

DEPARTMENT OF COMMERCE (DOC)**Statement of Regulatory Priorities**

Sustainable, long-term economic growth is a central focus of the President's policies and priorities. The mission of the Department of Commerce—ensuring and enhancing long-term economic opportunity and a rising standard of living for all Americans—fully supports the President's economic policy.

The Department of Commerce plays a critical role in helping the Nation meet its economic goals. The Department works primarily with and through the private sector, creating partnerships that facilitate job creation, international trade, local and regional economic development, manufacturing excellence, investment in R&D, environmentally sound development, and other activities that contribute to the Nation's economic well-being. It is both the representative and the pacesetter for the course business must take to be competitive in the new world order. The President and the Secretary of Commerce have established a clear set of priorities and programs for the Department of Commerce that will enable the Department to help create the best possible climate for long-term private sector economic growth and development in the United States.

The Department's policy and program priorities stress economic growth and development through:

- Opening and expanding foreign markets and promoting increased exports of U.S. goods and services in markets with the highest potential for growth and in important growing sectors;
- Advocating free and fair trade policies and enacting and implementing the first post-Cold War export regime—a regime that facilitates trade while safeguarding our national security;
- Enhancing technological development and commercialization through improved strategies for Government and/or industry cooperation;
- Providing developmental assistance to distressed communities;
- Establishing a new economic information infrastructure;
- Promoting stewardship and assessment of the global environment; and
- Creating a more effective, economical, productive, and responsive Department of Commerce.

As the President recently stated, the Commerce Department helps the private sector face the trends that affect the world's economy. Markets are becoming

increasingly global. Competition is fierce and relentless. Technology—one of the principal drivers of sustained economic growth—is constantly changing, knowing neither predetermined home nor boundaries. The ability of smaller companies to enter export markets and develop and adopt innovations is increasingly vital. In such an environment, the American economy depends in large part on our companies' abilities to innovate and to survive and prosper in new markets abroad and against foreign competition at home.

That is why the President has put forward a national economic strategy, with Commerce at center stage, that includes concrete tools to enhance investment, to open markets and to promote exports, to encourage innovation, and to educate and train our people. In addition, the Department of Commerce embraces the Administration's environmental strategy that promotes sustainable development and rejects the false choice between environmental goals and economic growth. The Department of Commerce 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.

The President's recent budget reaffirms the importance he places not only on balancing the Federal budget in a way that enhances sustainable economic growth, but also on stimulating investment, opening markets, and promoting innovation. In fact, Commerce programs help the U.S. economy more fully realize its growth potential, thus contributing to the incomes and tax revenues that finance these public expenditures.

The Department of Commerce's emphasis on boosting U.S. exports and stimulating technological innovation recognizes that open markets and technology are critical to our Nation's ability to compete. In both areas, the United States must have in place policies and programs that work to level the playing field for American businesses and workers. Compared with our major trading partners, the United States ranks dead last in expenditures for export promotion relative to the size of our economy and, compared with Japan and Germany, the United States spends less on nondefense R&D as a percentage of gross defense production. Through the Department of Commerce,

the United States takes as seriously as our trading partners the need for public-private partnerships that promote economic competitiveness.

For too long, U.S. companies were shut out of lucrative foreign markets or repeatedly lost bids for international contracts, while foreign governments aggressively promoted the interests of their firms abroad. Smaller manufacturers in the United States, unable to modernize quickly enough and meet payroll, laid off workers and closed their plants in the face of fierce and relentless competition. And report after report told us that the United States was losing ground in virtually every area of high technology—from automobiles to semiconductors—as the Federal Government stood idly by.

This Department of Commerce has instituted the programs and policies that mean cutting-edge, competitive, better paying jobs. We work every day to boost exports, to deregulate business, to help smaller manufacturers battle foreign competition, to advance the technologies critical to our future prosperity, to invest in our communities, and to fuse economic and environmental goals.

The Department of Commerce is American business' surest ally in job creation, serving as a vital resource base, a tireless advocate, and a Cabinet-level voice for the private sector.

The Department's regulatory plan directly tracks these policy and program priorities, only a few of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

To the extent permitted by law, all prerogative and regulatory activities and decisions adhere to the Administration's statement of regulatory philosophy and principles, as set forth in section 1 of Executive Order 12866. The Department of Commerce has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. All regulations are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated. When a regulation is no longer needed, the Secretary's standing order is to rescind it.

The Secretary has prohibited the issuance of any regulation that discriminates, and requires that all

regulations be written in simple, plain English 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.

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only six—the Bureau of Export Administration (BXA), the International Trade Administration (ITA), the National Oceanic and Atmospheric Administration (NOAA), the Patent and Trademark Office, the Economic Development Administration (EDA), and the Technology Administration—plan significant preregulatory or regulatory actions for the Regulatory Plan year. Many of these regulatory actions do not involve new or increased regulation of the private sector. Four of these operating units—BXA, ITA, EDA, and NOAA—have the most important of the Department's significant regulatory actions planned for the Regulatory Plan year. These four units are described below, along with their regulatory objectives and priorities, how they relate to the President's priorities, and their most significant planned regulatory actions.

The Commerce Department is also reinventing itself by taking into account, among other things, the President's regulatory principles. We have made bold and dramatic changes, never being satisfied with the status quo. Over the past 2 1/2 years we have emphasized, initiated, and expanded programs that work in partnership with the American people to secure the Nation's economic future. At the same time we have downsized, cut regulations, closed offices, and eliminated programs and jobs that are not part of our core mission. The bottom line is that, after much thought and debate, we have made many hard choices needed to make this Department "state of the art."

Reinvention at the Department of Commerce has not only meant cutting regulations or improving existing services. It has also meant purposeful growth, particularly in the areas of trade and technology.

The Secretary believes reinvention should view the entire Federal Government as a major corporation, and view the Department of Commerce as a critical function within that corporation. A company going through a reinvention process may shed jobs and functions, but it will also expand and enhance

operations that are vital to its long-term growth. It is certainly going to build on partnerships with its customers that work. The Department believes expansion of essential programs at Commerce is vital to economic growth.

Streamlining Regulatory Processes

The Department of Commerce has taken a variety of steps to reduce regulatory burden by streamlining its regulatory processes. For instance, export controls on computers and telecommunications equipment have been changed, thereby eliminating the requirement for prior approval on over \$32 billion worth of exports. Further, the Department has proposed the first complete rewrite of the export control regulations in 45 years. This will make compliance easier, particularly for small firms. In addition, Departmental grants processing time has been reduced an average of 25 percent. Finally, the Department has simplified its forms, has encouraged electronic filing, and has coordinated data sharing with other statistical agencies to reduce respondent burden, saving the private sector hundreds of thousands of dollars in time and money.

The Department is taking steps to streamline its regulatory processes and delivery systems in line with the President's directives. In his September 30, 1993, Memorandum for Heads of Departments and Agencies, President Clinton stated:

In order to streamline the entire [Federal] rulemaking process, agencies must, consistent with any applicable laws, utilize internally the most efficient method of developing and reviewing regulations. Accordingly, I direct the head of each agency and department to examine its internal review procedures to determine whether, and if so, how those procedures can be improved and streamlined. In conducting this examination, the agency or department shall consider the number of clearances required by its review process and whether its review process varies according to the complexity or significance of the rule.

Each preregulatory and regulatory action of the Department is undertaken with the concept of streamlining in mind. Methodologies for eliminating levels of review and delegating decisionmaking authority down to the lowest appropriate level are constantly being tested. Further, the Department is employing advanced technology designed to create greater responsiveness. For example, the Office of the General Counsel developed a regulation database and tracking system. This system, which became fully

operational in January 1995, provides decisionmakers with precise, concise, and up-to-the-minute information on the substance, status, and history of each of the Department's regulatory actions.

