the radio/TV cross-ownership rule; and the dual network rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/05/01 | 66 FR 50991 |
| R&O | 08/05/03 | 68 FR 46286 |
| Public Notice | 02/19/04 | 69 FR 9216 |
| FNPRM | 08/09/06 | 71 FR 4511 |
| Second FNPRM | 08/08/07 | 72 FR 44539 |
| R&O and Order on Recon. | 02/21/08 | 73 FR 9481 |
| Notice of Inquiry | 06/11/10 | 75 FR 33227 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy Brett, Asst. Div. Chief, Industry Analysis Div., Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2703, *Email: amy.brett@fcc.gov*.

*RIN:* 3060–AH97

**518. Establishment of Rules for Digital Low Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185)**

*Legal Authority:* 47 U.S.C. 309; 47 U.S.C. 336

*Abstract:* This proceeding initiates the digital television conversion for low power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for

these stations' conversion from analog to digital broadcasting. The Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. The Second Report and Order takes steps to resolve the remaining issues in order to complete the low power television digital transition.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/26/03 | 68 FR 55566 |
| NPRM Comment Period End. | 11/25/03 | |
| R&O | 11/29/04 | 69 FR 69325 |
| FNPRM and MO&O. | 10/18/10 | 75 FR 63766 |
| 2nd R&O | 07/07/11 | 76 FR 44821 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shaun Maher, Attorney, Video Division, Federal Communications Commission, Mass Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2324, *Fax:* 202 418–2827, *Email: shaun.maher@fcc.gov.*

*RIN:* 3060–AI38

**519. Joint Sales Agreements in Local Television Markets (MB Docket No. 04–256)**

*Legal Authority:* 47 U.S.C. 151 to 152(a); 47 U.S.C. 154(i); 47 U.S.C. 303; * * *

*Abstract:* A joint sales agreement (JSA) is an agreement with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee. The Commission has sought comment on whether TV JSAs should be attributed for purposes of determining compliance with the Commission's multiple ownership rules.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/26/04 | 69 FR 52464 |
| NPRM Comment Period End. | 09/27/04 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy Brett, Asst. Div. Chief, Industry Analysis Div., Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2703, *Email: amy.brett@fcc.gov.*

*RIN:* 3060–AI55

**520. Program Access Rules—Sunset of Exclusive Contracts Prohibition and Examination of Programming Tying Arrangements (MB Docket Nos. 07–29, 07–198)**

*Legal Authority:* 47 U.S.C. 548

*Abstract:* The program access provisions of the Communications Act (sec. 628) generally prohibit exclusive contracts for satellite delivered programming between programmers in which a cable operator has an attributable interest (vertically integrated programmers) and cable operators. This limitation was set to expire on October 5, 2007, unless circumstances in the video programming marketplace indicate that an extension of the prohibition continues ''to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The October 2007 Report and Order concluded the prohibition continues to be necessary, and accordingly, retained it until October 5, 2012. The accompanying Notice of Proposed Rulemaking (NPRM) sought comment on revisions to the Commission's program access and retransmission consent rules. The associated Report and Order adopted rules to permit complainants to pursue program access claims regarding terrestrially delivered cable affiliated programming.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/01/07 | 72 FR 9289 |
| NPRM Comment Period End. | 04/02/07 | |
| R&O | 10/04/07 | 72 FR 56645 |
| Second NPRM | 10/31/07 | 72 FR 61590 |
| Second NPRM Comment Period End. | 11/30/07 | |
| R&O | 03/02/10 | 75 FR 9692 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David Konczal, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2228, *Email: david.konczal@fcc.gov.*

*RIN:* 3060–AI87

**521. Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07–91)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 309; 47 U.S.C. 312; 47 U.S.C. 316; 47 U.S.C. 318 and 319; 47 U.S.C. 324 and 325; 47 U.S.C. 336 and 337

*Abstract:* Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. This proceeding is the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television (DTV). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In this review, the Commission considers how to ensure that broadcasters complete construction of their final post-transition (digital) facilities by the statutory deadline.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/09/07 | 72 FR 37310 |
| NPRM Comment Period End. | 08/08/07 | |
| R&O | 01/30/08 | 73 FR 5634 |
| Order on Clarification. | 07/10/08 | 73 FR 39623 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7142, *Email: evan.baranoff@fcc.gov.*

*RIN:* 3060–AI89

**522. Broadcast Localism (MB Docket No. 04–233)**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 532; 47 U.S.C. 536

*Abstract:* The concept of localism has been a cornerstone of broadcast regulation. The Commission has consistently held that as temporary trustee of the public's airwaves, broadcasters are obligated to operate their stations to serve the public interest. Specifically, broadcasters are required to air programming responsive to the needs and issues of the people in their licensed communities. The Commission opened this proceeding to seek input on a number of issues related to broadcast localism.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Report and NPRM | 02/13/08 | 73 FR 8255 |

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End. | 03/14/08 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mary Beth Murphy, DIvision Chief, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2132, *Email: marybeth.murphy@fcc.gov.*

*RIN:* 3060–AJ04

**523. Creating a Low Power Radio Service (MM Docket No. 99–25)**

*Legal Authority:* 47 U.S.C. 151 to 152; 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 403; 47 U.S.C. 405

*Abstract:* This proceeding was initiated to establish a new noncommercial educational low power FM radio service for non-profit community organizations and public safety entities. In January 2000, the Commission adopted a Report and Order establishing two classes of LPFM stations, 100 watt (LP100) and 10 watt (LP10) facilities, with service radii of approximately 3.5 miles and 1–2 miles, respectively. The Report and Order also established ownership and eligibility rules for the LPFM service. The Commission generally restricted ownership to entities with no attributable interest in any other broadcast station or other media. To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission established a point system favoring local ownership and locally-originated programming. The Report and Order imposed separation requirements for LPFM with respect to full power stations operating on co-, first- and second-adjacent and intermediate frequency (IF) channels.

In a Further Notice issued in 2005, the Commission reexamined some of its rules governing the LPFM service, noting that the rules may need adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility.

The Third Report and Order resolves issues raised in the Further Notice. The accompanying Second Further Notice of Proposed Rulemaking (FNPRM) considers rule changes to avoid the potential loss of LPFM stations.

In the third FNPRM, the Commission seeks comment on the impact of the Local Community Radio Act on the procedures previously adopted.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/16/99 | 64 FR 7577 |
| R&O | 02/15/00 | 65 FR 7616 |
| MO&O and Order on Recon. | 11/09/00 | 65 FR 67289 |
| Second R&O | 05/10/01 | 66 FR 23861 |
| Second Order on Recon and FNPRM. | 07/07/05 | 70 FR 3918 |
| Third R&O | 01/17/08 | 73 FR 3202 |
| Second FNPRM | 03/26/08 | 73 FR 12061 |
| Third FNPRM | 07/29/11 | 76 FR 454901 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2700, *Email: peter.doyle@fcc.gov.*

*RIN:* 3060–AJ07

**524. Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures (MB Docket No. 09–52)**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 307 and 309(j)

*Abstract:* This proceeding was commenced to consider a number of changes to the Commission's rules and procedures to carry out the statutory goal of distributing radio service fairly and equitably, and to increase the transparency and efficiency of radio broadcast auction and licensing processes. In the NPRM, comment is sought on specific proposals regarding the procedures used to award commercial broadcast spectrum in the AM and FM broadcast bands. The accompanying Report and Order adopts rules that provide tribes a priority to obtain broadcast radio licenses in tribal communities. The Commission concurrently adopted a Further Notice of Proposed Rulemaking seeking comment on whether to extend the tribal priority to tribes that do not possess tribal land.

The Commission adopted a second FNPRM in order to develop a more comprehensive record regarding measures to assist Federally recognized Native American tribes and Alaska native villages in obtaining commercial FM station authorizations. In the second R&O, the Commission adopted a number of procedures, procedural changes, and clarifications of existing rules and procedures, designed to promote ownership and programming diversity, especially by Native American tribes, and to promote the initiation and retention of radio service in and to smaller communities and rural areas.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/13/09 | 74 FR 22498 |
| NPRM Comment Period End. | 07/10/09 | |
| First R&O | 03/04/10 | 75 FR 9797 |
| FNPRM | 03/04/10 | 75 FR 9856 |
| 2nd FNPRM | 03/16/11 | 76 FR 14362 |
| 2nd R&O | 04/06/11 | 76 FR 18942 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2700, *Email: peter.doyle@fcc.gov.*

*RIN:* 3060–AJ23

**525. Promoting Diversification of Ownership in the Broadcast Services (MB Docket No. 07–294)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154 i and (j); 47 U.S.C. 257; 47 U.S.C. 303(r); 47 U.S.C. 307 to 310; 47 U.S.C. 336; 47 U.S.C. 534 and 535

*Abstract:* Diversity and competition are longstanding and important Commission goals. The measures proposed, as well as those adopted in this proceeding, are intended to promote diversity of ownership of media outlets. In the Report and Order and third FNPRM, measures are enacted to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. In the Report and Order and fourth FNPRM, the Commission adopts improvements to its data collection in order to obtain an accurate and comprehensive assessment of minority and female broadcast ownership in the United States. The Memorandum Opinion & Order addressed petitions for Reconsideration of the rules, and also sought comment on a proposal to expand the reporting requirements to non attributable interests.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| R&O | 05/16/08 | 73 FR 28361 |
| 3rd FNPRM | 05/16/08 | 73 FR 28400 |

| Action | Date | FR Cite |
|---|---|---|
| R&O | 05/27/09 | 74 FR 25163 |
| 4th FNPRM | 05/27/09 | 74 FR 25305 |
| 5th NPRM (release date). | 10/16/09 | |
| MO&O | 10/30/09 | 74 FR 56131 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy Brett, Asst. Div. Chief, Industry Analysis Div., Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2703, *Email: amy.brett@fcc.gov*.

*RIN:* 3060–AJ27

**526. • Amendment of the Commission's Rules Related to Retransmission Consent; MB Docket No. 10–71**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 325; 47 U.S.C. 534

*Abstract:* Cable systems and other multichannel video programming distributors are not entitled to retransmit a broadcast station's signal without the station's consent. This consent is known as ''retransmission consent.'' Since Congress enacted the retransmission consent regime in 1992, there have been significant changes in the video programming marketplace. In this proceeding, comment is sought on a series of proposals to streamline and clarify the Commission's rules concerning or affecting retransmission consent negotiations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/28/11 | 76 FR 17071 |
| NPRM Comment Period End. | 05/27/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Diana Sokolow, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2120, *Email: diana.sokolow@fcc.gov*.

*RIN:* 3060–AJ55

**527. • Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; MB Docket No. 11–43**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 303

*Abstract:* The Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA'') requires reinstatement of the video description rules adopted by the Commission in 2000. ''Video description,'' which is the insertion of narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue, makes video programming more accessible to individuals who are blind or visually impaired. This proceeding was initiated to enable compliance with the CVAA.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/18/11 | 76 FR 14856 |
| NPRM Comment Period End. | 04/18/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lyle Elder, Attorney, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2120, *Email: lyle.elder@fcc.gov*.

*RIN:* 3060–AJ56

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Office of Managing Director*

Long-Term Actions

**528. Assessment and Collection of Regulatory Fees**

*Legal Authority:* 47 U.S.C. 159

*Abstract:* Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/06/06 | 71 FR 17410 |
| R&O | 08/02/06 | 71 FR 43842 |
| NPRM | 05/02/07 | 72 FR 24213 |
| R&O | 08/16/07 | 72 FR 45908 |
| FNPRM | 08/16/07 | 72 FR 46010 |
| NPRM | 05/28/08 | 73 FR 30563 |
| R&O | 08/26/08 | 73 FR 50201 |
| FNPRM | 08/26/08 | 73 FR 50285 |
| 2nd R&O | 05/12/09 | 74 FR 22104 |
| NPRM and Order | 06/02/09 | 74 FR 26329 |
| R&O | 08/11/09 | 74 FR 40089 |
| NPRM | 04/26/10 | 75 FR 21536 |
| NPRM Comment Period End. | 05/04/10 | |
| R&O | 07/19/10 | 75 FR 41932 |
| NPRM | 05/26/11 | 76 FR 30605 |
| NPRM Comment Period End. | 06/09/11 | |
| R&O | 08/10/11 | 76 FR 4933 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Roland Helvajian, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0444, *Email: roland.helvajian@fcc.gov*.

*RIN:* 3060–AI79

**529. Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of Cores Registration System; MD Docket No. 10–234**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 158(c)(2); 47 U.S.C. 159(c)(2); 47 U.S.C. 303(r); 5 U.S.C. 5514; 31 U.S.C. 7701(c)(1)

*Abstract:* This Notice of Proposed Rulemaking proposes revisions intended to make the Commission's Registration System (CORES) more feature-friendly and improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the federal government. The proposed modifications to CORES partly include: Requiring entities and individuals to rely primarily upon a single FRN that may, at their discretion, be linked to subsidiary or associated accounts; allowing entities to identify multiple points of contact; eliminating some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (TIN) at the time of registration; requiring FRN holders to provide their email addresses; modifying CORES log-in procedures; adding attention flags and automated notices that would inform FRN holders of their financial standing before the Commission; and adding data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/01/11 | 76 FR 5652 |
| NPRM Comment Period End. | 03/03/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Warren Firschein, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0844, *Email: warren.firschein@fcc.gov.*

*RIN:* 3060–AJ54

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Public Safety and Homeland Security Bureau*

Long-Term Actions

### 530. Revision of the Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems

*Legal Authority:* 47 U.S.C. 134(i); 47 U.S.C. 151; 47 U.S.C. 201; 47 U.S.C. 208; 47 U.S.C. 215; 47 U.S.C. 303; 47 U.S.C. 309

*Abstract:* In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 08/02/96 | 61 FR 40374 |
| R&O | 08/02/96 | 61 FR 40348 |
| MO&O | 01/16/98 | 63 FR 2631 |
| Second R&O | 06/28/99 | 64 FR 34564 |
| Third R&O | 11/04/99 | 64 FR 60126 |
| Second MO&O | 12/29/99 | 64 FR 72951 |
| Fourth MO&O | 10/02/00 | 65 FR 58657 |
| FNPRM | 06/13/01 | 66 FR 31878 |
| Order | 11/02/01 | 66 FR 55618 |
| R&O | 05/23/02 | 67 FR 36112 |
| Public Notice | 07/17/02 | 67 FR 46909 |
| Order to Stay | 07/26/02 | |
| Order on Recon | 01/22/03 | 68 FR 2914 |
| FNPRM | 01/23/03 | 68 FR 3214 |
| R&O, Second FNPRM. | 02/11/04 | 69 FR 6578 |
| Second R&O | 09/07/04 | 69 FR 54037 |
| NPRM | 06/20/07 | 72 FR 33948 |
| NPRM Comment Period End. | 09/18/07 | |
| R&O | 02/14/08 | 73 FR 8617 |
| Public Notice | 09/25/08 | 73 FR 55473 |
| Comment Period End. | 10/18/08 | |
| Public Notice | 11/18/09 | 74 FR 59539 |
| Comment Period End. | 12/04/09 | |
| FNPRM, NOI | 11/02/10 | 75 FR 67321 |
| Second R&O | 11/18/10 | 75 FR 70604 |
| Order, Comment Period Extension. | 01/07/11 | 76 FR 1126 |
| Comment Period End. | 02/18/11 | |
| Second FNPRM | 08/04/11 | 76 FR 47114 |
| NPRM | 08/04/11 | 76 FR 47114 |
| NPRM Comment Period End. | 11/02/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0952, *Email: tom.beers@fcc.gov.*

*RIN:* 3060–AG34

### 531. Enhanced 911 Services for Wireline

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201; 47 U.S.C. 222; 47 U.S.C. 251

*Abstract:* The rules generally will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/11/94 | 59 FR 54878 |
| FNPRM | 01/23/03 | 68 FR 3214 |
| Second FNPRM | 02/11/04 | 69 FR 6595 |
| R&O | 02/11/04 | 69 FR 6578 |
| Public Notice | 01/13/05 | 70 FR 2405 |
| Comment Period End. | 03/29/05 | |
| NOI | 01/13/11 | 76 FR 2297 |
| NOI Comment Period End. | 03/14/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0952, *Email: tom.beers@fcc.gov.*

*RIN:* 3060–AG60

### 532. In the Matter of the Communications Assistance for Law Enforcement Act

*Legal Authority:* 47 U.S.C. 229; 47 U.S.C. 1001 to 1008

*Abstract:* All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/10/97 | 62 FR 63302 |
| Order | 01/13/98 | 63 FR 1943 |
| FNPRM | 11/16/98 | 63 FR 63639 |
| R&O | 01/29/99 | 64 FR 51462 |
| Order | 03/29/99 | 64 FR 14834 |
| Second R&O | 09/23/99 | 64 FR 51462 |
| Third R&O | 09/24/99 | 64 FR 51710 |
| Order on Recon | 09/28/99 | 64 FR 52244 |
| Policy Statement | 10/12/99 | 64 FR 55164 |
| Second Order on Recon. | 05/04/01 | 66 FR 22446 |
| Order | 10/05/01 | 66 FR 50841 |
| Order on Remand | 05/02/02 | 67 FR 21999 |
| NPRM | 09/23/04 | 69 FR 56976 |
| First R&O | 10/13/05 | 70 FR 59704 |
| Second R&O | 07/05/06 | 71 FR 38091 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0952, *Email: tom.beers@fcc.gov.*

*RIN:* 3060–AG74

### 533. Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 160; 47 U.S.C. 201 and 202; 47 U.S.C. 303; 47 U.S.C. 337(a); 47 U.S.C. 403

*Abstract:* This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/09/97 | 62 FR 60199 |
| Second NPRM | 11/07/97 | 62 FR 60199 |
| First R&O | 11/02/98 | 63 FR 58645 |
| Third NPRM | 11/02/98 | 63 FR 58685 |
| MO&O | 11/04/99 | 64 FR 60123 |
| Second R&O | 08/08/00 | 65 FR 48393 |
| Fourth NPRM | 08/25/00 | 65 FR 51788 |
| Second MO&O | 09/05/00 | 65 FR 53641 |
| Third MO&O | 11/07/00 | 65 FR 66644 |
| Third R&O | 11/07/00 | 65 FR 66644 |
| Fifth NPRM | 02/16/01 | 66 FR 10660 |
| Fourth R&O | 02/16/01 | 66 FR 10632 |
| MO&O | 09/27/02 | 67 FR 61002 |
| NPRM | 11/08/02 | 67 FR 68079 |
| R&O | 12/13/02 | 67 FR 76697 |
| NPRM | 04/27/05 | 70 FR 21726 |
| R&O | 04/27/05 | 70 FR 21671 |
| NPRM | 04/07/06 | 71 FR 17786 |
| NPRM | 09/21/06 | 71 FR 55149 |
| Ninth NPRM | 01/10/07 | 72 FR 1201 |
| Ninth NPRM Comment Period End. | 02/26/07 | |
| R&O and FNPRM | 05/02/07 | 72 FR 24238 |

| Action | Date | FR Cite |
|---|---|---|
| R&O and FNPRM Comment Period End. | 05/23/07 | |
| Second R&O | 08/24/07 | 72 FR 48814 |
| Second FNPRM | 05/21/08 | 73 FR 29582 |
| Third FNPRM | 10/03/08 | 73 FR 57750 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Cohen, Senior Legal Counsel, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0799, *Email: jeff.cohen@fcc.gov.*

*RIN:* 3060–AG85

**534. Implementation of 911 ACT**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 202; 47 U.S.C. 208; 47 U.S.C. 210; 47 U.S.C. 214; 47 U.S.C. 251(e); 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 308 to 309(j); 47 U.S.C. 310

*Abstract:* This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, a chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and is aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Fourth R&O, Third NPRM, and NPRM. | 09/19/00 | 65 FR 56752 |
| Fifth R&O, First R&O, and MO&O. | 01/14/02 | 67 FR 1643 |
| Final Rule | 01/25/02 | 67 FR 3621 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* David H. Siehl, Attorney, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1313, *Fax:* 202 418–2816, *Email: david.siehl@fcc.gov.*

*RIN:* 3060–AH90

**535. Commission Rules Concerning Disruptions to Communications**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 615a–1

*Abstract:* The Report and Order extended the Commission's disruption reporting requirements to communications providers who are not wireline carriers. The Commission also streamlined compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of that rule. In addition, the Commission delegated authority to the Chief, Office of Engineering and Technology, to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed. Such authority was subsequently delegated to the Chief of the Public Safety and Homeland Security Bureau. These actions will allow the Commission to obtain the necessary information regarding service disruptions in an efficient and expeditious manner and to achieve significant concomitant public interest benefits.

The Commission received nine petitions for reconsideration in this proceeding, which are pending.

The Further Notice of Proposed Rulemaking (NPRM) expands the record in the proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, the Commission requested comment on the additional types of airport communications (e.g., wireless, satellite) that should be required to file service disruption reports—particularly from a homeland security and defense perspective. These types of airport communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. The Commission also requested comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/26/04 | 69 FR 15761 |
| FNPRM | 11/26/04 | 69 FR 68859 |
| R&O | 12/03/04 | 69 FR 70316 |
| Announcement of Effective Date and Partial Stay. | 12/30/04 | 69 FR 78338 |
| Petition for Recon | 02/15/05 | 70 FR 7737 |
| Amendment of Delegated Authority. | 02/21/08 | 73 FR 9462 |
| Public Notice | 08/02/10 | |
| NPRM | 05/13/11 | 76 FR 33686 |
| NPRM Comment Period End. | 08/08/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7452, *Email: lisa.fowlkes@fcc.gov.*

*RIN:* 3060–AI22

**536. E911 Requirements For IP-Enabled Service Providers**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 251(e); 47 U.S.C. 303(r)

*Abstract:* The notice seeks comment on what additional steps the Commission should take to ensure that providers of voice-over Internet protocol services that interconnect with the public switched telephone network provide ubiquitous and reliable enhanced 911 service.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/29/05 | 70 FR 37307 |
| NPRM Comment Period End. | 09/12/05 | |
| NPRM | 06/20/07 | 72 FR 33948 |
| NPRM Comment Period End. | 09/18/07 | |
| FNPRM, NOI | 11/02/10 | 75 FR 67321 |
| Order, Extension of Comment Period. | 01/07/11 | 76 FR 1126 |
| Comment Period End. | 02/18/11 | |
| Second NPRM | 08/04/11 | 76 FR 47114 |
| Second NPRM Comment Period End. | 11/02/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tom Beers, Chief, Policy Division, Federal Communications Commission, Public

Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0952, *Email: tom.beers@fcc.gov.*

*RIN:* 3060–AI62

**537. Stolen Vehicle Recovery System (SVRS)**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 301 to 303

*Abstract:* The Report and Order amends 47 CFR 90.20(e)(6) governing stolen vehicle recovery system operations at 173.075 MHz, by increasing the radiated power limit for narrowband base stations; increasing the power output limit for narrowband base stations; increasing the power output limit for narrowband mobile transceivers; modifying the base station duty cycle; increasing the tracking duty cycle for mobile transceivers; and retaining the requirement for TV channel 7 interference studies and that such studies must be served on TV channel 7 stations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/23/06 | 71 FR 49401 |
| NPRM Comment Period End. | 10/10/06 | |
| R&O | 10/14/08 | 73 FR 60631 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Zenji Nakazawa, Assoc. Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7949, *Email: zenji.nakazaw@fcc.gov.*

*RIN:* 3060–AJ01

**538. Commercial Mobile Alert System**

*Legal Authority:* Pub. L. 109–347 title VI; EO 13407; 47 U.S.C. 151; 47 U.S.C. 154(i)

*Abstract:* In the Notice of Proposed Rulemaking (NPRM), the Commission initiated a comprehensive rulemaking to establish a commercial mobile alert system under which commercial mobile service providers may elect to transmit emergency alerts to the public. The Commission has issued three orders adopting CMAS rules as required by statute. Issues raised in an FNPRM regarding testing requirements for non-commercial educational and public broadcast television stations remain outstanding.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/03/08 | 73 FR 545 |
| NPRM Comment Period End. | 02/04/08 | |
| First R&O | 07/24/08 | 73 FR 43009 |
| Second R&O | 08/14/08 | 73 FR 47550 |
| FNPRM | 08/14/08 | 73 FR 47568 |
| FNPRM Comment Period End. | 09/15/08 | |
| Third R&O | 09/22/08 | 73 FR 54511 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7452, *Email: lisa.fowlkes@fcc.gov.*

*RIN:* 3060–AJ03

**539. Emergency Alert System**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(o); 47 U.S.C. 301; 47 U.S.C. 393(r) and 303(v); 47 U.S.C. 307 and 309; 47 U.S.C. 335 and 403; 47 U.S.C. 544(g); 47 U.S.C. 606 and 615

*Abstract:* This revision of 47 CFR part 11 provides for national-level testing of the Emergency Alert System.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/12/10 | 75 FR 4760 |
| NPRM Comment Period End. | 03/30/10 | |
| 3rd R&O | 02/03/11 | 76 FR 12600 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Eric Ehrenreich, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1726, *Email: eric.ehrenreich@fcc.gov.*

*RIN:* 3060–AJ33

**540. Wireless E911 Location Accuracy Requirements; PS Docket No. 07–114**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 332

*Abstract:* Related to the proceedings in which the FCC has previously acted to improve the quality of all emergency services, this action requires wireless carriers to take steps to provide more specific automatic location information in connection with 911 emergency calls to Public Safety Answering Points (PSAPs) in areas where wireless carriers have not done so in the past. Wireless licensees must now satisfy amended Enhanced 911 location accuracy standards at either a county-based or a PSAP-based geographic level.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/20/07 | 72 FR 33948 |
| NPRM Comment Period End. | 07/11/07 | |
| R&O | 02/14/08 | 73 FR 8617 |
| Public Notice | 09/25/08 | 73 FR 55473 |
| Comment Period End. | 10/14/08 | |
| Public Notice | 11/18/09 | 74 FR 59539 |
| Comment Period End. | 12/04/09 | |
| 2nd R&O | 11/18/10 | 75 FR 70604 |
| Second NPRM | 08/04/11 | 76 FR 47114 |
| Second NPRM Comment Period End. | 11/02/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0952, *Email: tom.beers@fcc.gov.*

*RIN:* 3060–AJ52

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Wireless Telecommunications Bureau*

Long-Term Actions

**541. Amendment of Parts 13 and 80 of the Commission's Rules Governing Maritime Communications**

*Legal Authority:* 47 U.S.C. 302 to 303

*Abstract:* This matter concerns the amendment of the rules governing maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/24/00 | 65 FR 21694 |
| NPRM | 08/17/00 | 65 FR 50173 |
| NPRM | 05/17/02 | 67 FR 35086 |
| Report & Order | 08/07/03 | 68 FR 46957 |
| Second R&O, Sixth R&O, Second FNPRM. | 04/06/04 | 69 FR 18007 |
| Comments Due | 06/07/04 | |
| Reply Comments Due. | 07/06/04 | |
| Second R&O and Sixth R&O. | 11/08/04 | 69 FR 64664 |

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/08/06 | 71 FR 65447 |
| Final Action | 01/25/08 | 73 FR 4475 |
| Petition for Reconsideration. | 03/18/08 | 73 FR 14486 |
| 4th R&O [Release Date]. | 06/10/10 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0680, *Email: jeff.tobias@fcc.gov.*

*RIN:* 3060–AH55

**542. Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152(n); 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 201(b); 47 U.S.C. 251(a); 47 U.S.C. 253; 47 U.S.C. 303(r); 47 U.S.C. 332(c)(1)(B); 47 U.S.C. 309

*Abstract:* This rulemaking considers whether the Commission should adopt an automatic roaming rule for voice services for Commercial Mobile Radio Services and whether the Commission should adopt a roaming rule for mobile data services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/21/00 | 65 FR 69891 |
| NPRM | 09/28/05 | 70 FR 56612 |
| NPRM | 01/19/06 | 71 FR 3029 |
| FNPRM | 08/30/07 | 72 FR 50085 |
| Final Rule | 08/30/07 | 72 FR 50064 |
| Final Rule | 04/28/10 | 75 FR 22263 |
| FNPRM | 04/28/10 | 75 FR 22338 |
| 2nd R&O | 05/06/11 | 76 FR 26199 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Trachtenberg, Assoc. Div. Chief SCPD, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7369, *Email: peter.trachtenberg@fcc.gov.*

Christina Clearwater, Asst. Div. Chief, SCPD, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1893, *Email: christina.clearwater@fcc.gov.*

*RIN:* 3060–AH83

**543. Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01–289)**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 303; 47 U.S.C. 307(e)

*Abstract:* This proceeding is intended to streamline, consolidate and revise our part 87 rules governing the Aviation Radio Service. The rule changes are designed to ensure these rules reflect current technological advances.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/16/01 | 66 FR 64785 |
| NPRM Comment Period End. | 03/14/02 | |
| R&O and FNPRM | 10/16/03 | |
| FNPRM | 04/12/04 | 69 FR 19140 |
| FNPRM Comment Period End. | 07/12/04 | |
| R&O | 06/14/04 | 69 FR 32577 |
| NPRM | 12/06/06 | 71 FR 70710 |
| NPRM Comment Period End. | 03/06/07 | |
| Final Rule | 12/06/06 | 71 FR 70671 |
| 3rd R&O | 03/29/11 | 76 FR 17347 |
| Stay Order | 03/29/11 | 76 FR 17353 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0680, *Email: jeff.tobias@fcc.gov.*

*RIN:* 3060–AI35

**544. Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05–211)**

*Legal Authority:* 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 155; 47 U.S.C. 155(c); 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 303(r); 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 309(j); 47 U.S.C. 325(e); 47 U.S.C. 334; 47 U.S.C. 336; 47 U.S.C. 339; 47 U.S.C. 554

*Abstract:* This proceeding implements rules and procedures needed to comply with the recently enacted Commercial Spectrum Enhancement Act (CSEA). It establishes a mechanism for reimbursing federal agencies out of spectrum auction proceeds for the cost of relocating their operations from certain ''eligible frequencies'' that have been reallocated from Federal to non-Federal use. It also seeks to improve the Commission's ability to achieve Congress's directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of its designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/14/05 | 70 FR 43372 |
| NPRM Comment Period End. | 08/26/05 | |
| Declaratory Ruling | 06/14/05 | 70 FR 43322 |
| R&O | 01/24/06 | 71 FR 6214 |
| FNPRM | 02/03/06 | 71 FR 6992 |
| FNPRM Comment Period End. | 02/24/06 | |
| Second R&O | 04/25/06 | 71 FR 26245 |
| Order on Recon of Second R&O. | 06/02/06 | 71 FR 34272 |
| NPRM | 06/21/06 | 71 FR 35594 |
| NPRM Comment Period End. | 08/21/06 | |
| Reply Comment Period End. | 09/19/06 | |
| Second Order and Recon of Second R&O. | 04/04/08 | 73 FR 18528 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7384, *Email: kelly.quinn@fcc.gov.*

*RIN:* 3060–AI88

**545. Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 301 to 303; 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 332; 47 U.S.C. 336 and 337

*Abstract:* The Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and

size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the nation.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/02/03 | 68 FR 34560 |
| NPRM Comment Period End. | 09/08/03 | |
| FNPRM | 07/29/04 | 69 FR 72048 |
| FNPRM Comment Period End. | 01/10/03 | |
| R&O | 07/29/04 | 69 FR 72020 |
| MO&O | 04/27/06 | 71 FR 35178 |
| FNPRM | 03/20/08 | 73 FR 26067 |
| FNPRM Comment Period End. | 07/07/08 | |
| MO&O | 03/20/08 | 73 FR 26032 |
| MO&O | 09/28/09 | 74 FR 49335 |
| FNPRM | 09/28/09 | 74 FR 49356 |
| FNPRM Comment Period End. | 10/13/09 | |
| R&O | 06/03/10 | 75 FR 33729 |
| FNPRM | 05/27/11 | 76 FR 32901 |
| FNPRM Comment Period End. | 07/22/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Schauble, Deputy Chief, Broadband Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