By volume, the greatest number of Commerce Department regulatory actions are fisheries-related rules issued under authority of the Magnuson Fishery Conservation and Management Act, 16 USC section 1801 et seq., by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA). In order to have the most streamlined process for review and clearance of the large volume of Magnuson Act rulemakings in place, NOAA and the Department this year established a new, more collegial clearance procedure for NMFS rules.

First, NOAA, NMFS, and the Department participate in a weekly conference call to coordinate all regulatory activity.

Next, all NMFS rules are categorized and reviewed according to priority:

1. Those rules designated as "significant or controversial" are fully reviewed at both the NOAA and departmental level.
2. Those rules designated as "noncontroversial" and "nondiscretionary" are reviewed by NOAA, with the Department being provided the copies of the rule for information and, at the option of the Department, comment.
3. Those actions designated as "nondiscretionary, noncontroversial rule-related notices" are cleared by NOAA, with the Department simply monitoring any action through the weekly conference call.

This clearance system was designed with two goals in mind. First, the procedures were established to delegate clearance authority to the greatest extent possible, thereby streamlining the number of clearances required for publication of a particular rule or rule-related document. Next, the weekly conference call, where individuals from both organizations discuss all regulatory actions, was instituted to foster an atmosphere of congeniality and cooperation. In practice, these two ideas have meshed into a clearance procedure that is characterized by efficient processing of regulatory actions and frank, nonadversarial communication between the parties.

Eliminating and Improving Regulations

On February 21, 1995, President Clinton announced his plans for reform

of the Federal regulatory system. This plan included four steps each agency was to undertake in order to achieve meaningful reform. One of the points in the President's program directed each agency to undertake a page-by-page review of its regulations to determine those that were obsolete and could be deleted. In light of the varied activities and responsibilities of the Department, each agency reviewed its regulations using a methodology most appropriate for its legal obligations, organizational structure, and policy priorities. However, all agencies were directed to analyze each of their regulations to determine if it was necessary and, if so, whether it should be rewritten to make it more streamlined and user-friendly. Additionally, the regulatory review was conducted by each agency with the Department's and Administration's policy and program priorities, as well as its own, clearly in mind.

The results of each agency's regulatory review produce a total elimination or reinvention of a substantial percentage of the Department's regulations. The Department of Commerce has a total of 317 parts in the Code of Federal Regulations (CFR). Of these, 52 CFR parts, 16.5 percent of all Commerce Department CFR parts, are slated to be eliminated in their entirety. Furthermore, 140 Commerce Department CFR parts are proposed to be reinvented so as to streamline, clarify, and consolidate the regulations and generally make them more user-friendly. Reinvention also includes elimination of regulatory text from these CFR parts. The 140 CFR parts being reinvented represent nearly half, 44 percent, of all current Commerce Department CFR parts.

These changes, represented in terms of CFR pages, break down as follows: The Department of Commerce presently has 2,878 pages of regulatory text in the CFR. Of this amount 705 pages will be eliminated, fully 25 percent of all pages of Commerce Department regulations. Further, 1,859 pages of regulatory text, or 66 percent of the total Commerce Department pages in the CFR, two-thirds of all pages, will be reinvented.

These totals represent the changes proposed by the Department as a whole. However, as mentioned above, the regulatory review was conducted by the individual agencies of the Department of Commerce, whose substantial contribution to these amounts should be noted.

The National Oceanic and Atmospheric Administration (NOAA)

proposes to reduce the total volume of its regulations by at least 45 percent. In addition, NOAA is proposing to reduce the 127 separate parts it currently maintains in the CFR to approximately 40. The end result will be a new set of NOAA regulations that will be easier for the public to read, to comprehend, and comply with. Further, regulations which are no longer necessary or obsolete will be eliminated.

Next, an interim final rule of the Economic Development Administration (EDA) deletes 200 or more regulations. This represents approximately a 50 percent reduction in agency regulations.

Finally, on May 11, 1995, following over one year of work, the Bureau of Export Administration published a proposed rule, described more fully below, to completely revise the Export Administration Regulations (EAR). This proposed rule clarified the very technical language of the EAR, simplified their application, and generally made the export control regulatory regime more user-friendly.

On March 16, 1995, President Clinton announced that the Administration would implement several additional new policies as part of his regulatory reform initiative. Two of these policies concerned enforcement of existing regulations and the imposition of penalties on small business. Specifically, the President directed agency heads to allow for the waiver of up to 100 percent of any punitive fine on a small business, if the same sum would be used toward correcting the violation leading to the fine and to offer small businesses, found to be in violation of regulations, an opportunity to avoid punitive action by correcting the violation(s) within a time period appropriate to the violation in question.

On April 21, the President issued an Executive Memorandum (EM) providing guidance on implementation of these measures. The EM stated that the additional policies did not apply to matters related to, among other things, national security, foreign affairs, the importation or exportation of prohibited or restricted items, and Government duties. Nor did they apply to agencies, or components thereof, whose principal purpose is the collection, analysis, and dissemination of statistical information. For purposes of the Department of Commerce, we interpreted these exclusions to apply to the Economics and Statistics Administration, the Bureau of Export Administration, and the Import Administration.

In light of the noted exclusions, only NOAA, among Department agencies, has regulatory enforcement functions subject to the President's directive. NOAA, therefore, reviewed every enforcement case that had been referred for assessment of monetary penalties. Most of these cases resulted from violations of those statutes, and NOAA's implementing regulations, pertaining to fisheries conservation and management, endangered species and marine mammal protection, and protection of marine sanctuaries. In addition to serious natural resource violations, there were some minor violations that appeared to have resulted from ignorance of the law by otherwise law-abiding citizens and small businesses. There also were some technical violations in which the violators appeared to have attempted to comply with the applicable regulations but fell short.

NOAA is in the process of instituting a "Fix-it" ticket program which uses compliance procedures for relatively minor violations. Under this program, both verbal and written warnings will be used more frequently than has been past practice. For example, in the instance of a violation of conservation regulations that prohibit the possession of certain fish, where there is no evidence of an intent to violate the regulations for commercial gain, the appropriate remedy may be to allow the inadvertent violator to abandon the unlawfully obtained fish. The same remedy may be used in cases involving small-percentage violations of fishing-trip poundage limits. In cases where a particular type of fishing gear must be used, and the fisherman has not done so, first offenses may be forgiven if the fisherman demonstrates that he or she subsequently has acquired the proper gear or otherwise corrected the problem with the gear.

NOAA has developed a first draft of a plan to extend these new enforcement practices within its organization and to its law enforcement partners. Implementation will involve cooperation among the Office of the General Counsel, the NMFS Enforcement Office, the U.S. Coast Guard, and cooperating State fish and game law enforcement officers. Additionally, NOAA will amend its penalty schedules to reflect a less confrontational approach to first-time violators and small businesses. If compliance can be easily obtained at the time a violation is detected, then that will be the preferred approach. These changes will improve the Agency's

image with the regulated public and foster voluntary compliance. Moreover, these changes will free up enforcement agent and attorney time to allow greater concentration on major cases involving deliberate noncompliance for commercial gain.

Description of Agency Regulations

Bureau of Export Administration

The Department of Commerce Bureau of Export Administration's (BXA's) main programmatic objective is to operate an export control program that encourages economic opportunities without compromising national security. Over the last 7 years, U.S. exports of goods and services accounted for one-third of U.S. economic growth, and export-related jobs grew six times faster than total employment. The Department of Commerce has primary responsibility in advocating for U.S. exports and international economic affairs. BXA helps achieve the major Departmental goal of advocating free and fair trade policies and enacting and implementing the first post-Cold War export regime—a regime that will facilitate trade while safeguarding our national security.

Export Controls and Related Programs

BXA oversees the administration and enforcement of U.S. export controls on items that have both civil and military uses. Pursuant to the Export Administration Act (EAA), the Nuclear Non-Proliferation Act, and other statutes, BXA seeks to promote and protect U.S. security, foreign policy, and nonproliferation interests without imposing unnecessary burdens on exporters.

Further, BXA administers and enforces export controls on commodities that are in short supply as provided for by the EAA, the Forest Resources Conservation and Shortage Relief Amendments Act, and other statutes.

BXA also implements the antiboycott provisions of the EAA to ensure that U.S. firms do not cooperate with the Arab economic boycott of Israel or other international economic boycotts that are contrary to U.S. law.

Defense Industrial Base Programs

Pursuant to the Defense Production Act, other national-security-related legislation, and Executive Orders, BXA administers a range of programs designed to strengthen the U.S. defense industrial base and assist U.S. defense manufacturers in diversifying production for civil applications.

Streamlining the Export Administration Regulations (EAR)

Although many substantive changes to the EAR must await reauthorization of the EAA, BXA's top regulatory priority is to clarify, simplify, and make more user-friendly the present EAR, consistent with U.S. national security and foreign policy interests and present law. This is one of the export control reform measures announced by the Administration in the first report of the Trade Promotion Coordinating Committee (TPCC), "Toward a National Export Strategy," (Sept. 30, 1993). (The TPCC is a 19-agency working group, chaired by the Secretary of Commerce, whose report recommendations form an integral part of the Administration's economic development strategy for the next several years.)

In order to meet the programmatic end described above within the regulatory philosophy and principles of Executive Order 12866 and the President's regulatory reform goals, BXA, on May 11, 1995, issued a proposed rule to reorganize its regulations in a more logical and transaction-oriented order; to make its regulations usable by both newcomers and professionals; to remove redundancy, overlap, and inconsistency; and to use consistent and easily understood drafting style.

The proposed new EAR contain many innovative changes designed to make the regulations easier to use. Probably the most important of these is a reorientation from the current regulations prohibition on all exports, absent BXA authorization, to a presumption that no license is needed unless the regulations affirmatively state the requirement. In addition, the chapters of the new regulations are arranged to give the exporter and reexporter a logical path to follow. Finally, the affirmative statements of the need to obtain a license or other obligation, currently scattered throughout the regulations, are consolidated into ten general prohibitions.

Additionally, the proposed new EAR include a Country Chart that lists worldwide licensing requirements by reason for control for all items listed on the Commerce Control List (CCL). Once an exporter identifies an item on the CCL, worldwide licensing requirements, the reason for control, and the licensing policy are readily discernible. This innovation will significantly reduce the amount of time exporters will need to obtain this information. BXA received overwhelming support for this new

approach when it conducted a pilot test comparing it with the current regulatory scheme.

The proposed new EAR would establish a Special Comprehensive License (SCL) procedure to replace four multiple-export licensing procedures currently in the regulations. This amounts to a 75 percent reduction in procedures that exporters need to consider when they apply for multiple-export authorizations. In addition, the transactions that would be eligible for the SCL are expanded in terms of country and product scope. This would further reduce burdens on exporters by expanding the number of cases for which transaction-by-transaction license applications could be replaced by the SCL.

The current EAR include approximately 30 general licenses, permissive reexports, and other exceptions which are scattered throughout a number of CFR parts. These general licenses, known as "license exceptions" in the proposed new EAR, are consolidated into one part of the proposed new EAR, and are combined into transaction-based groupings. This combination results in an almost 30 percent reduction in the number of license exceptions.

International Trade Administration

The International Trade Administration (ITA) is responsible for most of the nonagricultural trade promotion and enforcement activities of the Federal Government. It works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. A large component of ITA's activities does not involve regulation. However, ITA has important regulatory authority under a number of U.S. trade laws.

ITA administers programs to strengthen domestic export competitiveness and to promote U.S. industry's increased participation in international markets. ITA's trade development program includes policy development, industry analysis, and promotion, organized by industrial sectors such as science and electronics, basic industries, chemicals, and allied products, energy, and textiles and apparel. Among its regulatory activities, ITA issues certificates of review providing export trading companies with limited immunity from liability under antitrust laws.

ITA helps achieve the major Departmental goal of opening and expanding foreign markets and promoting increased exports of U.S.

goods and services in markets with the highest potential for growth, such as Asia and Latin America, and in important growing sectors, such as computers, telecommunications, and environmental technologies. The report of the TPCC outlined more than 60 specific actions to strengthen U.S. export promotion efforts. Many of these actions, such as increasing U.S. businesses' awareness of sources of, and access to, trade finance and the establishment of one-stop U.S. Export Assistance Centers, directly involve ITA but do not involve regulation.

ITA also enforces our trade laws to ensure free and fair competition in our domestic market between U.S. and foreign-manufactured goods. It administers and enforces the antidumping and countervailing duty laws of the United States. It investigates whether exports to the United States are subsidized or sold at less than fair value; when it finds that they are, and the U.S. International Trade Commission finds that a U.S. industry has been injured or threatened with material injury as a result, it issues an order to the U.S. Customs Service to impose offsetting duties. In addition, ITA administers the Foreign Trade Zone and Watch Quota Programs, and the Educational, Scientific, and Cultural Materials Importation Act.

Antidumping and Countervailing Duties Regulations

The top regulatory priority of ITA is revising the antidumping and countervailing duty regulations to conform to legislation implementing the results of the Uruguay Round multilateral trade negotiations.

The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of antidumping and countervailing duty laws. In order to facilitate the administration of these laws and to provide greater predictability for private parties affected by them, it will be necessary to promulgate regulations which translate the principles of the Agreements and the implementing legislation into specific and predictable rules. Revisions also will address matters that were the subject of other uncompleted rulemaking proceedings that the Department of Commerce has previously withdrawn. Clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws will enhance the efficiency and fairness of these laws at little, if any, additional cost. The

manner in which these regulations are drafted could have a significant impact on various important sectors of the economy, including the steel, lumber, and bearings industries.

National Oceanic and Atmospheric Administration

The 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 services vital to public safety and to the Nation's economy, such as weather 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 and assessment of the global environment.

In recognition that economic growth must go hand in hand with environmental stewardship, the Commerce 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 saving fisheries and confronting short-term economic dislocation, while boosting long-term economic growth. The Department of Commerce 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 marine mammals, and promotes the economic development of the U.S. fishing industries. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate civil operational land-remote sensing satellite systems.

The Administration is committed to an environmental strategy that promotes sustainable economic development and rejects the false choice between environmental goals and economic growth. The intent is to have the Government's economic decisions be guided by a comprehensive understanding of the environment. The Department of Commerce, 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 the sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management and other societal decisions can be made. The Department of Commerce's Economics and Statistics Administration has the primary Federal responsibility for providing information about the economy.

In the environmental stewardship area, NOAA's goals include rebuilding U.S. fisheries by refocusing policies and fishery management planning on increased scientific information; increasing the populations of depleted, threatened, or endangered species of 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 modernizing 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.