*RIN:* 3060–AJ12

**546. Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04–344)**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 306; 47 U.S.C. 307(e); 47 U.S.C. 332; 47 U.S.C. 154(i); 47 U.S.C. 161

*Abstract:* This action adopts additional measures for domestic implementation of Automatic Identification Systems (AIS), an advanced marine vessel tracking and navigation technology that can significantly enhance our nation's homeland security as well as maritime safety.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 01/29/09 | 74 FR 5117 |
| Final Rule Effective. | 03/02/09 | |
| Petition for Recon | 04/03/09 | 74 FR 15271 |
| Final Rule | 05/26/11 | 76 FR 33653 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0680, *Email: jeff.tobias@fcc.gov.*

*RIN:* 3060–AJ16

**547. Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 301

*Abstract:* This proceeding explores the possible uses of the 2155–2175 MHz frequency band (AWS–3) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS–3 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services. We proposed to apply our flexible, market-oriented rules to the band in order to meet this objective.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed AWS–3 rules, which include adding 5 megahertz of spectrum (2175–80 MHz) to the AWS–3 band, and requiring licensees of that spectrum to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/14/07 | 72 FR 64013 |
| NPRM Comment Period End. | 01/14/08 | |
| FNPRM | 06/25/08 | 73 FR 35995 |
| FNPRM Comment Period End. | 08/11/08 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Daronco, Associate Div. Chief, Broadband Div., Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7235, *Email: peter.daronco@fcc.gov.*

*RIN:* 3060–AJ19

**548. Service Rules for Advanced Wireless Services in the 1915 to 1920 MHz, 1995 to 2000 MHz, 2020 to 2025 MHz, and 2175 to 2180 MHz Bands**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 301; * * *

*Abstract:* This proceeding explores the possible uses of the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, and 2175–2180 MHz Bands (collectively AWS–2) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS–2 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed rules for the 1915–1920 MHz and 1995–2000 MHz bands. In addition, the Commission proposed to add 5 megahertz of spectrum (2175–80 MHz band) to the 2155–2175 MHz band, and would require the licensee of the 2155–2180 MHz band to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/02/04 | 69 FR 63489 |
| NPRM Comment Period End. | 01/24/05 | |
| FNPRM | 06/25/08 | 73 FR 35995 |
| FNPRM Comment Period End. | 08/11/08 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Peter Daronco, Associate Div. Chief, Broadband Div., Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7235, *Email: peter.daronco@fcc.gov.*

*RIN:* 3060–AJ20

**549. Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band, WT Docket No. 08–166; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 301 and 302(a); 47 U.S.C. 303; 47 U.S.C. 303(r); 47 U.S.C. 304; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 332; 47 U.S.C. 336 and 337

*Abstract:* In the Notice of Proposed Rulemaking and Order, to facilitate the DTV transition the Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking.

The Commission also imposes a freeze on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698–806 MHz) after the end of the DTV transition, February 17, 2009, as well as on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. The Commission also holds in abeyance, until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

On January 15, 2010, the Commission released a Report and Order that prohibits the distribution and sale of wireless microphones that operate in the 700 MHz Band (698–806 MHz, channels 52–69) and includes a number of provisions to clear these devices from that band. These actions help complete an important part of the DTV transition by clearing the 700 MHz Band to enable the rollout of communications services for public safety and the deployment of next generation wireless devices.

On January 15, 2010, the Commission also released a Further Notice of Proposed Rulemaking seeking comment on the operation of low power auxiliary stations, including wireless microphones, in the core TV bands (channels 2–51, excluding channel 37). Among the issues the Commission is considering in the Further Notice are revisions to its rules to expand eligibility for licenses to operate wireless microphones under part 74; the operation of wireless microphones on an unlicensed basis in the core TV bands under part 15; technical rules to apply to low power wireless audio devices, including wireless microphones, operating in the core TV bands on an unlicensed basis under part 15 of the rules; and long term solutions to address the operation of wireless microphones and the efficient use of the core TV spectrum.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/03/08 | 73 FR 51406 |
| NPRM Comment Period End. | 10/20/08 | |
| R&O | 01/22/10 | 75 FR 3622 |
| FNPRM | 01/22/10 | 75 FR 3682 |
| FNPRM Comment Period End. | 03/22/10 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* G. William Stafford, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0563, *Fax:* 202 418–3956, *Email: bill.stafford@fcc.gov.*

*RIN:* 3060–AJ21

**550. Amendment of the Commission's Rules To Improve Public Safety Communications in the 800 MHz Band, and To Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 332

*Abstract:* This action adopts rules that retain the current site-based licensing paradigm for the 900 MHz B/ILT ''white space''; adopts interference protection rules applicable to all licensees operating in the 900 MHz B/ILT spectrum; and lifts, on a rolling basis, the freeze placed on applications for new 900 MHz B/ILT licenses in September 2004—the lift being tied to the completion of rebanding in each 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/18/05 | 70 FR 13143 |
| NPRM Comment Period End. | 06/12/05 | 70 FR 23080 |
| Final Rule | 12/16/08 | 73 FR 67794 |
| Petition for Recon | 03/12/09 | 74 FR 10739 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Connelly, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0132, *Email: michael.connelly@fcc.gov.*

*RIN:* 3060–AJ22

**551. Amendment of Part 101 To Accommodate 30 MHz Channels in the 6525–6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8–22.0 and 23.0–23.2 GHz Band (WT Docket No. 04–114)**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 310; 47 U.S.C. 319; 47 U.S.C. 324; 47 U.S.C. 332 and 333

*Abstract:* The Commission seeks comments on modifying its rules to authorize channels with bandwidths of as much as 30 MHz in the 6525–6875 MHz band. We also propose to allow conditional authorization on additional channels in the 21.8–22.0 and 23.0–23.2 GHz bands.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/29/09 | 74 FR 36134 |
| NPRM Comment Period End. | 07/22/09 | |
| R&O | 06/11/10 | 75 FR 41767 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Schauble, Deputy Chief, Broadband Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

*RIN:* 3060–AJ28

**552. In the Matter of Service Rules for the 698 to 746, 747 to 762 and 777 to 792 MHz Bands**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309

*Abstract:* This is one of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698–806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52–69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services, and is known as the 700 MHz Commercial Services proceeding.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/03/06 | 71 FR 48506 |
| NPRM | 09/20/06 | |
| FNPRM | 05/02/07 | 72 FR 24238 |
| FNPRM Comment Period End. | 05/23/07 | |
| R&O | 07/31/07 | 72 FR 48814 |
| Order on Recon | 09/24/07 | 72 FR 56015 |
| Second FNPRM | 05/14/08 | 73 FR 29582 |
| Second FNPRM Comment Period End. | 06/20/08 | |
| Third FNPRM | 09/05/08 | 73 FR 57750 |
| Third FNPRM Comment Period End. | 11/03/08 | |
| Second R&O | 02/20/09 | 74 FR 8868 |
| Final Rule | 03/04/09 | 74 FR 8868 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Paul D'Ari, Spectrum and Competition Policy Division, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1550, *Fax:* 202 418–7447, *Email: paul.dari@fcc.gov.*

*RIN:* 3060–AJ35

**553. National Environmental Act Compliance for Proposed Tower Registrations; in the Matter of Effects on Migratory Birds**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(q); 47 U.S.C. 303(r); 47 U.S.C. 309(g); 42 U.S.C. 4321 *et seq.*

*Abstract:* On April 14, 2009, American Bird Conservancy, Defenders of Wildlife, and National Audubon Society filed a Petition for Expedited Rulemaking and Other Relief. The petitioners request that the Commission adopt on an expedited basis a variety of new rules, which they assert are necessary to comply with environmental statutes and their implementing regulations. This proceeding addresses the Petition for Expedited Rulemaking and Other Relief.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/22/06 | 71 FR 67510 |
| NPRM Comment Period End. | 02/20/07 | |
| New NPRM Comment Period End. | 05/23/07 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Steinberg, Deputy Chief, Spectrum and Competition Div, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0896.

*RIN:* 3060–AJ36

**554. Amendment of Part 90 of the Commission's Rules**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 303

*Abstract:* This proceeding considers rule changes impacting miscellaneous part 90 Private Land Mobile Radio rules.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/13/07 | 72 FR 32582 |
| FNPRM | 04/14/10 | 75 FR 19340 |
| Order on Recon (Release Date). | 06/07/10 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Rodney P Conway, Engineer, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2904, *Fax:* 202 418–1944, *Email: rodney.conway@fcc.gov.*

*RIN:* 3060–AJ37

**555. Amendment of Part 101 of the Commission's Rules for Microwave Use and Broadcast Auxiliary Service Flexibility**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 157; 47 U.S.C. 160 and 201; 47 U.S.C. 214; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 310; 47 U.S.C. 319 and 324; 47 U.S.C. 332 and 333

*Abstract:* In this document, the Commission commences a proceeding to remove regulatory barriers to the use of spectrum for wireless backhaul and other point-to-point and point-to-multipoint communications.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/05/10 | 75 FR 52185 |
| NPRM Comment Period End. | 11/22/10 | |
| R&O | 09/27/11 | 76 FR 59559 |
| FNPRM | 09/27/11 | 76 FR 59614 |
| FNPRM Comment Period End. | 10/25/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Schauble, Deputy Chief, Broadband Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

*RIN:* 3060–AJ47

**556. 2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of the Commission's Rules Governing Construction, Marking, and Lighting of Antenna Structures**

*Legal Authority:* 47 U.S.C. 154(i)–(j) and 161; 47 U.S.C. 303(q)

*Abstract:* In this NPRM, in WT Docket No. 10–88, the Commission seeks comment on revisions to part 17 of the Commission's rules governing construction, marking, and lighting of antenna structures. The Commission initiated this proceeding to update and modernize the part 17 rules. These proposed revisions are intended to improve compliance with these rules and allow the Commission to enforce them more effectively, helping to better ensure the safety of pilots and aircraft passengers nationwide. The proposed revisions would also remove outdated and burdensome requirements without

compromising the Commission's statutory responsibility to prevent antenna structures from being hazards or menaces to air navigation.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/21/10 | 75 FR 28517 |
| NPRM Comment Period End. | 07/20/10 | |
| NPRM Reply Comment Period End. | 08/19/10 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Borkowski, Attorney-Advisor, Federal Communications Commission, 2025 M Street NW., Washington, DC 20554, *Phone:* 202 634–2443.

*RIN:* 3060–AJ50

**557. Universal Service Reform Mobility Fund (WT Docket No. 10–208)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 155; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 205; 47 U.S.C. 225; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 303(c); 47 U.S.C. 303(f); 47 U.S.C. 303(r); 47 U.S.C. 303(y); 47 U.S.C. 309; 47 U.S.C. 310

*Abstract:* This proceeding proposes the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current-and next-generation wireless infrastructure in areas where these services are unavailable.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/14/10 | 75 FR 67060 |
| NPRM Comment Period End. | 01/18/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Scott Mackoul, Attorney-Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0660.

*RIN:* 3060–AJ58

**558. Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz**

*Legal Authority:* 47 U.S.C. 151 and 154; 47 U.S.C. 303 and 310

*Abstract:* The Commission proposes steps to make additional spectrum available for new investment in mobile broadband networks while ensuring that the United States maintains robust mobile satellite service capabilities. Mobile broadband is emerging as one of America's most dynamic innovation and economic platforms. Yet tremendous demand growth will soon test the limits of spectrum availability. 90 megahertz of spectrum allocated to the Mobile Satellite Service (MSS)—in the 2 GHz band, Big LEO band, and L-band—are potentially available for terrestrial mobile broadband use. The Commission seeks to remove regulatory barriers to terrestrial use, and to promote additional investments, such as those recently made possible by a transaction between Harbinger Capital Partners and SkyTerra Communications, while retaining sufficient market-wide MSS capability. The Commission proposes to add co-primary Fixed and Mobile allocations to the 2 GHz band, consistent with the International Table of Allocations. This allocation modification is a precondition for more flexible licensing of terrestrial services within the band. Second, the Commission proposes to apply the Commission's secondary market policies and rules applicable to terrestrial services to all transactions involving the use of MSS bands for terrestrial services in order to create greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. The Commission also requests comment on further steps we can take to increase the value, utilization, innovation, and investment in MSS spectrum generally.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/15/10 | 75 FR 49871 |
| NPRM Comment Period End. | 09/30/10 | |
| R&O | 04/06/11 | 76 FR 31252 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeremy Marcus, Asst. Division Chief, Broadband Div., Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1530, *Fax:* 202 418–1567, *Email: jeremy.marcus@fcc.gov*.

*RIN:* 3060–AJ59

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

*Wireline Competition Bureau*

Long-Term Actions

**559. Implementation of the Universal Service Portions of the 1996 Telecommunications Act**

*Legal Authority:* 47 U.S.C. 151 *et seq.*

*Abstract:* The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest. More recently, modernization efforts for continuous improvements to the universal service programs are being realized consistent and in keeping with the goals envisioned by the National Broadband Plan.

On February 19, 2010, the Commission released an Order and Notice of Proposed Rulemaking that enabled schools that receive funding from the E-rate program to allow members of the general public to use the schools' Internet access during non-operating hours through funding year 2010 (July 1, 2010 through June 30, 2010) and sought comment on revising its rules to make this change permanent.

On March 18, 2010, the Commission issued a Report & Order and Memorandum Opinion & Order. In this order, the Commission addressed an inequitable asymmetry in the Commission's current rules governing

the receipt of universal service high-cost local switching support (LSS) by small incumbent local exchange carriers (LECs). By modifying the Commission's rules to permit incumbent LECs that lose lines to receive additional LSS when they cross a threshold, the order provides LSS to all small LECs on the same basis. Nothing in the order is intended to address the long-term role of LSS in the Commission's high-cost universal service policies, which the Commission is considering as part of comprehensive universal service reform. April 16, 2010, the Commission issued an Order and NPRM addressing high-cost universal service support for non-rural carriers serving insular areas. In the NPRM, the Commission sought comment on amending its rules to provide additional low-income support in Puerto Rico.