Programs that seek to achieve the above goals involve fishery management activities under the Magnuson Fishery Conservation and Management Act and other statutes, including regulatory, enforcement, and conservation actions; endangered species and marine mammal protection activities; marine

habitat conservation activities under the Fish and Wildlife Coordination Act and the Federal Power Act; deep-seabed mining regulatory activities under the Deep Seabed Hard Mineral Resources Act; studies on locating ocean dump sites and disposing of toxic waste under the Marine Protection, Research and Sanctuaries Act and other laws; and coastal zone, estuarine research reserve and national marine sanctuary management activities, including regulatory activities under various statutes.

NOAA's principal regulatory objectives are to manage the marine fishery resources under its jurisdiction more effectively, to implement the designation of the Florida Keys National Marine Sanctuary, and to promulgate natural resource damage assessment regulations applicable to oil spills.

Magnuson Act Rulemakings

Magnuson Fishery Conservation and Management Act (Magnuson Act) rulemakings concern the conservation and management of fishery resources in the U.S. 3-to-200-mile Exclusive Economic Zone. Among the several hundred rulemakings that NOAA plans to issue in the Regulatory Plan year, 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, and by other circumstances which cannot be predicted. Once a rulemaking is triggered by an FMC, the Magnuson Act places stringent deadlines upon NMFS within which it must exercise its rulemaking responsibilities. Most of these rulemakings will be minor, involving only the opening or closing of a fishery under an existing FMP. While no one Magnuson Act rulemaking is among the Department's most important significant regulatory actions, and therefore none is specifically described below, the sum of these actions, and a few of the individual actions themselves, are highly significant.

The Magnuson Act, which is the primary legal authority for Federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments, FMPs address a variety of fishery matters,

including depressed stocks, overfished stocks, gear conflicts, and foreign fishing. One of the strategies that FMPs may use is preventing overcapitalization (preventing excess fishing capacity) of fisheries by limiting access to those dependent on the fishery in the past and/or by allocating the resource through individual transferable quotas which can be sold on the open market to other participants or those wishing access. Quotas set on good 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.

NMFS favors the concept of framework FMPs where applicable. Such FMPs provide ranges, boundaries, and decision rules within which NMFS can change management measures without formally amending the FMP. Further, consistent with the recommendations on improving regulatory systems accompanying the Report of the National Performance Review, NMFS favors using market-oriented approaches such as marketable limited-access permits and marketable individual quotas in managing fisheries. Open-access fisheries are destined to have too many people investing too much money in vessels and equipment. Access controls (e.g., a limited number of permits) represent a rational approach for managing fishery resources; they can be used to control fishing mortality levels and to prevent overfishing, economic dissipation, and subsequent economic and social dislocation. Of course overall quotas will need to be set based on the best scientific information available as to such things as stock status and optimum yields. At present, adequate scientific information is available for only 34 percent of all U.S. fishery resources.

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 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 Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

The Magnuson Act contains seven national standards against which fishery management measures are judged. NMFS has supplemented these standards with guidelines interpreting each standard. One of the national standards requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. Under the guidelines, NMFS will not approve management measures submitted by an FMC unless the fishery is in need of management. Together, the standards and the guidelines correspond to many of the Administration's principles of regulation as set forth in section 1(b) of Executive Order 12866. One of the national standards establishes a qualitative equivalent to the Executive order's net benefits requirement—one of the focuses of the Administration's statement of regulatory philosophy as stated in section 1(a) of the order.

Rulemakings implementing an FMP or amendment cannot be precisely scheduled in advance because, for the most part, an FMP or amendment is developed and submitted by an FMC. The timing of the submission is determined by the FMC, not by NMFS. Upon receiving an FMP or amendment and implementing regulations, NMFS is required by the Magnuson Act to publish the proposed implementing regulations within 15 days unless, after preliminary review, NMFS disapproves the FMP or amendment because it is inconsistent with the national standards or too deficient in scope and substance to warrant review. Upon completion of the preliminary review, if NMFS finds that the FMP or amendment is consistent with the national standards and sufficient in scope and substance to warrant further review, NMFS must commence such review. Upon completion of that review, if NMFS finds that the FMP or amendment is consistent with the national standards, the other provisions of the Magnuson Act, and any other applicable law, NMFS must approve the FMP or amendment and issue final regulations implementing it. If the FMP or amendment is not consistent with the Magnuson Act or other applicable law, NMFS must disapprove or partially disapprove it within 95 days of receipt,

and the FMC may submit a revised FMP or amendment.

Florida Keys National Marine Sanctuary Rulemaking

One of NOAA's most important significant regulatory actions will be finalizing the management plan and regulations for the Florida Keys National Marine Sanctuary. A proposed management plan and proposed implementing regulations were published in early spring, 1995. Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2,800-square-nautical-mile area of coastal waters running the entire 220-mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Act makes NOAA responsible for developing a comprehensive Sanctuary management plan, including a Florida and U.S. EPA-developed Water Quality Plan, to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources the proposed plan addresses, many problems never before presented in sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management of this marine area.

A draft environmental impact statement (DEIS) has been published which sets forth management alternatives for dealing with the problems identified in the planning process (e.g., boating, fishing, recreation). Five alternatives are set forth for each problem ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three mid-range alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted

under each alternative. The DEIS selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. Accordingly, the benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources, that is, shipwrecks, also abound in the surrounding waters. Recent information indicates that there may be more archaeological resources of pre-European cultures there than previously believed.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats, and marinas, as well as hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the \$1.6 billion in total sales for the area is related to tourism, and another \$16 million is spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large

commercial fishing sector. With approximately 9 percent of the area work force, this industry is the fourth largest source of employment in the Keys.

Finally, the monetary costs of compliance with these proposed regulations borne by individuals would be relatively small and arise from two items. First, some of those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salvaging (in Federal waters) and coral collecting, would require permits or be subject to additional requirements. However, the amount charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas, and mineral leasing and development and prohibited vessels greater than 50 meters from an Area to Be Avoided. However, since Congress prohibited these activities, the regulatory prohibition does not create associated costs. Other than the prohibition of oil, gas, and mineral leasing, the Sanctuary regulations contain some Sanctuary-wide prohibitions, such as the prohibition on harvesting live rock or altering the seabed, that may generate costs.

Many issues inherent in Sanctuary regulation are foreclosed by prohibitions in the FKNMSPA on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The proposed regulations employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well-developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted; however it was believed that this method was the best approach for achieving protection while still facilitating use of the Sanctuary.

Natural Resources Damage Assessment Regulations

Another of NOAA's most important significant regulatory activities for the Regulatory Plan year is promulgation of natural resource damage assessment regulations applicable to oil spills.

Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 4201 et seq. (CERCLA, also known as Superfund) and the Oil Pollution Act of 1990, 33 USC 2701 et seq. (OPA), NOAA, in concert with the Department of the Interior (DOI), is charged with developing regulations for natural resources damage assessment for injury to natural resources as a result of hazardous substance release and oil spills. Section 1006(b) of the OPA provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees of the Nation's natural resources. In the event that such natural resources are injured, lost, or destroyed as a result of a discharge of oil, these officials are authorized to assess the injury to the natural resource and develop and implement a restoration plan. Section 1006(e) directs NOAA to take the lead for the Federal Government in developing natural resource damage assessment regulations for harm resulting from oil spills. Such regulations will help fulfill the goal of promoting stewardship and assessment of the global environment.

Natural resource damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration, and the cost of the damage assessment. Determination of damages made in accordance with these regulations by Federal, State, or Indian resource trustees will have the "force and effect of a rebuttable presumption" in administrative or judicial proceedings.

On December 28, 1990, NOAA issued an advance notice of proposed rulemaking for these regulations. Following review of the comments received, NOAA on January 7, 1994, published proposed regulations. The public comment period continued through October 7, 1994. In addition, 12 public meetings were held on the proposed regulations in January and February, 1994, again showing full consistency with the President's policy of increased public participation in rulemaking. Subsequently, NOAA determined, due in part to the comments received on the January 7, 1994, proposed rule, to issue a second proposed rule. That second proposal

was published in the Federal Register on August 3, 1995 (60 FR 39804).

A single set of Federal natural resource damage assessment regulations will be more cost efficient than having the individual States develop separate methodologies. It is expected that the trustees will use the procedures contained in the regulations because the Oil Pollution Act provides that any determination or assessment of damages made in accordance with the regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in an administrative or judicial proceeding.

Economic Development Administration

Because economic opportunity is not evenly dispersed to all communities and because of the dynamic nature of our economy, the Commerce Department includes programs to help areas respond to conditions of economic deterioration and dislocation. Under the Department's economic development programs, we help communities build the capacity to plan and implement the economic development strategies needed to respond to problems and to restore their job bases. The Economic Development Administration (EDA) provides grants to help communities fund the infrastructure improvements needed to support development. We have been particularly active in helping communities respond to problems caused by the down-sizing of the defense industry. With 70 major military facilities selected for closure or realignment in the first two rounds and an additional 49 major facilities recommended by the Defense Base Realignment and Closure Commission for closure or realignment in the 1995 round, the need for this assistance will continue to grow.

It had been over 20 years since the EDA's regulations were completely revamped. Many regulations were out of date, applied to programs that no longer existed, or reflected policies that had changed or were not applied in a consistent or regular manner. The regulatory system did not fully reflect actual programmatic procedures or practices. In essence, EDA regulations did not achieve the desired goal of truth-in-regulating that is at the heart of a reinvented government. As a result, the reform of EDA's regulations produces not only fewer and more streamlined regulations, but regulations that have been thought through anew and restricted to the absolute minimum to achieve EDA's program goals.

An initial review resulted in an agency consensus to delete and/or

rewrite over 200 of approximately 370 EDA regulations. An interim final rule to accomplish the deletions was recently published.

The reform of the regulatory system has also prompted a complete review of long-time requirements and policies that may not always be reflected in the regulations. Some will be eliminated, others rewritten. In conjunction with the regulatory reform, EDA's annual Notice of Funding Availability (NOFA) is also undergoing revision and streamlining. Over the years, the NOFA has grown to well over 50 typewritten pages of information, requirements, policies, and directions, becoming yet another—and sometimes duplicative—required source of information for applicants.

The participation of agency staff in the reform effort has been very broad. Additionally, public comment has been invited and has already generated useful suggestions that have been incorporated into the reform.

The reform of EDA's regulations is intended to produce a set of regulations that will more easily be read and understood by EDA's customers—potential applicants for grant funding and the businesses and communities that benefit from economic development projects. Their expectations will reflect more accurately the reality of the application process they will have to undergo. There will be the potential for one-stop application information.

In addition, the regulations will be more user-friendly to the staff of EDA that applies them on a daily basis. They will be able to explain and use the regulations more rationally. The agency will be able to achieve more continuity and consistency in the application of its regulations among its regional offices. The regulatory reform effort will also have a positive effect on EDA's ongoing efforts to re-engineer its grant application, including the process and the forms used.

DOC—Economic Development Administration (EDA)

FINAL RULE STAGE

12. SIMPLIFICATION AND STREAMLINING OF REGULATIONS OF THE ECONOMIC DEVELOPMENT ADMINISTRATION

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation:

13 CFR 301 to 318

Legal Deadline:

None

Abstract:

The Economic Development Administration (EDA) has issued an interim final rule to revise all of its regulations so that they are easier to read and use, and accurately reflect program requirements, evaluation criteria, and selection processes in implementing programs under the Public Works and Economic Development Act of 1965 (PWEDA), as amended, the Trade Act of 1974, as amended, and other statutes. This streamlining effort includes the removal of numerous unnecessary, redundant, and outdated parts, sections, and smaller portions of the existing regulations.

Statement of Need:

It has been over 20 years since the Economic Development Administration's regulations were completely revamped. During that time, EDA's regulations have been criticized by Congress, applicants, recipients, and others as being too long, burdensome, complex, and difficult to understand. EDA believes that many of its regulations are out of date, apply to programs that no longer exist, or reflect policies that have changed or are not applied in a consistent or regular manner. Therefore, EDA's regulatory system does not fully reflect actual programmatic procedures or practices. In essence, current EDA regulations do not achieve the desired goal of truth-in-regulating that is at the heart of a reinvented government. As a result, the reform of EDA's regulations will produce not only fewer and more streamlined regulations, but regulations that have been thought through anew and restricted to the absolute minimum to achieve EDA's program goals.

The reform of the regulatory system has also prompted a complete review of long-time requirements and policies that may not always be reflected in the

regulations. Some have been eliminated, others rewritten. Also in conjunction with the regulatory reform, EDA's annual Notice of Funding Availability (NOFA) is also undergoing revision and streamlining. Over the years, the NOFA has grown to well over fifty typewritten pages of information, requirements, policies, and directions, becoming yet another--and sometimes duplicative--required source of information for applicants.

Summary of the Legal Basis:

The PWEDA, as amended, and the Trade Act of 1974, as amended, serve as the basic underlying legal authorities for EDA's assistance programs.

Alternatives:

EDA held three representative regional public meetings, in Philadelphia, Chicago, and Monterey, during early 1995, in order to receive input on the regulatory reform project from recipients and applicants of EDA financial assistance. Comments received at these meetings focused on the complexity, length of time, and repetitive nature of grants processing. Additionally, all EDA employees were encouraged to participate in the process of identifying problems in the agency's regulations, and many did.

The interim final rule addresses the concerns raised at the public meetings and by EDA employees because they are less complex and set forth program descriptions, evaluation criteria, and processing procedures in an easy-to-read and straightforward manner. The interim final rule also contains several significant changes. Certain regulations were removed because the programs to which those regulations apply are no longer in existence. Other removals were made because policy rules not required by PWEDA have become unnecessarily constraining or outdated. Finally, the new 13 CFR 304, which contains the general selection process and evaluation criteria for EDA projects funded under PWEDA, was substantially rewritten to condense and clarify policies and criteria previously published in EDA's annual funding notices, which were codified in the interim final rule.

Anticipated Costs and Benefits:

The reform of EDA's regulations is intended to produce a set of regulations that will more easily be read and understood by EDA's customers -- potential applicants for grant funding and the businesses and communities that benefit from economic development projects. They will be able

to determine before applying what requirements they must meet. Their expectations will reflect more accurately the reality of the application process they will have to undergo. There will be the potential for one-stop application information.

In addition, the regulations will be more user-friendly to the staff of EDA that applies them on a daily basis, who will then be able to explain and use the regulations more rationally. The agency will be able to achieve more continuity and consistency in the application of its regulations among its regional offices. The regulatory reform effort will also have a positive effect on EDA's ongoing efforts to re-engineer its grant application, including the process and the forms used.

The costs of achieving these benefits should be minimal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/95	60 FR 49670
Final Action	04/00/96	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal

Sectors Affected:

Multiple

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DOC—International Trade Administration (ITA)**PROPOSED RULE STAGE****13. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES****Priority:**

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

19 USC 1671 et seq; 19 USC 1673 et seq; 19 USC 1303

CFR Citation:

19 CFR 353; 19 CFR 355

Legal Deadline:

Other, Statutory, January 1, 1996.

Section 103(b) of the Uruguay Round Agreements Act establishes January 1, 1996, as the deadline for interim final regulations.