On April 21, 2010, the Commission issued a Notice of Inquiry and Notice of Proposed Rulemaking, the first in a series of proceedings to kick off universal service support reform that is key to making broadband service available for millions of Americans who lack access. This NOI and NPRM sought comment on first steps to reform the distribution of universal service high-cost support.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Recommended Decision Federal-State Joint Board, Universal Service. | 11/08/96 | 61 FR 63778 |
| First R&O | 05/08/97 | 62 FR 32862 |
| Second R&O | 05/08/97 | 62 FR 32862 |
| Order on Recon | 07/10/97 | 62 FR 40742 |
| R&O and Second Order on Recon. | 07/18/97 | 62 FR 41294 |
| Second R&O, and FNPRM. | 08/15/97 | 62 FR 47404 |
| Third R&O | 10/14/97 | 62 FR 56118 |
| Second Order on Recon. | 11/26/97 | 62 FR 65036 |
| Fourth Order on Recon. | 12/30/97 | 62 FR 2093 |
| Fifth Order on Recon. | 06/22/98 | 63 FR 43088 |
| Fifth R&O | 10/28/98 | 63 FR 63993 |
| Eighth Order on Recon. | 11/21/98 | |
| Second Recommended Decision. | 11/25/98 | 63 FR 67837 |
| Thirteenth Order on Recon. | 06/09/99 | 64 FR 30917 |
| FNPRM | 06/14/99 | 64 FR 31780 |
| FNPRM | 09/30/99 | 64 FR 52738 |
| Fourteenth Order on Recon. | 11/16/99 | 64 FR 62120 |
| Fifteenth Order on Recon. | 11/30/99 | 64 FR 66778 |
| Tenth R&O | 12/01/99 | 64 FR 67372 |
| Ninth R&O and Eighteenth Order on Recon. | 12/01/99 | 64 FR 67416 |
| Nineteenth Order on Recon. | 12/30/99 | 64 FR 73427 |
| Twentieth Order on Recon. | 05/08/00 | 65 FR 26513 |
| Public Notice | 07/18/00 | 65 FR 44507 |
| Twelfth R&O, MO&O and FNPRM. | 08/04/00 | 65 FR 47883 |
| FNPRM and Order. | 11/09/00 | 65 FR 67322 |
| FNPRM | 01/26/01 | 66 FR 7867 |
| R&O and Order on Recon. | 03/14/01 | 66 FR 16144 |
| NPRM | 05/08/01 | 66 FR 28718 |
| Order | 05/22/01 | 66 FR 35107 |
| Fourteenth R&O and FNPRM. | 05/23/01 | 66 FR 30080 |
| FNPRM and Order. | 01/25/02 | 67 FR 7327 |
| NPRM | 02/15/02 | 67 FR 9232 |
| NPRM and Order | 02/15/02 | 67 FR 10846 |
| FNPRM and R&O | 02/26/02 | 67 FR 11254 |
| NPRM | 04/19/02 | 67 FR 34653 |
| Order and Second FNPRM. | 12/13/02 | 67 FR 79543 |
| NPRM | 02/25/03 | 68 FR 12020 |
| Public Notice | 02/26/03 | 68 FR 10724 |
| Second R&O and FNPRM. | 06/20/03 | 68 FR 36961 |
| Twenty-Fifth Order on Recon, R&O, Order, and FNPRM. | 07/16/03 | 68 FR 41996 |
| NPRM | 07/17/03 | 68 FR 42333 |
| Order | 07/24/03 | 68 FR 47453 |
| Order | 08/06/03 | 68 FR 46500 |
| Order and Order on Recon. | 08/19/03 | 68 FR 49707 |
| Order on Remand, MO&O, FNPRM. | 10/27/03 | 68 FR 69641 |
| R&O, Order on Recon, FNPRM. | 11/17/03 | 68 FR 74492 |
| R&O, FNPRM | 02/26/04 | 69 FR 13794 |
| R&O, FNPRM | 04/29/04 | |
| NPRM | 05/14/04 | 69 FR 3130 |
| NPRM | 06/08/04 | 69 FR 40839 |
| Order | 06/28/04 | 69 FR 48232 |
| Order on Recon & Fourth R&O. | 07/30/04 | 69 FR 55983 |
| Fifth R&O and Order. | 08/13/04 | 69 FR 55097 |
| Order | 08/26/04 | 69 FR 57289 |
| Second FNPRM | 09/16/04 | 69 FR 61334 |
| Order & Order on Recon. | 01/10/05 | 70 FR 10057 |
| Sixth R&O | 03/14/05 | 70 FR 19321 |
| R&O | 03/17/05 | 70 FR 29960 |
| MO&O | 03/30/05 | 70 FR 21779 |
| NPRM & FNPRM | 06/14/05 | 70 FR 41658 |
| Order | 10/14/05 | 70 FR 65850 |
| Order | 10/27/05 | |
| NPRM | 01/11/06 | 71 FR 1721 |
| Report Number 2747. | 01/12/06 | 71 FR 2042 |
| Order | 02/08/06 | 71 FR 6485 |
| FNPRM | 03/15/06 | 71 FR 13393 |
| R&O and NPRM | 07/10/06 | 71 FR 38781 |
| Order | 01/01/06 | 71 FR 6485 |
| Order | 05/16/06 | 71 FR 30298 |
| MO&O and FNPRM. | 05/16/06 | 71 FR 29843 |
| R&O | 06/27/06 | 71 FR 38781 |
| Public Notice | 08/11/06 | 71 FR 50420 |
| Order | 09/29/06 | 71 FR 65517 |
| Public Notice | 03/12/07 | 72 FR 36706 |
| Public Notice | 03/13/07 | 72 FR 40816 |
| Public Notice | 03/16/07 | 72 FR 39421 |
| Notice of Inquiry | 04/16/07 | |
| NPRM | 05/14/07 | 72 FR 28936 |
| Recommended Decision. | 11/20/07 | |
| Order | 02/14/08 | 73 FR 8670 |
| NPRM | 03/04/08 | 73 FR 11580 |
| NPRM | 03/04/08 | 73 FR 11591 |
| R&O | 05/05/08 | 73 FR 11837 |
| Public Notice | 07/02/08 | 73 FR 37882 |
| NPRM | 08/19/08 | 73 FR 48352 |
| Notice of Inquiry | 10/14/08 | 73 FR 60689 |
| Order on Remand, R&O, FNPRM. | 11/12/08 | 73 FR 66821 |
| R&O | 05/22/09 | 74 FR 2395 |
| Order & NPRM | 03/24/10 | 75 FR 10199 |
| R&O and MO&O | 04/08/10 | 75 FR 17872 |
| NOI and NPRM | 05/13/10 | 75 FR 26906 |
| Order and NPRM | 05/28/10 | 75 FR 30024 |
| NPRM | 06/09/10 | 75 FR 32699 |
| NPRM | 08/09/10 | 75 FR 48236 |
| NPRM | 09/21/10 | 75 FR 56494 |
| R&O | 12/03/10 | 75 FR 75393 |
| Order | 01/27/11 | 76 FR 4827 |
| NPRM | 03/02/11 | 76 FR 11407 |
| NPRM | 03/02/11 | 76 FR 11632 |
| NPRM | 03/23/11 | 76 FR 16482 |
| Order and NPRM | 06/27/11 | 76 FR 37307 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nakesha Woodward, Program Support Assistant, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1502, *Email: kesha.woodward@fcc.gov.*

*RIN:* 3060–AF85

**560. 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements**

*Legal Authority:* 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 201(b); 47 U.S.C. 303(r); 47 U.S.C. 403

*Abstract:* This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43–05 and 43–06) and replace them with a more consumer-oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/04/00 | 65 FR 75657 |

| Action | Date | FR Cite |
|---|---|---|
| Order ..... Next Action Undetermined. | 02/06/02 | 67 FR 5670 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeremy Miller, Deputy Chief, Industry Analysis and Technology Div., Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1507, *Fax:* 202 418–1413, *Email: jeremy.miller@fcc.gov.*

*RIN:* 3060–AH72

**561. Access Charge Reform and Universal Service Reform**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 201 to 205; 47 U.S.C. 254; 47 U.S.C. 403

*Abstract:* On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order was implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate-of-return carriers, and proposed changes to the Commission's ''all-or-nothing'' rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002.

On February 12, 2004, the Commission adopted a Second Report and Order resolving several issues on which the Commission sought comment in the FNPRM. First, the Commission modified the ''all-or-nothing'' rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. Second, the Commission granted rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. Third, the Commission merged Long Term Support (LTS) with Interstate Common Line Support (ICLS).

The Commission also adopted a Second FNPRM seeking comment on two specific plans that propose establishing optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with the consideration of those alternative regulation proposals, the Commission sought comment on modification that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas. Comments on the Second FNPRM were due on April 23, 2004, and May 10, 2004.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/25/01 | 66 FR 7725 |
| NPRM Comment Period End. | 02/26/01 | |
| FNPRM ..... | 11/30/01 | 66 FR 59761 |
| FNPRM Comment Period End. | 12/31/01 | |
| R&O ..... | 11/30/01 | 66 FR 59719 |
| Second FNPRM .. | 03/23/04 | 69 FR 13794 |
| Second FNPRM Comment Period End. | 04/23/04 | |
| Order ..... Next Action Undetermined. | 05/06/04 | 69 FR 25325 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Douglas Slotten, Attorney-Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1572, *Email: douglas.slotten@fcc.gov.*

*RIN:* 3060–AH74

**562. National Exchange Carrier Association Petition**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 201 and 202; * * *

*Abstract:* In a Notice of Proposed Rulemaking (NPRM) released on July 19, 2004, the Commission initiated a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 08/13/04 | 69 FR 50141 |
| NPRM Comment Period End. | 11/12/04 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Douglas Slotten, Attorney-Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1572, *Email: douglas.slotten@fcc.gov.*

*RIN:* 3060–AI47

**563. IP-Enabled Services**

*Legal Authority:* 47 U.S.C. 151 and 152; * * *

*Abstract:* The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

On June 16, 2005, the Commission published in the **Federal Register** notice that public information collections set forth in the First Report and Order were being submitted for review to the office of management and budget.

On July 27, 2005, the Commission published in the **Federal Register** notice that the information collection requirements adopted in the First Report and Order were approved in OMB No. 3060–1085 and would become effective on July 29, 2005.

On August 31, 2005, the Commission published in the **Federal Register** notice of the comment cycle for three Petitions for Reconsideration and/or Clarification of the First Report and Order.

On July 10, 2006, the Commission published in the **Federal Register** notice that it had adopted on June 21, 2006, rules that make interim modifications to the existing approach for assessing contributions to the Federal universal

service fund (USF or Fund) in order to provide stability while the Commission continues to examine more fundamental reform.

On June 8, 2007, the Commission published in the **Federal Register** notice that it had adopted on April 2, 2007, an item strengthening the Commission's rules to protect the privacy of customer proprietary network information (CPNI) that is collected and held by providers of communications services, and a further notice of proposed rulemaking seeking comment on what steps the Commission should take, if any, to secure further the privacy of customer information.

On August 6, 2007, the Commission published in the **Federal Register** notice that it had adopted on May 31, 2007, and item extending the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended, to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extended the Telecommunications Relay Services (TRS) requirements contained in its regulations to interconnected VoIP providers.

On August 7, 2007, the Commission published in the **Federal Register** a notice that a petition for reconsideration of the CPNI order described above had been filed.

On August 16, 2007, the Commission published in the **Federal Register** notice that it had adopted on August 2, 2007, an item amending the Commission's Schedule of Regulatory Fees by, inter alia, incorporating regulatory fee payment obligations for interconnected VoIP service providers, which shall become effective November 15, 2007, which is 90 days from date of notification to Congress.

On November 1, 2007, the Commission gave notice that it granted in part, denied in part, and sought comment on petitions filed by the Voice on the Net Coalition, the United States Telecom Association, and Hamilton Telephone Company seeking a stay or waiver of certain aspects of the Commission's VoIP Telecommunications Relay Services (TRS) Order (72 FR 61813; 72 FR 61882).

On December 13, 2007, the Commission announced the effective date of its revised CPNI rules (72 FR 70808).

On December 6, 2007, OMB approved the public information collection pursuant to the Paperwork Reduction Act of 1995 for the Commission's CPNI rules (72 FR 72358).

On February 21, 2008, the Commission published in the **Federal Register** notice that the Commission adopted rules extending local number portability obligations and numbering administration support obligations to interconnected VoIP services. The Commission also explained it had responded to the District of Columbia Circuit Court of Appeals stay of the Commission's Intermodal Number Portability Order by publishing a Final Regulatory Flexibility Act (73 FR 9463; R&O 02/21/2008).

On February 21, 2008, the Commission published in the **Federal Register** notice that it sought comment on other changes to its LNP and numbering related rules, including whether to extend such rules to interconnected VoIP providers (73 FR 9507).

On August 6, 2007, the Commission published in the **Federal Register** notice that it had extended Telecommunications Relay Services (TRS) regulations to interconnected VoIP providers and extended certain disability access requirements to interconnected VoIP providers and to manufacturers of specially designed equipment used to provide such service (72 FR 43546).

On May 15, 2008, the Commission's Consumer and Governmental Affairs Bureau (CGB) published in the **Federal Register** notice that it had granted interconnected VoIP providers an extension of time to route 711-dialed calls to an appropriate telecommunications relay service (TRS) center in certain circumstances (73 FR 28057). On July 29, 2009, CGB published notice in the **Federal Register** that it was granting another extension. (74FR 37624)

On August 7, 2009, the Commission published a notice in the **Federal Register** that it had amended its rules so that providers of interconnected VoIP service must comply with the same discontinuance rules as domestic non-dominant telecommunications carriers. (74 FR 39551)

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/29/04 | 69 FR 16193 |
| NPRM Comment Period End. | 07/14/04 | |
| First R&O | 06/03/05 | 70 FR 37273 |
| Public Notice | 06/16/05 | 70 FR 37403 |
| First R&O Effective. | 07/29/05 | 70 FR 43323 |
| Public Notice | 08/31/05 | 70 FR 51815 |
| R&O | 07/10/06 | 71 FR 38781 |
| R&O and FNPRM | 06/08/07 | 72 FR 31948 |
| FNPRM Comment Period End. | 07/09/07 | 72 FR 31782 |
| R&O | 08/06/07 | 72 FR 43546 |
| Public Notice | 08/07/07 | 72 FR 44136 |
| R&O | 08/16/07 | 72 FR 45908 |
| Public Notice | 11/01/07 | 72 FR 61813 |
| Public Notice | 11/01/07 | 72 FR 61882 |
| Public Notice | 12/13/07 | 72 FR 70808 |
| Public Notice | 12/20/07 | 72 FR 72358 |
| R&O | 02/21/08 | 73 FR 9463 |
| NPRM | 02/21/08 | 73 FR 9507 |
| Order | 05/15/08 | 73 FR 28057 |
| Order | 07/29/09 | 74 FR 37624 |
| R&O | 08/07/09 | 74 FR 39551 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Tim Stelzig, Associate Chief, Competition Policy Division, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0942, *Email: tim.stelzig@fcc.gov.*

*RIN:* 3060–AI48

**564. Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07–135)**

*Legal Authority:* Not Yet Determined

*Abstract:* The Federal Communications Commission (Commission) is examining whether its existing rules governing the setting of tariffed rates by local exchange carriers (LECs) provide incentives and opportunities for carriers to increase access demand endogenously with the result that the tariff rates are no longer just and reasonable. The Commission tentatively concluded that it must revise its tariff rules so that it can be confident that tariffed rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand. The Commission seeks comment on the types of activities that are causing the increases in interstate access demand and the effects of such demand increases on the cost structures of LECs. The Commission also seeks comment on several means of ensuring just and reasonable rates going forward. The NPRM invites comment on potential traffic stimulation by rate-of-return LECs, price cap LECs, and competitive LECs, as well as other forms of intercarrier traffic stimulation. Comments were received on December 17, 2007, and reply comments were received on January 16, 2008.