Abstract:

Revisions of the antidumping and countervailing duty regulations are necessary due to enactment of legislation implementing the results of the Uruguay Round multilateral trade negotiations. Revisions also will address matters that were the subject of other uncompleted rulemaking proceedings that ITA has previously withdrawn. (See April 1994 Unified Agenda of Federal Regulations). Clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws will enhance the efficiency and fairness of these laws at little, if any, additional cost.

Statement of Need:

Regulations will be needed to implement the results of the Uruguay Round with respect to the administration of the antidumping and countervailing duty laws. The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of these laws. In order to facilitate administration and to provide greater predictability for private parties affected by these laws, it will be necessary to promulgate regulations which translate the principles of the Agreements and the implementing legislation into specific and predictable rules.

Summary of the Legal Basis:

The Secretary of Commerce is responsible for administering the antidumping and countervailing duty laws pursuant to authority contained in several legislative enactments, See 19 USC 1671 et seq.; 19 USC 1673 et seq.; 19 USC 1303. These laws conform to the Subsidies Code and the Antidumping Code (Codes) of the General Agreement on Tariffs and Trade (GATT) and reflect internationally agreed rules regarding unfair trade. The Secretary, acting

through the Import Administration of the International Trade Administration, is responsible for processing petitions from firms that allege they have been harmed by unfair competition from imports, making preliminary and final determinations about whether such competition was subsidized or benefited from "dumping," and conducting periodic administrative reviews of antidumping and countervailing duty orders. Merchandise found to be benefiting from subsidies or to have been "dumped" is subject to duties in the amount of the dumping or subsidization.

Alternatives:

U.S. objectives in the Uruguay Round antidumping negotiations were to improve transparency and due process in antidumping proceedings, develop disciplines on diversionary dumping, and ensure that the antidumping rules continue to provide an effective tool to combat injurious dumping. The Agreements substantially achieve these objectives.

The Subsidies agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies nonactionable, provided they are subject to conditions designed to limit distorting effects. The Agreements create three categories of subsidies and remedies: (a) prohibited subsidies; (b) permissible subsidies which are actionable if they cause adverse trade effects; and (c) permissible subsidies which are nonactionable if they are structured according to criteria intended to limit their potential for distortion.

Anticipated Costs and Benefits:

The Uruguay Round Agreements are anticipated to create hundreds of thousands of high-wage, high-skilled jobs in the United States. Further, economists estimate that the Uruguay Round will increase trade and will add between \$100 and \$200 billion to the United States economy after the round is fully implemented. Finally, the Agreements create an effective set of rules for the prompt settlement of disputes by eliminating shortcomings in the current system that allows parties to prolong the process and block adverse determinations.

The costs of administering the antidumping/countervailing duty system will be increased pursuant to the new rules established in the Uruguay Round and the implementing legislation. The new Codes dictate a

number of new obligations in the investigation of petitions and the conduct of administrative reviews. Binding GATT dispute settlement will also increase legal costs because substantially more challenges to ITA determinations will be brought to the GATT forum.

Timetable:

Action	Date	FR Cite
ANPRM	01/03/95	60 FR 80
ANPRM Comment Period End	02/24/95	60 FR 80
Interim Final Rule	05/11/95	60 FR 25130
Interim Final Rule Effective	05/11/95	
NPRM	10/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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DOC—Bureau of Export Administration (BXA)**FINAL RULE STAGE****14. SIMPLIFICATION OF THE EXPORT ADMINISTRATION REGULATIONS****Priority:**

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7429; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 12924; Notice of August 15, 1995, (60 FR 42767)

CFR Citation:

15 CFR 768 to 779; 15 CFR 785 to 791;
15 CFR 799

Legal Deadline:

None

Abstract:

The Bureau of Export Administration (BXA) is continuing a comprehensive review of the Export Administration Regulations (EAR). This review is intended to simplify, to clarify, and to make the export control regulatory requirements more user-friendly.

Statement of Need:

It is essential that the United States have and implement export controls that take into account the realities of a post-Cold War world. Strong controls will continue to be needed to combat the threat of proliferation of weapons of mass destruction and to preserve our national security and foreign policy interests. However, long overdue reforms are needed to ensure that we do not unfairly and unnecessarily burden our important commercial interests.

There has not been a complete overhaul of the EAR in the approximately 45 years they have been in place. The structure has become disorganized and the content has become increasingly complex as the EAR have been repeatedly revised over the years to reflect numerous changes in their legal and policy foundation. The most fundamental change has been a shift away from requiring governmental review of a wide range of exports to making it unnecessary, in most cases, for an exporter to apply for a license if the export meets a set of destination and use criteria. Moreover, it can be extremely difficult for exporters to find and understand the rules using the current EAR.

Forces driving the revision of export control regulations in the near term as BXA tries to meet these objectives are reauthorization of the Export Administration Act (EAA) and simplification of the EAR as recommended by the Trade Promotion Coordinating Committee (TPCC).

Section 201 of the Export Enhancement Act of 1992, P.L. 102-429, directed the President to establish the TPCC. The law requires, among other things, that the TPCC issue an annual report to Congress on the country's exports and export promotion efforts. The statute designates the Secretary of Commerce as the chairperson of the TPCC, with representatives from the Departments of

State, Treasury, Agriculture, Energy, and Transportation, the U.S. Trade Representative, Small Business Administration, Agency for International Development, Overseas Private Investment Corporation, Export-Import Bank, the Trade and Development Agency, and such other agencies as the President determines to be necessary.

On September 30, 1993, the first report of the TPCC, "Toward a National Export Strategy," was issued. This report outlined more than 60 specific actions to strengthen U.S. export promotion efforts. An important recommendation of the TPCC report was to clarify and simplify United States export control regulatory requirements. On February 10, 1994, an advance notice of proposed rulemaking was published in the Federal Register (59 FR 6526) inviting comments on areas that should be the focus of our simplification process. On May 11, 1995, BXA published a proposed rule (60 FR 25268) to simplify the EAR and make them more user-friendly.

Summary of the Legal Basis:

The legal authority to regulate exports of dual-use products stems from the Export Administration Act, as amended, 50 USC app. 2401, et seq. The EAA authorizes three types of controls: (a) national security controls which cover high-technology items of strategic significance, (b) foreign policy controls used to achieve various foreign policy objectives, and (c) short-supply controls restricting the export of commodities that are in domestic short supply.

The EAA expired on August 20, 1994. However, on August 19, 1994, the President issued Executive Order 12924 invoking the International Emergency Economic Powers Act and continuing in effect, to the extent permitted by law, the provisions of the EAA and EAR. The EAR will need to be amended, in various degrees, to take into account changes in the EAA once it is reauthorized. At the present time, however, we cannot predict with any degree of certainty how the regulations will need to be amended.

Alternatives:

A clarified, simplified, and logically structured EAR will bring such clear benefit to both business and government that it is more appropriate to note additional steps regarding export control, rather than alternatives. BXA has already taken steps to carry out other TPCC recommendations.

These include a major reduction in export licensing requirements through elimination of outdated controls. The processing of export licenses will be expedited under an Executive Order on interagency review that awaits the President's signature. Work is well underway on arrangements to shift dual-use items that remain on the State Department Munitions List to BXA licensing and to give exporters reliable guidance as to which agency has licensing jurisdiction over specific items. As these and other substantive reforms are accomplished, they will be incorporated into the pending, simplified, EAR.

Anticipated Costs and Benefits:

The publication of the proposed EAR brought an extraordinary number of written public comments. Many comments noted that there would be one-time costs associated with adjusting internal systems to the new regulations and in training personnel. There was, however, broad support for the overall direction of the simplification initiative and expression of the view that transition costs would be exceeded by the long-term benefits. The principal benefits from the new EAR will accrue, not only to the applicants for the approximately 10,000 individual export licenses issued annually by BXA, but also to the vastly greater number of exporters who will be able to determine for themselves, quickly and reliably, that they can legally export without a license.

Timetable:

Action	Date	FR Cite
ANPRM	02/10/94	59 FR 6528
ANPRM Comment Period End	03/28/94	
NPRM	05/11/95	60 FR 25268
NPRM Comment Period End	07/10/95	
Final Action	12/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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DOC—National Oceanic and Atmospheric Administration (NOAA)**PROPOSED RULE STAGE****15. FLORIDA KEYS NATIONAL MARINE SANCTUARY****Priority:**

Other Significant

Legal Authority:

16 USC 1431 et seq; PL 101-605

CFR Citation:

15 CFR 929

Legal Deadline:

Final, Statutory, May 1993.

Abstract:

These regulations are necessary for the implementation of the Congressionally designated national marine sanctuary.

Statement of Need:

Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2,800-square nautical mile area of coastal waters running the entire 220-mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is made responsible for developing a comprehensive Sanctuary management plan designed to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources it contains, many problems never before presented in sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management.

Summary of the Legal Basis:

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, PL 101-605, set out as a note to 16 USC 1453, became law. The FKNMSPA designated, effective the day of enactment, an area of waters and submerged lands, including the living and nonliving resources within those waters, the Florida Keys National Marine Sanctuary. Congress found that the area encompassed "spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs" with the environments being "the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved."

Both section 7(a) of the FKNMSPA and the National Marine Sanctuaries Research Act, 17 USC 1431 et seq. authorize NOAA to issue regulations necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Florida Keys National Marine Sanctuary.

Alternatives:

A draft environmental impact statement (DEIS) has been published which sets forth alternatives for dealing with the problems identified in the planning process (e.g., boating, fishing, recreation). Five alternatives are set forth for each problem, ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three mid-range alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted under each alternative. The DEIS selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

A final management plan and regulations will be published that will further the Clinton Administration's objective of providing long-term protection for ecologically significant areas while maximizing their sustainable use. The final regulations

will protect Sanctuary resources with the minimum necessary regulatory burden on Sanctuary users.

Anticipated Costs and Benefits:

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. Accordingly, the benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources, that is, shipwrecks, also abound in the surrounding waters. Recent information indicates that there may be more archaeological resources of pre-European cultures there than previously believed.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing, and dive boats, and marinas, as well as hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the \$1.6 billion in total sales for the area are related to tourism, with another \$16 million spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large commercial fishing sector. With approximately 9

percent of the area work force, this industry is the fourth largest source of employment in the Keys.

Finally, the monetary costs of compliance with these regulations borne by individuals would be relatively small and arise from two items. First, those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salvaging and coral collecting, would be required to obtain permits. However, the amount permitted to be charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas, and mineral leasing and development. However, since Congress prohibited this activity, the regulatory prohibition does not itself create this cost. Other than the prohibition of oil, gas, and mineral leasing, the Sanctuary regulations contain only one Sanctuary-wide prohibition, live rock harvest, that may generate costs.

Risks:

Many issues inherent in Sanctuary regulation are foreclosed by statutory prohibitions on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The proposed regulations employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well-developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted; however, it was believed that this method was the best approach for achieving the goals of the statute.

Timetable:

Action	Date	FR Cite
NPRM	03/30/95	60 FR 16399
NPRM Comment Period End	12/31/95	
Final Action	06/00/96	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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DOC—NOAA

16. NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION REGULATIONS

Priority:

Other Significant

Legal Authority:

33 USC 2706

CFR Citation:

15 CFR 990

Legal Deadline:

Final, Statutory, August 18, 1992. Final, Judicial, December 31, 1995.

Congress required the regulations to be promulgated no later than 2 years following the enactment of the Oil Pollution Act (OPA).

Abstract:

The Oil Pollution Act of 1990 (OPA) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, acting through NOAA, to promulgate natural resource damage assessment regulations applicable to oil spills. A Federal approach will provide a consistent, uniform set of procedures specifically for use in oil spills. These procedures will be available to Federal, State, Indian, and foreign natural resource trustees. A single Federal solution will be more cost efficient than having the individual States develop separate methodologies. It is expected that trustees will use the procedures contained in the regulations because the OPA provides that any determination or assessment of damages made in accordance with the regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in an administrative or judicial proceeding.

Statement of Need:

Under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) and OPA, DOI and NOAA are charged with developing regulations for natural resources damage assessment for injury to natural resources resulting from a release or substantial threat of release of a hazardous substance or oil. Damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration, and the cost of the damage assessment. Section 1006(b) of the OPA provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees of the Nation's natural resources. In the event that such natural resources are injured, lost, or destroyed as a result of a discharge of oil, these officials are authorized to assess the injury to the natural resource and develop and implement a restoration plan. Section 1006(e) directs NOAA to take the lead for the Federal Government in developing natural resource damage assessment regulations for harm resulting from oil spills. Such regulations will help fulfill the goal of promoting stewardship and assessment of the global environment.

Natural resource damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration, and the cost of the damage assessment. Determination of damages made in accordance with these regulations by Federal, State, or Indian resource trustees will have the "force and effect of a rebuttable presumption" in administrative or judicial proceedings. Currently, natural resource damages resulting from the discharge of oil, or substantial threat of a discharge, are calculated using the rules promulgated by the DOI at 43 CFR 11, or under State law.

On December 28, 1990, NOAA issued an advance notice of proposed rulemaking for these regulations. Following review of the comments received, NOAA published proposed regulations on January 7, 1994. The public comment period continued through October 7, 1994. In addition, 12 public meetings were held on the proposed regulations in January and February, again showing full consistency with the National Performance Review's recommendation for increased public participation in rulemaking. Subsequently, NOAA determined, due in part to the comments received on the January 7,

1994 proposed rule, to issue a second proposed rule. This second proposal was published in the Federal Register on August 3, 1995.

Summary of the Legal Basis:

The OPA provides for the prevention of, liability for, removal of and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, its adjoining shoreline or the Exclusive Economic Zone. Section 1006(e)(1) of the OPA requires NOAA to promulgate regulations for use by authorized Federal, State, or tribal officials, collectively referred to as trustees, in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources sustained as a result of the discharge of oil.

Alternatives:

Because the rulemaking is Congressionally mandated, there is no alternative to the rulemaking itself. However, through the rulemaking process to date, including substantial public input, NOAA has developed a new approach which was made available for public comment in the August 3, 1995, proposed rule. As described below, that proposal focuses on restoring the resource rather than merely developing a process for assessing damages.

The goal of OPA is to make the environment and public whole for injuries to natural resources and natural resource services resulting from an incident involving oil. This goal is achieved through the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and/or services. Under the proposed rule, restoration plans, including activities to compensate for natural resource injuries and diminution in value, are the basis of a claim for damages. This approach will decrease the time from the incident until completion of restoration, due to reduction in duplicative steps, and will reduce transaction costs. In addition, the proposed rule explicitly considers allowing responsible parties to implement trustee-approved restoration plans. The restoration planning process provided in the proposed rule is divided into three phases: (a) preassessment; (b) restoration planning; and (c) restoration implementation.