On February 8, 2011, the Commission adopted a Further Notice of Proposed Rulemaking seeking comment on

proposed rule revisions to address access stimulation. The Commission sought comment on a proposal to require rate-of-return LECs and competitive LECs to file revised tariffs if they enter into or have existing revenue sharing agreements. The proposed tariff filing requirements vary depending on the type of LEC involved. The Commission also sought comment on other record proposals and on possible rules for addressing access stimulation in the context of intra-MTA call terminations by CMRS providers. Comments were filed on April 1, 2011, and reply comments were filed on April 18, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/15/07 | 72 FR 64179 |
| NPRM Comment Period End. | 12/17/07 | |
| FNPRM | 03/02/11 | 76 FR 11632 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Douglas Slotten, Attorney-Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1572, *Email: douglas.slotten@fcc.gov.*

*RIN:* 3060–AJ02

**565. Jurisdictional Separations**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 205; 47 U.S.C. 221(c); 47 U.S.C. 254; 47 U.S.C. 403; 47 U.S.C. 410

*Abstract:* Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and market changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' recommendation to impose an interim freeze of the part 36 category relationships and jurisdictional cost allocation factors for a period of five years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission adopted an Order and Further Notice of Proposed Rulemaking, which extended the separations freeze for a period of three years and sought comment on comprehensive reform. In 2009, the Commission adopted a Report and Order extending the separations freeze an additional year to June 2010. In 2010, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2011. In 2011, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2012.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/05/97 | 62 FR 59842 |
| NPRM Comment Period End. | 12/10/97 | |
| Order | 06/21/01 | 66 FR 33202 |
| Order and FNPRM. | 05/26/06 | 71 FR 29882 |
| Order and FNPRM Comment Period End. | 08/22/06 | |
| Report and Order | 05/15/09 | 74 FR 23955 |
| R&O | 05/25/10 | 75 FR 30301 |
| R&O | 05/27/11 | 76 FR 30840 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ted Burmeister, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7389, *Email: theodore.burmeister@fcc.gov.*

*RIN:* 3060–AJ06

**566. Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering (WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21)**

*Legal Authority:* 47 U.S.C. 151 to 155; 47 U.S.C. 160 and 161; 47 U.S.C. 20 to 205; 47 U.S.C. 215; 47 U.S.C. 218 to 220; 47 U.S.C. 251 to 271; 47 U.S.C. 303(r) and 332; 47 U.S.C. 403; 47 U.S.C. 502 and 503

*Abstract:* This NPRM tentatively proposes to collect infrastructure and operating data that is tailored in scope to be consistent with Commission objectives from all facilities-based providers of broadband and telecommunications. Similarly, the NPRM also tentatively proposes to collect data concerning service quality and customer satisfaction from all facilities-based providers of broadband and telecommunications. The NPRM seeks comment on the proposals, on the specific information to be collected, and on the mechanisms for collecting information.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/15/08 | 73 FR 60997 |
| NPRM Comment Period End. | 11/14/08 | |
| Reply Comment Period End. | 12/15/08 | |
| NPRM | 02/28/11 | 76 FR 12303 |
| NPRM Comment Period End. | 03/30/11 | |
| Reply Comment Period End. | 04/14/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Cathy Zima, Deputy Division Chief, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7380, *Fax:* 202 418–6768, *Email: cathy.zima@fcc.gov.*

*RIN:* 3060–AJ14

**567. Form 477; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans**

*Legal Authority:* 15 U.S.C. 251; 47 U.S.C. 252; 47 U.S.C. 257; 47 U.S.C. 271; 47 U.S.C. 1302; 47 U.S.C. 160(b); 47 U.S.C. 161(a)(2)

*Abstract:* The NPRM seeks comment on streamlining and reforming the Commission's Form 477 Data Program which is the Commission's primary tool to collect data on broadband and telephone services.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/16/07 | 72 FR 27519 |
| Order | 07/02/08 | 73 FR 37861 |
| Order | 10/15/08 | 73 FR 60997 |
| NPRM | 02/08/11 | 76 FR 10827 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Carol Simpson, Deputy Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2391, *Fax:* 202 418–2816, *Email: carol.simpson@fcc.gov.*

*RIN:* 3060–AJ15

**568. Preserving the Open Internet; Broadband Industry Practices**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154 (i)–(j); 47 U.S.C. 201(b)

*Abstract:* In 2009, the FCC launched a public process to determine whether and what actions might be necessary to

preserve the characteristics that have allowed the Internet to grow into an indispensable platform supporting our nation's economy and civic life. After receiving input from more than 100,000 individuals and organizations and several public workshops, this process has made clear that the Internet has thrived because of its freedom and openness—the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. The Open Internet Order builds on the bipartisan Internet Policy Statement the Commission adopted in 2005. The Order requires that all broadband providers are required to be transparent by disclosing their network management practices, performance, and commercial terms; fixed providers may not block lawful content, applications, services, or non-harmful devices; fixed providers may not unreasonably discriminate in transmitting lawful network traffic; mobile providers may not block access to lawful Web sites, or applications that compete with their voice or video telephony services; and all providers may engage in ''reasonable network management,'' such as managing the network to address congestion or security issues. The rules do not prevent broadband providers from offering specialized services, such as facilities-based VoIP; do not prevent providers from blocking unlawful content or unlawful transfers of content; and do not supersede any obligation or authorization a provider may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/30/09 | 74 FR 62638 |
| NPRM Comment Period End. | 04/26/10 | |
| Public Notice | 09/10/10 | 75 FR 55297 |
| Comment Period End. | 11/04/10 | |
| Order | 09/23/11 | 76 FR 59192 |
| OMB Approval Notice. | 09/21/11 | 76 FR 58512 |
| Rules Effective | 11/20/11 | |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* R. Matthew Warner, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2419, *Email: matthew.warner@fcc.gov.*

*RIN:* 3060–AJ30

**569. Local Number Portability Porting Interval and Validation Requirements (WC Docket No 07–244)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 251; 47 U.S.C. 303(r)

*Abstract:* In 2007, the Commission released a Notice of Proposed Rulemaking in WC Docket No. 07–244. The Notice sought comment on whether the Commission should adopt rules specifying the length of the porting intervals or other details of the porting process. It also tentatively concluded that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.

In the Local Number Portability Porting Interval and Validation Requirements First Report and Order and Further Notice of Proposed Rulemaking, released on May 13, 2009, the Commission reduced the porting interval for simple wireline and simple intermodal port requests, requiring all entities subject to its local number portability (LNP) rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day. In a related Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on what further steps, if any, the Commission should take to improve the process of changing providers.

In the LNP Standard Fields Order, released on May 20, 2010, the Commission adopted standardized data fields for simple wireline and intermodal ports. The Order also adopts the NANC's recommendations for porting process provisioning flows and for counting a business day in the context of number porting.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/21/08 | 73 FR 9507 |
| R&O and FNPRM | 07/02/09 | 74 FR 31630 |
| R&O | 06/22/10 | 75 FR 35305 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Kirkel, Attorney-Advisor, WCB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7958, *Fax:* 202 418–1413, *Email: melissa.kirkel@fcc.gov.*

*RIN:* 3060–AJ32

**570. Electronic Tariff Filing System (ETFS); WC Docket No. 10–141**

*Legal Authority:* 47 U.S.C. 151 and 154; 47 U.S.C. 201 to 205; 47 U.S.C. 218 and 222; 47 U.S.C. 225 to 226; 47 U.S.C. 228 and 254; 47 U.S.C. 403

*Abstract:* Section 402(b)(1)(A)(iii) of the Telecommunications Act of 1996 added section 204(a)(3) to the Communications Act of 1934, as amended, providing for streamlined tariff filings by local exchange carriers. On September 6, 1996, in an effort to meet the goals of the 1996 Act, the Commission released the Tariff Streamlining NPRM, proposing measures to implement the tariff streamlining requirements of section 204(a)(3). Among other suggestions, the Commission proposed requiring LECs to file tariffs electronically.

The Commission began implementing the electronic filing of tariffs on January 31, 1997, when it released the Streamlined Tariff Order. On November 17, 1997, the Bureau made this electronic system, known as the Electronic Tariff Filing System, available for voluntary filing by incumbent LECs. The Bureau also announced that the use of ETFS would become mandatory for all incumbent LECs in 1998.

On May 28, 1998, in the ETFS Order, the Bureau established July 1, 1998, as the date after which incumbent LECs would be required to use ETFS to file tariffs and associated documents. The Commission deferred consideration of establishing mandatory electronic filing for non-incumbent LECs until the conclusion of a proceeding considering the mandatory detariffing of interstate long distance services.

In contrast to tariff filings by incumbent LECs, tariff filings by nondominant carriers are currently submitted via diskette, CD–ROM and/or paper, which are cumbersome and costly for the carrier, the Commission, and make it difficult for interested parties to review the documents. With this Report and Order the Commission requires mandatory electronic filing of tariffs and associated documents by all tariff filing entities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/11/10 | 75 FR 48629 |
| NPRM Comment Period End. | 09/10/10 | |
| NPRM Reply Comment Period End. | 09/27/10 | |
| Report and Order | 07/20/11 | 76 FR 43206 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lynne H. Engledow, Attorney, Federal Communications

Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1520, *Fax:* 202 418–1567, *Email: lynne.engledow@fcc.gov.*

*RIN:* 3060–AJ41

**571. • Implementation of Section 224 of the Act; A National Broadband Plan for Our Future; WC Docket No. 07–245, GN Docket No. 09–51**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i0; 47 U.S.C. 154(j); 47 U.S.C. 224

*Abstract:* In 2010, the Commission released an Order and Further Notice of Proposed rulemaking which implemented certain pole attachment recommendations of the National Broadband Plan and sought comment with regard to others. On April 7, 2011, the Commission adopted a Report and Order and Order on Reconsideration that sets forth a comprehensive regulatory scheme for access to poles, and modifies existing rules for pole attachment rates and enforcement.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/06/08 | 73 FR 6879 |
| FNPRM | 07/15/10 | 75 FR 41338 |
| Declaratory Ruling | 08/03/10 | 75 FR 45494 |
| R&O | 05/09/11 | 76 FR 26620 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jonathan Reel, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0637, *Email: jonathan.reel@fcc.gov.*

*RIN:* 3060–AJ64

[FR Doc. 2012–1664 Filed 2–10–12; 8:45 am]

BILLING CODE 6712–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXIII

## Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Ch. III

### Semiannual Agenda of Regulations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

**FOR FURTHER INFORMATION CONTACT:** Persons identified under regulations listed in the Agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

**Prerule**

*Recordkeeping Rules for Institutions Operating under the Exceptions or Exemptions for Banks from the Definitions of ''Broker'' or ''Dealer'' in the Securities Exchange Act of 1934 (AD80):* The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision are requesting comment on proposed recordkeeping rules for banks, savings associations, federal and state-licensed branches and agencies of foreign banks, and Edge and agreement corporations that engage in securities-related activities under the statutory exceptions or regulatory exemptions for ''banks'' from the definitions of ''broker'' or ''dealer'' in section 3(a)(4)(B) or section 3(a)(5) of the Securities Exchange Act of 1934. The proposed rules are designed to facilitate and promote compliance with these exceptions and exemptions.

*Calculation of Maximum Obligation Limitation (AD84):* This notice is published jointly by the Federal Deposit Insurance Corporation and the Departmental Offices of the Department of the Treasury and proposes rules to implement applicable provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In accordance with the requirements of the Dodd-Frank Act, the proposed rules govern the calculation of the maximum obligation limitation (MOL), as specified in section 210(n)(6) of the Dodd-Frank Act. The MOL limits the aggregate amount of outstanding obligations that the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

*Prohibitions and Restrictions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds (AD85):* This notice is published jointly by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Securities Exchange Commission, and the Commodity Futures Trading Commission and are requesting comment on a proposed rule that would implement section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act which contains certain prohibitions and restrictions on the ability of banking entities and nonbank financial companies supervised by the Board to engage in proprietary trading and have certain investments in, or relationships with, hedge funds or private equity funds. Section 619 is commonly referred to as the ''Volcker Rule.''

**Proposed Rules**

*Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions (AD59):* The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposed rule that would require certain identified insured depository institutions (IDIs) that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion. The IDI's plan would include a gap analysis that would identify impediments to the orderly stand-alone resolution of the IDI, and identify reasonable steps that are or will be taken to eliminate or mitigate such impediments. The contingent resolution plan, gap analysis, and mitigation efforts are intended to enable the FDIC to develop a reasonable strategy, plan, or options for the orderly resolution of the institution. The proposal would apply only to IDIs with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets.

*Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies (AD62):* The regulations of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (collectively the Agencies) include various references to and requirements based on the use of credit ratings issued by nationally recognized statistical rating organizations. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, requires the Agencies to review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or requirements regarding credit ratings. In addition, the Agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness.

*Risk-Based Capital Guidelines: Market Risk (AD70):* The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation (collectively the Agencies) are requesting comment on a proposal to revise their market risk capital rules to modify their scope to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality in market risk capital requirements; enhance the rules' sensitivity to risks that are not adequately captured under the current regulatory measurement methodologies; and increase transparency through enhanced disclosures. The proposal does not include the methodologies adopted by the Basel Committee on Banking Supervision for calculating the specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposal, therefore, retains the current specific risk treatment for these positions until the Agencies develop alternatives standards of creditworthiness as required by the Act. The proposed rules are substantively the same across the Agencies.

*Credit Risk Retention (AD74):* The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development (collectively the Agencies) are proposing rules to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 15G generally requires the securitizer of asset-backed securities to retain not less than five percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as ''qualified residential mortgages,'' as such term is defined by the Agencies by rule.

*Resolution Plans and Credit Exposure Reports Required (AD77):* The Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC) request comment on this proposed rule that implements the requirements in section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) regarding resolution plans and credit exposure reports. Section 165(d) requires each nonbank financial company supervised by the Board and each bank holding company with assets of $50 billion or more to report periodically to the Board, the FDIC, and the Financial Stability Oversight Council (the Council) (i) the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, and (ii) the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies and the nature and extent of the credit exposures of significant bank holding companies and significant nonbank financial companies to such company. Section 165(d)(8) of the Dodd-Frank Act requires the Board and the FDIC to jointly issue final rules implementing section 165(d) by not later than January 21, 2012.

*Margin and Capital Requirements for Covered Swap Entities (AD79):* The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency (collectively, the Agencies) are requesting comment on a proposal to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator.

*Incentive-Based Compensation Arrangements (AD86):* The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the U.S. Securities Exchange Commission, and the Fair Housing Finance Agency (collectively the Agencies) are proposing rules to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rule would require the reporting of incentive-based compensation arrangements by a covered financial institution and prohibit incentive-based compensation arrangements at a covered financial institution that provide excessive compensation or that could expose the institution to inappropriate risks that could lead to material financial loss.

**Final Rules**

*Retail Foreign Exchange Transactions (AD81):* The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule that imposes requirements for foreign currency futures, options on futures, and options that an insured depository institution supervised by the FDIC engages in with retail customers. The final rule also imposes requirements on other foreign currency transactions that are functionally or economically similar, including so-called ''rolling spot'' transactions that an individual enters into with a foreign currency dealer, usually through the Internet or other electronic platform, to transact in foreign currency. The regulations do not apply to traditional foreign currency forwards, spots, or swap transactions that an insured depository institution engages in with business customers to hedge foreign exchange risk. The final rule applies to all state nonmember banks and, as of July 21, 2011, also to all state savings associations.

*Transfer and Redesignation of Certain Regulations Involving State Savings Associations Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (AD82):* Consistent with the authority provided to the Federal Deposit Insurance Corporation (FDIC) by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and other statutory authorities, the FDIC is reissuing and redesigning certain transferring Office of Thrift Supervision (OTS) regulations currently found in title 12, chapter V of the Code of Federal Regulations. In republishing these rules, the FDIC is making only technical changes to existing OTS regulations (such as nomenclature or address changes), and eliminating those OTS regulations for which other appropriate Federal banking agencies are authorized to act. In the future, the FDIC may take other actions related to the transferred rules: Incorporating them into other FDIC regulations contained in title 12, chapter III; amending them; or rescinding them, as appropriate.

*Disclosure of Information; Privacy Act Regulations; Notice and Amendments (AD83):* The Dodd-Frank Wall Street Reform and Consumer Protection Act abolished the Office of Thrift Supervision (OTS) and redistributed, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC), respectively. The FDIC has determined that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended. In taking this action the FDIC's goal is to avoid potential confusion and uncertainty that may arise regarding information concerning State savings associations after the Transfer Date.

**Completed Actions**

*Guidelines for Furnishers of Information to Consumer Reporting Agencies (AD40):* The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively the Agencies) requested comment to gather information that would assist the Agencies in considering the development of a possible proposed addition to the furnisher accuracy and integrity guidelines which, along with

the accompanying regulations, implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 that amended section 623 of the Fair Credit Reporting Act. This rule would also assist the Agencies 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 to a consumer reporting agency to promote the integrity of the information. In addition, the Agencies requested comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity.

*Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution (AD53):* The Federal Deposit Insurance Corporation (FDIC) is amending its regulation codified at 12 CFR section 360.6, Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred in Connection with a Securitization or Participation. The amendment adds a new subparagraph (b)(2) in order to continue for a limited time the safe harbor provision of section 360.6(b) for participations or securitizations that would be affected by recent changes to generally accepted accounting principles. In effect, the Rule ''grandfathers'' all participations and securitizations for which financial assets were transferred or, for revolving securitization trusts, for which securities were issued prior to March 31, 2010, so long as those participations or securitizations complied with the preexisting section 360.6 under generally accepted accounting principles in effect prior to November 15, 2009. The transitional safe harbor will apply irrespective of whether or not the participation or securitization satisfies all of the conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009.

*Risk-Based Capital Standards: Advanced Capital Adequacy Framework-Basel II; Establishment of a Risk-Based Capital Floor (AD71):* The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) propose to amend the advanced risk-based capital adequacy standards (advanced approaches rules) to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and amend the general risk-based capital rules to provide limited flexibility consistent with section 171(b) of the Dodd-Frank Act for recognizing the relative risk of certain assets generally not held by depository institutions.

*Procedures for Monitoring Bank Secrecy Act Compliance and Fair Credit Reporting: Technical Amendments (AD76):* The Federal Deposit Insurance Corporation has adopted a final rule updating the cross-references in its anti-money laundering program and Fair Credit Reporting Act rules, to conform to changes in the numbering of the Department of the Treasury's rules that implement the Bank Secrecy Act.