Preassessment Phase

When notified by response agencies of an incident involving a discharge or

substantial threat of discharge of oil, trustees must first determine threshold issues that provide their authority to begin the NRDA process. Trustees then determine whether natural resource and/or service injuries will be adequately addressed through response or emergency restoration actions, or whether further action is warranted to consider the need for restoration. If further action is justified, the trustees make a preliminary determination as to whether natural resources and/or services have been injured and whether feasible restoration alternatives exist to address these injuries.

Restoration Planning Phase

The purpose of the Restoration Planning Phase is to evaluate potential injuries to natural resources and/or services, and use that information to determine the need for and scale of restoration actions. The Restoration Planning Phase integrates and provides the link between injury and restoration. It has two basic components: injury assessment and restoration selection.

Injury Assessment Component

The goal of the injury assessment component of the Restoration Planning Phase is to determine the nature, degree, and extent of injuries to natural resources and/or services, thus providing a technical basis for evaluating the need for and scale of restoration. Under the proposed rule, injury is defined as an observable or measurable adverse change in a natural resource or impairment of a service. To determine injury, trustees must decide if this definition has been met. Trustees must also determine either that: (a) the natural resource was exposed, and there is a plausible pathway between the incident and the natural resource of concern; or (b) in the case of response-related injuries and incidents involving a substantial threat of a discharge, the injury or impairment of use of a natural resource service has occurred as a result of the incident. Trustees must also perform injury quantification. Injury quantification is the process by which trustees determine the degree and extent of injuries. The quantification of injury is accomplished by comparing the condition of the injured natural resource and/or service to baseline conditions.

The proposed rule provides a range of possible approaches to injury determination and quantification, including simplified and more detailed procedures. Although trustees are encouraged to use simplified

procedures, when appropriate, selection of assessment procedures will be based upon such factors as: the potential nature, degree, and extent of the injury; time and cost necessary to implement the assessment procedures; and relationship between the anticipated injury information and restoration planning.

Restoration Selection

Once injury assessment is completed, trustees must develop a plan for restoring the injured natural resources and/or services. Under the proposed rule, trustees would identify a reasonable range of restoration alternatives, evaluate those alternatives, select an alternative, develop a draft restoration plan, and produce a final restoration plan that considers public comments. Trustees must identify a reasonable range of alternative restoration actions for consideration. Acceptable restoration actions include any of the actions authorized under OPA (i.e., restoration, rehabilitation, replacement, or acquisition of the equivalent), any combination of those actions, and natural recovery, as well as a no-action alternative.

Restoration alternatives may include: (a) primary restoration, which is human intervention or natural recovery that returns injured natural resources and services to baseline; and (b) compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident through recovery.

Each alternative considered would have a primary restoration action. Alternative primary restoration actions can range from natural recovery with no human intervention to more intensive actions expected to return injured natural resources to baseline faster or with greater certainty than natural recovery.

Trustees may also include a compensatory restoration action in some or all of the alternatives. Trustees would first identify compensatory restoration alternatives that, in the judgment of the trustees, provide services of the same type and quality, and are subject to resource scarcity and demand conditions comparable to those lost. Trustees would determine the scale of such alternatives by selecting the scale that would provide services equal in quantity to those lost. If alternatives that provide services of the same type and quality, and are subject to comparable resource scarcity and demand conditions as those lost were

infeasible or too few in number to provide a reasonable range of alternatives, trustees could then consider other alternatives that would provide services of at least comparable type and quality as those lost. The procedure for determining the scale of such additional alternatives would differ from that of determining the scale of alternatives that provided services of the same type and quality, and are subject to comparable resource scarcity and demand conditions. When trustees consider alternatives that provide services of a different type or quality, or are subject to resource scarcity and demand conditions not comparable to those lost, they need a way of translating the services lost and the services provided into a common metric. In such cases, the proposed rule would allow trustees to measure quantities in terms of lost economic value. Trustees would first calculate the value of the lost services and then determine the value gained from different scales of the alternative. Trustees would then select the scale that would produce value equal to that lost. However, the responsible parties would not be liable for the value calculated but rather for the cost of implementing a restoration alternative that would generate that amount of value.

If valuation of the services provided by an alternative could not, in the judgment of the trustees, be performed consistently with the definition of "reasonable assessment costs," the trustees would be allowed to calculate the value of the lost services and then select the scale of the restoration alternative that posed a cost equivalent to the lost value. The responsible parties would have the option of requesting trustees to value the alternative, if the responsible parties advanced the costs of doing so in a timeframe acceptable to the trustees.

Selection of a Preferred Alternative

Once trustees have developed a reasonable range of restoration alternatives, they would be required to evaluate the alternatives based on a number of factors. Such factors include: the extent to which the alternative can return natural resources and/or services to baseline and compensate for interim lost services; extent to which the alternative improves the rate of recovery; likelihood of success of the alternative; and relative cost of the alternative. Based on the evaluation of the various factors, trustees select a preferred restoration package. If there are two or more preferred alternatives,

trustees must select the most cost-effective.

Draft restoration plans will be made available for review and comment by the public, including appropriate members of the scientific community where possible. These draft restoration plans will describe the trustees' preassessment activities, as well as injury assessment activities and results, evaluate restoration alternatives, and identify preferred restoration projects. Final restoration plans will become the basis of claims for damages.

Restoration Implementation Phase

The final restoration plans are presented to responsible parties for implementation or funding of trustee costs to implement. Presentation will include a demand letter, summarizing the restoration planning process and selected alternatives, all trustee assessment costs, and all incurred and expected costs associated with restoration implementation and oversight. Responsible parties will have the option to settle the damages claim. Should responsible parties decline to settle claims for natural resource damages, OPA authorizes trustees to bring civil actions for damages in Federal court, or present claims for damages to the Oil Spill Liability Trust Fund.

Anticipated Costs and Benefits:

NOAA's attempt to minimize transaction costs and discourage complex litigation littered with discovery battles and other activities not leading to restoration of natural resources is born of the unsatisfactory experience of the *Exxon Valdez*. In that incident all parties were criticized by the public for maintaining the confidentiality of scientific studies, conducting science for purpose of litigation, and then settling the case without providing for the release of the scientific data gathered. Clearly, that process did not serve the public owners of the injured natural resources very well. NOAA and other Federal, State, and tribal trustees are now engaged in a very public process for restoration, replacement and acquisition of the equivalent resources injured in the *Exxon Valdez* incident. However, it is NOAA's view that significantly more fiscal resources might have been available for dedication to restoration of the environment had not so much been committed to litigation over the nature and extent of the injury.

The August 3, 1995, proposed rule differs significantly in approach from that originally proposed in January,

1994. The differences strengthen the focus of the damage assessment process on achieving restoration of injured natural resources as quickly as possible. The August 1995 proposed rule provides a process for involving the public and responsible parties in selecting restoration actions appropriate for a given incident. NOAA intends for this process to eliminate the need for costly and time-consuming studies and litigation.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/90	55 FR 53478
Public Meeting Scheduled for 03/20/91	02/28/91	56 FR 8307
ANPRM	04/01/91	56 FR 8307
ANPRM Comment Period Extended to 10/01/92	06/01/92	57 FR 23067
ANPRM Comment Period End	01/15/93	58 FR 4601
ANPRM; Release of Report; Extension of Comment Period to January 15, 1993	01/15/93	58 FR 4601
6 Cooperative Prespilling Planning Meetings Scheduled During January and February 1994	01/07/94	59 FR 1190
6 Public Meetings Scheduled During January and February 1994	01/07/94	59 FR 1189
NPRM Comment Period Extended to	10/07/94	59 FR 32148
NPRM	08/03/95	60 FR 39804
NPRM Comment Period End	10/02/95	
Interim Final Rule	12/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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