*Interest On Deposits; Deposit Insurance Coverage (AD78):* Effective July 21, 2011, the statutory prohibition against the payment of interest on demand deposits will be repealed pursuant to section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In light of this, the Federal Deposit Insurance Corporation (FDIC) proposes to rescind part 329, the regulation that has implemented this prohibition with respect to state-chartered nonmember (SNM) banks. Because part 329 includes a definition of ''interest'' that may assist the FDIC in interpreting a recent statutory amendment that provides temporary, unlimited deposit insurance coverage for noninterest-bearing transaction accounts, the FDIC also proposes to retain and move the definition of ''interest'' into part 330, the deposit insurance regulations.

*Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (AD87):* The Federal Deposit Insurance Corporation (FDIC) issued a final rule to implement certain provisions of its authority to resolved covered financial companies under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The Final Rule established a more comprehensive framework for the implementation of the FDIC's orderly liquidation authority and will provide greater transparency to the process for the orderly liquidation of a systemically important financial institution under the Dodd-Frank Act.

Federal Deposit Insurance Corporation.

**Valerie Best,**

*Assistant Executive Secretary.*

FEDERAL DEPOSIT INSURANCE CORPORATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 572 ..... | 12 CFR 342 Recordkeeping Rules for Institutions Operating Under the Exceptions or Exemptions for Banks From the Definitions of ''Broker'' or ''Dealer'' in the Securities Exchange Act of 1934. | 3064–AD80 |

FEDERAL DEPOSIT INSURANCE CORPORATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 573 ..... | 12 CFR 325 Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies. | 3064–AD62 |

## FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

*Proposed Rule Stage*

**572. • Recordkeeping Rules for Institutions Operating Under the Exceptions or Exemptions for Banks From the Definitions of ''Broker'' or ''Dealer'' in the Securities Exchange Act of 1934**

*Legal Authority:* 12 U.S.C. 1818; 12 U.S.C. 1819 (Tenth); 12 U.S.C. 1828(t)

*Abstract:* The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance corporation and the Office of Thrift Supervision are requesting comment on proposed recordkeeping rules for banks, savings associations, federal and state-licensed branches and agencies of foreign banks, and Edge and agreement corporations that engage in securities-related activities under the statutory exceptions or regulatory exemptions for ''banks'' from the definitions of ''broker'' or ''dealer'' in section 3(a)(4)(B) or section 3(a)(5) of the Securities Exchange Act of 1934. The proposed rules are designed to facilitate and promote compliance with these exceptions and exemptions.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3581.

*RIN:* 3064–AD80

## FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

*Final Rule Stage*

**573. Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies**

*Legal Authority:* Not Yet Determined

*Abstract:* The regulations of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (collectively the Agencies) include various references to and requirements based on the use of credit ratings issued by nationally recognized statistical rating organizations. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, requires the Agencies to review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or requirements regarding credit ratings. In addition, the Agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM ..... | 08/25/10 | 75 FR 52283 |
| ANPRM Comment Period End. | 10/25/10 | |
| Final Rule ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Bobby R. Bean, Chief, Policy Section, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3575.

Mark Handzlik, Senior Attorney, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3900.

Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, *Phone:* 202 898–3581.

*RIN:* 3064–AD62

[FR Doc. 2012–1666 Filed 2–10–12; 8:45 am]

BILLING CODE 6714–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXIV

## Federal Reserve System

Semiannual Regulatory Agenda

## FEDERAL RESERVE SYSTEM

### 12 CFR Ch. II

### Semiannual Regulatory Flexibility Agenda

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period November 1, 2011 through April 30, 2012. The next agenda will be published in spring 2012.

**DATES:** Comments about the form or content of the agenda may be submitted any time during the next six months.

**ADDRESSES:** Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** A staff contact for each item is indicated with the regulatory description below.

**SUPPLEMENTARY INFORMATION:** The Board is publishing its fall 2011 agenda as part of the Fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following Web site: *www.reginfo.gov.* Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into four sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next six months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. A third section, Long-Term Actions, reports on matters that have been proposed and under Board consideration, but a completion date has not been determined. And a fourth section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda.

**Margaret McCloskey Shanks,**
*Associate Secretary of the Board.*

FEDERAL RESERVE SYSTEM—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 574 | Regulation Y—Resolution Plans and Credit Exposure Reports Require (Docket No. R–1414) | 7100–AD73 |
| 575 | Regulation CC—Availability of Funds and Collection of Checks (Docket No. R–1408) | 7100–AD68 |
| 576 | Regulation NN—Retail Foreign Exchange Transactions (Docket No. R–1428) | 7100–AD79 |
| 577 | Regulation OO—Securities Holding Companies (Docket No. R–1430) | 7100–AD81 |
| 578 | Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No. R–1429). | 7100–AD80 |

FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 579 | Regulation KK—Margin and Capital Requirements for Covered Swap Entities (Docket No. R–1415) | 7100–AD74 |

FEDERAL RESERVE SYSTEM—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 580 | Regulation D, Q, and DD—Prohibition Against Payment of Interest on Demand Deposits (Docket No. R–1413). | 7100–AD72 |
| 581 | Regulation II—Debit Card Interchange Fees and Routing (Docket No. R–1404) | 7100–AD63 |
| 582 | Regulation Z—Truth in Lending (Docket No. R–1393) | 7100–AD55 |
| 583 | Regulation Z—Truth in Lending (Docket No. R–1394) | 7100–AD56 |
| 584 | Regulation Z—Escrow Requirements (Docket No. R–1406) | 7100–AD65 |
| 585 | Regulation Z—Truth in Lending (Docket No. R–1417) | 7100–AD75 |

## FEDERAL RESERVE SYSTEM (FRS)

*Proposed Rule Stage*

### 574. • Regulation Y—Resolution Plans and Credit Exposure Reports Require (Docket No. R–1414)

*Legal Authority:* 12 U.S.C. 1817(j)(13); 12 U.S.C. 1818; 12 U.S.C. 1828(o); 12 U.S.C. 1851; * * *

*Abstract:* The Dodd-Frank Act requires certain financial institutions to report to the Federal Reserve Board and the Federal Deposit Insurance Corporation their plans for rapid and orderly resolution under the U.S. Bankruptcy Code. The proposed rule would establish requirements for the submission and content of a resolution plan and credit exposure report. The resolution plan must include information related to the organizational structure of the company, the manner and extent to which any insured depository institution affiliated with the company is protected from risks presented by non-bank subsidiaries; identification of cross-guarantees, major counter parties, and the parties to whom collateral is pledged; and certain other elements including a strategic analysis of the company's plans for maintaining core business lines and critical operations. Credit Exposure Reports must include information related to the aggregate credit exposure associated

with a range of transactions with every large financial firm.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 04/22/11 | 76 FR 22648 |
| Board Expects Further Action. | 01/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Barbara Bouchard, Senior Associate Director, Federal Reserve System, Division of Banking Supervision and Regulation, *Phone:* 202 452–3072.

*RIN:* 7100–AD73

**575. • Regulation CC—Availability of Funds and Collection of Checks (Docket No. R–1408)**

*Legal Authority:* 12 U.S.C. 4001 to 4010; 12 U.S.C. 5001 to 5018

*Abstract:* The Federal Reserve Board (the Board) proposed amendments to Regulation CC to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return, including proposed amendments to condition a depositary bank's right of expeditious return on the depositary bank agreeing to accept returned checks electronically either directly or indirectly from the paying bank. The Board also proposed amendments to the funds availability schedule provisions to reflect the fact that there are no longer any non local checks. The Board proposed to revise the model forms in appendix C that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations in appendix F. Finally, the Board requested comment on whether it should consider future changes to the regulation to improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check in order to reduce the risk to a depositary bank of having to make funds available for withdrawal before learning whether a deposited check has been returned unpaid.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 03/25/11 | 76 FR 16862 |
| Board Expects Further Action. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dena Milligan, Attorney, Federal Reserve System, Legal Division, *Phone:* 202 452–3900.

*RIN:* 7100–AD68

**576. • Regulation NN—Retail Foreign Exchange Transactions (Docket No. R–1428)**

*Legal Authority:* 7 U.S.C. 2(i)(2)(E); 12 U.S.C. 248; 12 U.S.C. 321 to 338; 12 U.S.C. 1818; 12 U.S.C. 3108; * * *

*Abstract:* The Federal Reserve Board is publishing for comment a regulation to permit banking organizations under its supervision to engage in off-exchange transactions in foreign currency with retail customers. Section 2(c)(Z)(E) of the Commodity Exchange Act, as amended by the Dodd-Frank Act, requires U.S. financial institutions to effect these transactions only pursuant to rules adopted by their federal regulatory authority.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 08/03/11 | 76 FR 46652 |
| Board Expects Further Action. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Scott J. Holz, Senior Counsel, Federal Reserve System, Legal Division, *Phone:* 202 452–2966.

*RIN:* 7100–AD79

**577. • Regulation OO—Securities Holding Companies (Docket No. R–1430)**

*Legal Authority:* 12 U.S.C. 1850a

*Abstract:* The Federal Reserve Board (the Board) is issuing a proposed rule to implement section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act which permits nonbank companies that own at least one registered securities broker or dealer, and that are required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision, to register with the Board and subject themselves to supervision by the Board. The proposed rule outlines the requirements that a securities holding company must satisfy to make an effective election, including filing the appropriate form with the responsible Reserve Bank, providing all additional required information, and satisfying the statutory waiting period of 45 days or such shorter period as the Board determines appropriate.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 08/31/11 | 76 FR 54717 |
| Board Expects Further Action. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amanda K. Allexon, Senior Counsel, Federal Reserve System, Legal Division, *Phone:* 202 452–3818.

*RIN:* 7100–AD81

**578. • Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No. R–1429)**

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828; * * *

*Abstract:* Dodd-Frank Wall Street Reform and Consumer Protection Act. The interim final rules provide for the corresponding transfer from the Office of Thrift Supervision (OTS) to the Federal Reserve Board (the Board) of the regulations necessary for the Board to administer the statutes governing the Savings and Loan Holding Companies (SLHCs).

The Dodd-Frank Act transferred from OTS to the Board responsibility for supervision of SLHCs and their non-depository subsidiaries. The Dodd-Frank Act also transferred supervisory functions related to Federal savings associations and state savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board of Governors of the Federal Reserve System is publishing an interim final rule with a request for public comment that sets forth regulations for savings and loan holding companies (SLHCs). On July 21, 2011, the responsibility for supervision and regulation of SLHCs transferred from the Office of Thrift Supervision (OTS) to the Board pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This interim final rule provides for the corresponding transfer from the OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs. Technical changes to other regulations have also been made to account for the transfer of authority over SLHCs to the Board.

The interim final rule has three components: (1) New Regulation LL (Part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (Part 239), which sets forth regulations governing SLHCs in

mutual form; and (3) technical amendments to current Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board.

The structure of the new Regulation LL closely follows that of the Board's Regulation Y, which houses regulations directly related to bank holding companies (BHCs), in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, Regulation LL incorporates current OTS regulations, with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Additionally, the Board added or modified regulations to reflect substantive changes introduced by the Dodd-Frank Act. Those include revisions to applications processing procedures, control determinations, requirements to engage in nonbanking activities, and notice procedures for receipt of dividends by subsidiary savings associations.

Regulation MM organizes the current OTS regulations specific to SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board's regulations. In many cases, Regulation MM mirrors the current OTS rules with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Additionally, the Board added or modified regulations to reflect substantive changes introduced by the Dodd-Frank Act. Those include revisions to applications processing procedures, dividend waiver procedures, review of offering circulars, forms of proxy, and proxy statements, and stock repurchases.

The Board has made technical amendments to Board rules to facilitate supervision of SLHCs. These amendments include revisions to the interagency rules implementing requirements relating to the Community Reinvestment Act, as well as the procedural and administrative rules of the Board including those relating to the Freedom of Information Act. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Dodd Frank Act, which transfers to the Board all rulemaking authority under section 11 of HOLA relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 09/13/11 | 76 FR 56508 |
| Board Expect Further Action. | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amanda K. Allexon, Senior Counsel, Federal Reserve System, Legal Division, *Phone:* 202 452–3818.

*RIN:* 7100–AD80

## FEDERAL RESERVE SYSTEM (FRS)

*Long-Term Actions*

**579. • Regulation KK—Margin and Capital Requirements for Covered Swap Entities (Docket No. R–1415)**

*Legal Authority:* 7 U.S.C. 6s; 15 U.S.C. 78o–10

*Abstract:* The Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Farm Credit Administration, and Federal Housing Finance Agency (the Agencies) are requesting comment on a proposal to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This proposed rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 04/12/11 | 76 FR 27564 |
| Comment Period End. | 07/11/11 | 76 FR 37029 |
| Next Action Undetermined. | | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Gibson, Senior Associate Director, Federal Reserve System, Division of Banking Supervision and Regulation, *Phone:* 202 452–2495.

*RIN:* 7100–AD74

## FEDERAL RESERVE SYSTEM (FRS)

*Completed Actions*

**580. • Regulation D, Q, and DD—Prohibition Against Payment of Interest on Demand Deposits (Docket No. R–1413)**

*Legal Authority:* 12 U.S.C. 371a

*Abstract:* Section 627 of the Dodd-Frank Act repeals section 19(i) of the Federal Reserve Act in its entirety, effective July 21, 2011. The Federal Reserve Board's Regulation Q (Prohibitions Against Payment of Interest on Demand Deposits) implemented section 19(i) of the Federal Reserve Act. Accordingly, the Federal Reserve Board has repealed Regulation Q in its entirety effective July 21, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Adopted Final Rule. | 07/18/11 | 76 FR 42015 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sophia Allison, Senior Counsel, Federal Reserve System, Legal Division, *Phone:* 202 452–3565.

*RIN:* 7100–AD72

**581. Regulation II—Debit Card Interchange Fees and Routing (Docket No. R–1404)**

*Legal Authority:* 15 U.S.C. 1693O

*Abstract:* The Federal Reserve Board (the Board) published the final rule for new Regulation II, Debit Card Interchange Fees and Routing. The rule implements the provisions of section 920 of the Electronic Fund Transfer Act, including standards for reasonable and proportional interchange transaction fees for electronic debit transactions, exemptions from the interchange transaction fee limitations, prohibitions on evasion and circumvention, prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions, and reporting requirements for debit card issuers and payment card networks.

The Board also adopted an interim final rule and requested comment on provisions in Regulation II that govern adjustments to debit interchange transaction fees for fraud-prevention costs. The provisions allow an issuer to receive and adjustment of 1 cent to its interchange transaction fee if the issuer develops, implements, and updates

policies and procedures that are reasonably designed to identify and prevent fraudulent electronic debit transactions, and secure debit card and cardholder data. Comments on the interim final rule must be submitted by September 30, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 12/16/10 | 75 FR 81722 |
| Board Adopted Final Rule. | 06/29/11 | 76 FR 43394 |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dena Milligan, Attorney, Federal Reserve System, Legal Division, *Phone:* 202 452–3900.

*RIN:* 7100–AD63

**582. Regulation Z—Truth in Lending (Docket No. R–1393)**

*Legal Authority:* 12 U.S.C. 3806; 15 U.S.C. 1604; 15 U.S.C. 1637; 15 U.S.C. 1639; * * *

*Abstract:* This proposed rule seeks to clarify aspects of the Federal Reserve Board's final rules implementing the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Pub. L. 111–24), which were published in February 2010 (75 FR 7658) and June 2010 (75 FR 37526). The Board published a final rule substantially as proposed on April 25, 2011 (76 FR 22948).

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Issued Interim Final Rule. | 11/02/10 | 75 FR 67458 |
| Board Issued Final Rule. | 04/25/11 | 76 FR 22948 |
| Board Issued Final Rule Effective. | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Benjamin K. Olson, Attorney, Federal Reserve System, Division of Consumer and Community Affairs, *Phone:* 202 452–2826.

*RIN:* 7100–AD55

**583. Regulation Z—Truth in Lending (Docket No. R–1394)**

*Legal Authority:* 12 U.S.C. 3806; 15 U.S.C. 1604; 15 U.S.C. 1637c

*Abstract:* On October 28, 2010, the Federal Reserve Board (the Board) approved for public comment an interim final rule amending Regulation Z (Truth in Lending) (75 FR 66554). The interim rule implements section 129E of the Truth in Lending Act (TILA), which was enacted on July 21, 2010, as section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. TILA section 129E establishes new requirements for appraisal independence for consumer credit transactions secured by the consumer's principal dwelling. The amendments are designed to ensure that real estate appraisals used to support creditors' underwriting decisions are based on the appraiser's independent professional judgment, free of any influence or pressure that may be exerted by parties that have an interest in the transaction. The amendments also seek to ensure that creditors and their agents pay customary and reasonable fees to appraisers. The Board sought comment on all aspects of the interim final rule, which were due by December 27, 2010. Compliance is mandatory for residential mortgage applications received by creditors on or after April 1, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Issued Interium Final Rule and Request for Public Comment. | 10/28/10 | 75 FR 66554 |
| Board Expects No Futher Action. | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lorna Neill, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs, *Phone:* 202 452–3667.

*RIN:* 7100–AD56

**584. Regulation Z—Escrow Requirements (Docket No. R–1406)**

*Legal Authority:* 12 U.S.C. 3806; 15 U.S.C. 1604; 15 U.S.C. 1637(c)(5); 15 U.S.C. 1639

*Abstract:* The Federal Reserve Board (Board) published in the **Federal Register** on March 2, 2011, a proposed rule that would amend Regulation Z (Truth in Lending) to implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Regulation Z currently requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a dwelling. The proposal would implement statutory changes made by the Dodd-Frank Act that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. In addition, the proposal would implement the Act's disclosure requirements regarding escrow accounts. The proposal also would exempt certain loans from the statute's escrow requirement. The primary exemption would apply to mortgage loans extended by creditors that operate predominantly in rural or underserved areas, originate a limited number of mortgage loans, and do not maintain escrow accounts for any mortgage loans they service.

The comment period for the proposed rule ended on May 1, 2011. Rule making authority transferred to the CFPB on July 21, 2011. This proposal will be transferred to the CFPB which will be responsible for issuing a final rule.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Expects No Further Action. | 07/21/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nikita M. Pastor, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs, *Phone:* 202 452–3667.

*RIN:* 7100–AD65

**585. • Regulation Z—Truth in Lending (Docket No. R–1417)**

*Legal Authority:* 15 U.S.C. 1604(a); 15 U.S.C. 1639b(e); 15 U.S.C. 1639c(b)

*Abstract:* On May 11, 2011, the Federal Reserve Board published for public comment proposed amendments to Regulation Z (Truth in Lending) and the staff commentary to the regulation to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Regulation Z currently prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The proposal would implement statutory changes made by the Dodd-Frank Act that expand the scope of the ability-to-repay requirement to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan).

In addition, the proposal would establish standards for complying with the ability-to-repay requirement, including by making a ''qualified mortgage.'' The proposal also implements the Act's limits on prepayment penalties. Rulemaking authority for TILA was transferred to the Consumer Financial Protection Bureau (CFPB) on July 21,2011. Accordingly, this rulemaking become a proposal of the CFPB on that date and any further action will be taken by the CFPB. The public comment period ended on July 22, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment. | 05/11/11 | 76 FR 27390 |
| Proposal Transferred to CFPB. | 07/21/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Maureen Yap, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs, *Phone:* 202 452–2412.

*RIN:* 7100–AD75

[FR Doc. 2012–1667 Filed 2–10–12; 8:45 am]

**BILLING CODE 6210–01–P**

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXV

## Nuclear Regulatory Commission

Semiannual Regulatory Agenda

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. I

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96–354, ''The Regulatory Flexibility Act,'' and Executive Order 12866, ''Regulatory Planning and Review.'' The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on July 7, 2011 (76 FR 40204).

**ADDRESSES:** Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Comments may also be hand delivered to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852–2738, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda. Public comments on NRC's published rulemaking actions are available on the Federal rulemaking Web site at *www.regulations.gov.*

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying, for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852–2738.

The complete Unified Agenda will be available online at *www.reginfo.gov,* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact: Cindy Bladey, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301 492–3667; Email: *Cindy.Bladey@nrc.gov.* Persons outside the Washington, DC, metropolitan area may call, toll-free: 1 800 368–5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading ''Agency Contact'' for that rule.

**SUPPLEMENTARY INFORMATION:** The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on July 7, 2011 (76 FR 40204). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through September 9, 2011. The date for the next scheduled action under the heading ''Timetable'' is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda. In particular, the Commission is considering recommendations from a task force established to examine the NRC's regulatory requirements, programs, processes, and implementation in light of information from the Fukushima Daiichi site in Japan, following the March 11, 2011, earthquake and tsunami.

The NRC agenda lists all open rulemaking actions. Five rules affect small entities. Dated at Rockville, Maryland, this 9th day of September 2011.

For the Nuclear Regulatory Commission.

**Leslie Terry,**

*Acting Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.*

### NUCLEAR REGULATORY COMMISSION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 586 | Revision of Fee Schedules: Fee Recovery for FY 2012 [NRC–2011–0207] (**Reg Plan Seq No. 162**) | 3150–AJ03 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

### NUCLEAR REGULATORY COMMISSION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 587 | Distribution of Source Material To Exempt Persons and General Licensees and Revision of General License and Exemptions [NRC–2009–0084]. | 3150–AH15 |
| 588 | Physical Protection of Byproduct Material [NRC–2008–0120] (**Reg Plan Seq No. 164**) | 3150–AI12 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

### NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 589 | Controlling the Disposition of Solid Materials [NRC–1999–0002] | 3150–AH18 |

NUCLEAR REGULATORY COMMISSION—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 590 | Revision of Fee Schedules: Fee Recovery for FY 2011 [NRC–2011–0016] | 3150–AI93 |

## NUCLEAR REGULATORY COMMISSION (NRC)

*Proposed Rule Stage*

**586. • Revision of Fee Schedules: Fee Recovery for FY 2012 [NRC–2011–0207]**

*Regulatory Plan:* This entry is Seq. No. 162 in part II of this issue of the **Federal Register**.

*RIN:* 3150–AJ03

## NUCLEAR REGULATORY COMMISSION (NRC)

*Final Rule Stage*

**587. Distribution of Source Material To Exempt Persons and General Licensees and Revision of General License and Exemptions [NRC–2009–0084]**

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*Abstract:* The proposed rule would amend the Commission's regulations to improve the control over the distribution of source material to exempt persons and to general licensees in order to make part 40 more risk-informed. The proposed rule also would govern the licensing of source material by adding specific requirements for licensing of and reporting by distributors of products and materials used by exempt persons and general licensees. Source material is used under general license and under various exemptions from licensing requirements in part 40 for which there is no regulatory mechanism for the Commission to obtain information to fully assess the resultant risks to public health and safety. Although estimates of resultant doses have been made, there is a need for ongoing information on the quantities and types of radioactive material distributed for exempt use and use under general license. Obtaining information on the distribution of source material is particularly difficult because many of the distributors of source material to exempt persons and generally licensed persons are not currently required to hold a license from the Commission. Distributors are often unknown to the Commission. No controls are in place to ensure that products and materials distributed are maintained within the applicable constraints of the exemptions. In addition, the amounts of source material allowed under the general license in section 40.22 could result in exposures above 1 mSv/year (100 mrem/year) to workers at facilities that are not required to meet the requirements of parts 19 and 20. Without knowledge of the identity and location of the general licensees, it would be difficult to enforce restrictions on the general licensees. This rule also would address Petition for Rulemaking, PRM–40–27 submitted by the State of Colorado and Organization of Agreement States.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/26/10 | 75 FR 43425 |
| NPRM Comment Period Extended. | 11/18/10 | 75 FR 70618 |
| NPRM Comment Period End. | 02/15/11 | |
| Final Rule | 05/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gary C. Comfort, Jr., Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–8106, *Email:* *gary.comfort@nrc.gov.*

*RIN:* 3150–AH15

**588. Physical Protection of Byproduct Material [NRC–2008–0120]**

*Regulatory Plan:* This entry is Seq. No. 164 in part II of this issue of the **Federal Register**.

*RIN:* 3150–AI12

## NUCLEAR REGULATORY COMMISSION (NRC)

*Long-Term Actions*

**589. Controlling the Disposition of Solid Materials [NRC–1999–0002]**

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*Abstract:* The NRC staff provided a draft proposed rule package on Controlling the Disposition of Solid Materials to the Commission on March 31, 2005, which the Commission disapproved (ADAMS Accession Number: ML051520285). The rulemaking package included a summary of stakeholder comments (NUREG/CR–6682), Supplement 1, (ADAMS Accession Number: ML003754410). The Commission's decision was based on the fact that the Agency is currently faced with several high priority and complex tasks, that the current approach to review specific cases on an individual basis is fully protective of public health and safety, and that the immediate need for this rule has changed due to the shift in timing for reactor decommissioning. The Commission has deferred action on this rulemaking.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | To Be Determined | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kimyata Morgan Butler, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001, *Phone:* 301 415–0733, *Email:* *kimyata.morganbutler@nrc.gov.*

*RIN:* 3150–AH18

## NUCLEAR REGULATORY COMMISSION (NRC)

*Completed Actions*

**590. Revision of Fee Schedules: Fee Recovery for FY 2011 [NRC–2011–0016]**

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*Abstract:* The final rule amends the Commission's licensing, inspection, and annual fees charged to its applicants and licensees. The amendments implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in Fiscal Year (FY) 2011, less the amounts appropriated from the Nuclear Waste Fund, and for Waste Incidental to Reprocessing, generic homeland security activities, and scholarships and fellowships.

Based on the FY 2011 NRC Budget sent to Congress, the NRC's required fee recovery amount for the FY 2011 budget is approximately $915.8 million. After

accounting for carryover and billing adjustments, the total amount to be recovered through fees is approximately $916.2 million. The OBRA–90, as amended, requires that the fees for FY 2011 be collected by September 30, 2011.

*Completed:*

| Reason | Date | FR Cite |
|---|---|---|
| Final Rule ..... | 06/22/11 | 76 FR 36780 |
| Final Rule Effective. | 08/22/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Renu Suri, *Phone:* 301 415–0161, *Email:* *renu.suri@nrc.gov.*

*RIN:* 3150–AI93

[FR Doc. 2012–1668 Filed 2–10–12; 8:45 am]

BILLING CODE 7590–01–P

# FEDERAL REGISTER

Vol. 77 Monday,

No. 29 February 13, 2012


Part XXVI

## Securities and Exchange Commission

Semiannual Regulatory Agenda

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Ch. II

**[Release Nos. 33–9260, 34–65350, IA–3280, IC–29792, File No. S7–37–11]**

### Regulatory Flexibility Agenda

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Securities and Exchange Commission is publishing an agenda of its rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sep. 19, 1980). Information in the agenda was accurate on September 16, 2011, the day on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of a Regulatory Flexibility Act analysis is required.

The Commission's complete RFA agenda will be available online at *www.reginfo.gov.*

**DATES:** Comments should be received on or before December 30, 2011.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–37–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–37–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Anne Sullivan, Office of the General Counsel, 202 551–5019.

**SUPPLEMENTARY INFORMATION:** The RFA requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

''Securities Act''— Securities Act of 1933

''Exchange Act''— Securities Exchange Act of 1934

''Investment Company Act''— Investment Company Act of 1940

''Investment Advisers Act''— Investment Advisers Act of 1940

''Dodd-Frank Act''— Dodd-Frank Wall Street Reform and Consumer Protection Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Dated: September 16, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

DIVISION OF CORPORATION FINANCE—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 591 | Proxy Solicitation Enhancements | 3235–AK28 |

DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 592 | Disqualification of Felons and Other ''Bad Actors'' From Rule 506 Offerings | 3235–AK97 |
| 593 | Short-Term Borrowings | 3235–AK72 |
| 594 | Conflict Minerals | 3235–AK84 |
| 595 | Disclosure of Payments By Resource Extraction Issuers | 3235–AK85 |
| 596 | Listing Standards for Compensation Committees | 3235–AK95 |
| 597 | Exemptions for Security-Based Swaps | 3235–AL17 |
| 598 | Net Worth Standard for Accredited Investors | 3235–AK90 |

DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 599 | Voluntary Filers | 3235–AK59 |
| 600 | Risk Disclosures | 3235–AK58 |

DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 601 | References to Credit Ratings in Certain Investment Company Act Rules and Forms | 3235–AL02 |

DIVISION OF INVESTMENT MANAGEMENT—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 602 | Rules Implementing Amendments to the Investment Advisers Act | 3235–AK82 |
| 603 | Family Offices | 3235–AK66 |

DIVISION OF TRADING AND MARKETS—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 604 | Publication or Submission of Quotations Without Specified Information | 3235–AH40 |

DIVISION OF TRADING AND MARKETS—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 605 | Broker-Dealer Reports | 3235–AK56 |
| 606 | Transitional Registration as a Municipal Advisor | 3235–AK69 |
| 607 | Consolidated Audit Trail | 3235–AK51 |
| 608 | Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934 | 3235–AL14 |
| 609 | Rules for Nationally Recognized Statistical Rating Organizations | 3235–AL15 |

DIVISION OF TRADING AND MARKETS—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|---|---|---|
| 610 | Confirmation of Transactions in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings. | 3235–AJ11 |
| 611 | Point-of-Sale Disclosure of Purchases in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings. | 3235–AJ12 |
| 612 | Rule 15c–100: Schedule 15C | 3235–AJ13 |
| 613 | Rule 15c–101: Schedule 15D | 3235–AJ14 |
| 614 | Processing of Reorganization Events, Tender Offers, and Exchange Offers | 3235–AH53 |
| 615 | Proposed Rules for Nationally Recognized Statistical Rating Organizations | 3235–AK14 |

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Corporation Finance*

Proposed Rule Stage

### 591. Proxy Solicitation Enhancements

*Legal Authority:* 15 U.S.C. 78n

*Abstract:* The Commission adopted amendments in December 2009 to enhance proxy disclosures. In the proposing release for those rules, the Commission also proposed further amendments to its proxy rules to clarify the manner in which they operate and address issues that have arisen in the proxy solicitation process. The Division is considering recommending that the Commission repropose amendments in this area.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/17/09 | 74 FR 35076 |
| NPRM Comment Period End. | 09/15/09 | |
| Final Rule | 12/23/09 | 74 FR 68334 |
| Final Rule Effective. | 02/28/10 | |
| Second NPRM | 06/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mark W. Green, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC

20549–0301, *Phone:* 202 551–3440, *Email: greenm@sec.gov.*

*RIN:* 3235–AK28

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Corporation Finance*

Final Rule Stage

### 592. Disqualification of Felons and Other ''Bad Actors'' From Rule 506 Offerings

*Legal Authority:* 15 U.S.C. 77c(a); 15 U.S.C. 77d; 15 U.S.C. 77s; 15 U.S.C. 77z–3

*Abstract:* The Commission proposed rules to disqualify securities offerings involving certain ''bad actors'' from eligibility for the exemptions under Rule 506 of Regulation D, in accordance with section 926 of the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/01/11 | 76 FR 31518 |
| NPRM Comment Period End. | 07/14/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Johanna Vega Losert, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3460, *Email: losertj@sec.gov.*

*RIN:* 3235–AK97

### 593. Short-Term Borrowings

*Legal Authority:* 15 U.S.C. 77a *et seq.;* 15 U.S.C. 78a *et seq.*

*Abstract:* The Commission proposed revisions to rules to enhance the disclosure that registrants provide about short-term borrowings.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/28/10 | 75 FR 59866 |
| NPRM Comment Period End. | 11/29/10 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Christina Padden, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3435, *Email: paddenc@sec.gov.*

*RIN:* 3235–AK72

### 594. Conflict Minerals

*Legal Authority:* 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; Pub. L. 111–203 sec 1502

*Abstract:* The Commission proposed amendments to forms and rules to implement the requirements of section 1502 of the Dodd-Frank Act. The proposed amendments would require any reporting issuer for which conflict minerals are necessary to the functionality or production of a product manufactured or contracted to be manufactured by that issuer to disclose in its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country. If so, the issuer would be required to furnish a separate report which is audited by an independent private sector auditor, as an exhibit to the annual report that includes, among other matters, a description of the measures taken by the issuer to exercise due diligence on the source and chain of custody of its conflict minerals.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/23/10 | 75 FR 80948 |
| NPRM Comment Period End. | 01/31/11 | |
| NPRM Comment Period Extended. | 02/03/11 | 76 FR 6110 |
| NPRM Comment Period Extended End. | 03/02/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Fieldsend, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430, *Email: fieldsendj@sec.gov.*

*RIN:* 3235–AK84

### 595. Disclosure of Payments by Resource Extraction Issuers

*Legal Authority:* 15 U.S.C. 78q; Pub. L. 203–111 sec 1504

*Abstract:* The Commission proposed rules pursuant to section1504 of the Dodd-Frank Act, which added section 13(q) to the Exchange Act. Section 13(q) requires the Commission to adopt rules requiring resource extraction issuers to disclose in their annual reports filed with the Commission payments made to foreign governments or the U.S. federal government for the purpose of the commercial development of oil, natural gas, or minerals.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/23/10 | 75 FR 80978 |
| NPRM Comment Period End. | 01/31/11 | |
| NPRM Comment Period Extended. | 02/03/11 | 76 FR 6111 |
| NPRM Comment Period Extended End. | 03/02/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Elliot Staffin, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3243, *Email: staffine@sec.gov.*

*RIN:* 3235–AK85

### 596. Listing Standards for Compensation Committees

*Legal Authority:* Pub. L. 111–203 sec 952; 15 U.S.C. 78j–3

*Abstract:* The Commission proposed a new rule and rule amendments to implement the provisions of section 952 of the Dodd-Frank Act, which adds section 10C to the Exchange Act. Section 10C requires the Commission to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with section 10C's compensation committee and compensation adviser requirements. In accordance with the statute, the proposed rule would direct the exchanges to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be ''independent,'' as defined in the listing standards of the exchanges adopted in accordance with the proposed rule. In addition, section 10C(c)(2) of the Exchange Act requires the Commission to adopt new disclosure rules concerning the use of compensation consultants and any related conflicts of interest.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/06/11 | 76 FR 18966 |
| NPRM Comment Period End. | 04/29/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC

20549, *Phone:* 202 551–3430, *Email: harrisons@sec.gov.*

*RIN:* 3235–AK95

**597. • Exemptions for Security-Based Swaps**

*Legal Authority:* 15 U.S.C. 77s; 15 U.S.C. 77aa; 15 U.S.C. 78l(h); 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 78ddd(d)

*Abstract:* The Commission adopted interim final rules, providing exemptions under the Securities Act, Exchange Act, and Trust Indenture Act for those security-based swaps that under current law are security-based swap agreements and will be defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011, due solely to the provisions of title VII of the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 07/11/11 | 76 FR 40605 |
| Interim Final Rule Effective. | 07/11/11 | |
| Interim Final Rule Comment Period End. | 08/15/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy Starr, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3860.

*RIN:* 3235–AL17

**598. Net Worth Standard for Accredited Investors**

*Legal Authority:* Pub. L. 111–203 sec 413(a); 15 U.S.C. 77c(b); 15 U.S.C. 77d(2)

*Abstract:* The Commission proposed amendments to the accredited investor standards in its rules under the Securities Act to reflect the requirements of section 413(a) of the Dodd-Frank Act. Section 413(a) requires the definitions of ''accredited investor'' in Securities Act rules to exclude the value of a person's primary residence for purposes of determining whether the person qualifies as an ''accredited investor'' on the basis of having a net worth in excess of $1 million. The Commission also proposed technical amendments to Form D and a number of its rules to conform them to the language of section 413(a) and to correct cross-references to former section 4(6) of the Securities Act, which was renumbered section 4(5) by section 944 of the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 01/31/11 | 76 FR 5307 |
| NPRM Comment Period End. | 03/11/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Anthony G. Barone, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3460.

*RIN:* 3235–AK90

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Corporation Finance*

Completed Actions

**599. Voluntary Filers**

*Legal Authority:* Not Yet Determined

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430.

*RIN:* 3235–AK59

**600. Risk Disclosures**

*Legal Authority:* Not Yet Determined

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn ..... | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Zepralka, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430.

*RIN:* 3235–AK58

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Investment Management*

Final Rule Stage

**601. References to Credit Ratings in Certain Investment Company Act Rules and Forms**

*Legal Authority:* 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–8; 15 U.S.C. 80a–14(a); 15 U.S.C. 80a–29; 15 U.S.C. 80a–30(a); 15 U.S.C. 80a–37; 15 U.S.C. 77e; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s(a); Pub. L. 111–203 sec 939; Pub. L. 111–203 sec 939A

*Abstract:* The Commission proposed (i) to amend two rules (Rules 2a–7 and 5b–3) and four forms (Forms N–1A, N–2, N–3, and N–MFP) under the Investment Company Act that reference credit ratings and (ii) a new rule under that Act that would set forth a credit quality standard in place of a credit rating removed by the Dodd-Frank Act from section 6(a)(5)(A)(iv)(1)of that Act. These proposals would give effect to provisions of the Dodd-Frank Act that require removing credit ratings references from certain Commission regulations and adopting credit quality standards to replace such references in the rules as well as to replace a statutory credit rating reference eliminated by the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM ..... | 03/09/11 | 76 FR 12896 |
| NPRM Comment Period End. | 04/25/11 | |
| Final Action ..... | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Anu Dubey, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549

*Phone:* 202 551–6792

*RIN:* 3235–AL02

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Investment Management*

Completed Actions

**602. Rules Implementing Amendments to the Investment Advisers Act**

*Legal Authority:* 15 U.S.C. 80b–3(c)(1); 15 U.S.C. 80b–3A(a)(2)(B)(ii); 15 U.S.C. 80b–3A(C); 15 U.S.C. 80b–4; 15 U.S.C. 80b–6(4); 15 U.S.C. 80b–6A; 15 USAC 77s(a); 15 U.S.C. 77sss(a); 15 U.S.C. 78a–37(a); 15 U.S.C. 78w(a); 15 U.S.C. 78bb(e)(2); Pub. L. 111–203 sec 404;

Pub. L. 111–203 sec 406 to 408; Pub. L. 111–203 sec 410

*Abstract:* The Commission adopted new rules and amendments to existing rules and forms under the Advisers Act to implement provisions of the Dodd-Frank Act that eliminate the ''private adviser'' exemption, extend the Commission's authority to require reporting by certain investment advisers that are exempt from registration, and reallocate regulatory responsibilities for certain investment advisers to the states. The Commission also adopted amendments to the registration form (Form ADV) for investment advisers to obtain additional information that will enhance the Commission's risk-assessment capabilities. Finally, the Commission adopted amendments to its pay to play rule and other rules to address a number of other changes to the Investment Advisers Act made by the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/10/10 | 75 FR 77052 |
| NPRM Comment Period End. | 01/24/11 | |
| Final Action | 07/19/11 | 76 FR 42950 |
| Final Action Effective. | 09/19/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Porter, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6739, *Email: porterj@sec.gov.*

*RIN:* 3235–AK82

**603. Family Offices**

*Legal Authority:* 15 U.S.C. 80b–2(a)(11)(G)

*Abstract:* The Commission adopted a rule, consistent with section 409 of the Dodd-Frank Act, regarding family offices.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/18/10 | 75 FR 63753 |
| NPRM Comment Period End. | 11/18/10 | |
| Final Action | 06/29/11 | 76 FR 37983 |
| Final Action Effective. | 08/29/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sarah ten Siethoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6729, *Email: tensiethoffs@sec.gov.*

*RIN:* 3235–AK66

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Trading and Markets*

Proposed Rule Stage

**604. Publication or Submission of Quotations Without Specified Information**

*Legal Authority:* 15 U.S.C. 78c; 15 U.S.C. 78j(b); 15 U.S.C. 78o(c); 15 U.S.C. 78o(g); 15 U.S.C. 78q(a); 15 U.S.C. 78w(a)

*Abstract:* As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission proposed amendments to Rule 15c2–11. These amendments would limit the rule's piggyback provision and increase public availability of issuer information. The amendments would expand the information review requirements for non-reporting issuers and the documentation required for significant relationships between the broker-dealer and the issuer of the security to be quoted. Finally, the amendments would exclude from the rule securities of larger, more liquid issuers.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/25/98 | 63 FR 9661 |
| NPRM Comment Period End. | 04/27/98 | |
| Second NPRM | 03/08/99 | 64 FR 11124 |
| Second NPRM Comment Period End. | 04/07/99 | |
| Second NPRM Comment Period Extended. | 04/14/99 | 64 FR 18393 |
| Comment Period End. | 05/08/99 | |
| Third NPRM | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Barry O'Connell, Securities and Exchange Commission, Division of Trading and Markets, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5787.

*RIN:* 3235–AH40

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Trading and Markets*

Final Rule Stage

**605. Broker-Dealer Reports**

*Legal Authority:* 15 U.S.C. 78q

*Abstract:* The Commission proposed amendments to Rule 17a-5 dealing with, among other things, broker-dealer custody of assets.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/27/11 | 76 FR 37572 |
| NPRM Comment Period End. | 08/26/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mark Attar, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5889, *Email: attarm@sec.gov.*

*RIN:* 3235–AK56

**606. Transitional Registration as a Municipal Advisor**

*Legal Authority:* Pub. L. 111–203, sec 975

*Abstract:* The Commission adopted an interim final temporary rule to require all municipal advisors to register with it by October 1, 2010, consistent with the Dodd-Frank Act. The rule is effective through December 31, 2011.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/08/10 | 75 FR 54465 |
| Interim Final Rule Effective. | 10/01/10 | |
| Interim Final Rule Comment Period End. | 10/08/10 | |
| Interim Final Rule Effective Through. | 12/31/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ira Brandriss, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5681, *Email: brandrissi@sec.gov.*

*RIN:* 3235–AK69

**607. Consolidated Audit Trail**

*Legal Authority:* 15 U.S.C. 78k–1(a); 15 U.S.C. 78q(a)

*Abstract:* The Commission proposed a rule that would require national securities exchanges and national securities associations to act jointly in developing a national market system (NMS) plan to develop, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/08/10 | 75 FR 32556 |
| NPRM Comment Period End. | 08/09/10 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer L. Colihan, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5642, *Email: colihanj@sec.gov*.

*RIN:* 3235–AK51

**608. • Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934**

*Legal Authority:* Pub. L. 111–203 sec 939A

*Abstract:* Section 939A of the Dodd-Frank Act requires the Commission to remove any references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Commission proposed to amend certain rules and one form under the Securities Exchange Act of 1934 (the Exchange Act) applicable to broker-dealer financial responsibility, distributions of securities, and confirmations of transactions. The Commission also requested comment on potential standards of creditworthiness for purposes of Exchange Act sections 3(a)(41) and 3(a)(53), which define the terms ''mortgage related security'' and ''small business related security,'' respectively, as the Commission considers how to implement section 939(e) of the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/06/11 | 76 FR 26550 |
| NPRM Comment Period End. | 07/05/11 | |
| Final Action | 09/00/12 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Leigh Bothe, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5511, *Email: bothel@sec.gov*.

*RIN:* 3235–AL14

**609. • Rules for Nationally Recognized Statistical Rating Organizations**

*Legal Authority:* 15 U.S.C. 78o–7; 15 U.S.C. 78q; 15 U.S.C. 78mm; Pub. L. 111–203 sections 936, 938, and 943

*Abstract:* The Commission proposed rules and rule amendments to implement certain provisions of the Dodd-Frank Act concerning nationally recognized statistical rating organizations, providers of third-party due diligence services for asset-backed securities, and issuers and underwriters of asset-backed securities.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/08/11 | 76 FR 33420 |
| NPRM Comment Period End. | 08/08/11 | |
| Final Action | 12/00/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Timothy Fox, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5687, *Email: foxt@sec.gov*.

*RIN:* 3235–AL15

## SECURITIES AND EXCHANGE COMMISSION (SEC)

*Division of Trading and Markets*

Completed Actions

**610. Confirmation of Transactions in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings**

*Legal Authority:* 15 U.S.C. 78j; 15 U.S.C. 78k; 15 U.S.C. 78o; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End. | 04/12/04 | |
| NPRM Comment Period Extended. | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End. | 04/04/05 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5618, *Fax:* 202 772–9270, *Email: goldina@sec.gov*.

*RIN:* 3235–AJ11

**611. Point-of-Sale Disclosure of Purchases in Open–End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings**

*Legal Authority:* 15 U.S.C. 78j; 15 U.S.C. 78k; 15 U.S.C. 78o; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End. | 04/12/04 | |
| NPRM Comment Period Extended. | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End. | 04/04/05 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5618, *Fax:* 202 772–9270, *Email: goldina@sec.gov*.

*RIN:* 3235–AJ12

**612. Rule 15C–100: Schedule 15C**

*Legal Authority:* 15 U.S.C. 78j; 15 U.S.C. 78k; 15 U.S.C. 78o; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End. | 04/12/04 | |
| NPRM Comment Period Extended. | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End. | 04/04/05 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5618, *Fax:* 202 772–9270, *Email: goldina@sec.gov*.

*RIN:* 3235–AJ13

**613. Rule 15C–101: Schedule 15D**

*Legal Authority:* 15 U.S.C. 78j; 15 U.S.C. 78k; 15 U.S.C. 78o; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End. | 04/12/04 | |
| NPRM Comment Period Extended. | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End. | 04/04/05 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5618, *Fax:* 202 772–9270, *Email: goldina@sec.gov*.

*RIN:* 3235–AJ14

**614. Processing of Reorganization Events, Tender Offers, and Exchange Offers**

*Legal Authority:* 15 U.S.C. 78b; 15 U.S.C. 78k–1(a)(1)(B); 15 U.S.C. 78n(d)(4); 15 U.S.C. 78o(c)(3); 15 U.S.C. 78o(c)(6); 15 U.S.C. 78q–1(a); 15 U.S.C. 78q–1(d)(1); 15 U.S.C. 78w(a)

*Abstract:* The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/04/98 | 63 FR 47209 |
| NPRM Comment Period End. | 11/03/98 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jerry Carpenter, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5710, *Fax:* 202 772–9270, *Email: carpenterj@sec.gov*.

*RIN:* 3235–AH53

**615. Proposed Rules for Nationally Recognized Statistical Rating Organizations**

*Legal Authority:* 15 U.S.C. 78o–7; 15 U.S.C. 89q

*Abstract:* The Commission proposed rule amendments and a new rule that would require nationally recognized statistical rating organizations (NRSROs) to furnish a new annual report by the firm's designated compliance officers, to disclose additional information about firm sources of revenue, and to make publicly available a consolidated report about revenues attributable to persons paying the NRSRO for the issuance or maintenance of a credit rating.

The Commission is withdrawing this item from the Unified Agenda because it does not expect to consider this item within the next 12 months, but the Commission may consider the item at a future date, pending the outcome of additional NRSRO rules proposed in May 2011 (RIN 3235–AL15) to implement certain provisions of the Dodd-Frank Act.

*Timetable:*

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/25/08 | 73 FR 36212 |
| NPRM Comment Period End. | 07/25/08 | |
| Final Rule | 02/09/09 | 74 FR 6465 |
| Second NPRM | 02/09/09 | 74 FR 6485 |
| Second NPRM Comment Period End. | 03/26/09 | |
| Final Rule | 12/04/09 | 74 FR 63832 |
| Final Rule Effective. | 02/01/10 | |
| Third NPRM | 12/04/09 | 74 FR 63866 |
| Third NPRM Comment Period End. | 02/02/10 | |
| Withdrawn | 10/01/11 | |

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sheila Swartzs, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5545, *Fax:* 202 772–9273, *Email: swartzs@sec.gov*.

*RIN:* 3235–AK14

[FR Doc. 2012–1669 Filed 2–10–12; 8:45 am]

**BILLING CODE 8011–01–P**

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