federal register

Wednesday
October 29, 1997

Part II

Regulatory Information Service Center

Statement by the Vice President

Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

Agency Regulatory Plans

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Federal Register
Vol. 62, No. 209
Wednesday, October 29, 1997

The Regulatory Plan

Statement by the Vice President

This fourth Regulatory Plan reflects the hard work of this Administration to reform our regulatory process--to develop regulations the right way. Regulation is vitally important to this Administration's priorities: providing Americans basic health, safety, and environmental protections, along with a growing, secure economy. In developing new regulations and in modifying existing regulations, we are committed to establishing partnerships with regulated entities whenever possible; consulting with, and listening to, stakeholders; carefully analyzing the likely effects; and making rules as flexible and simple as possible.

As this document shows, we are streamlining and simplifying regulations. For example, the Department of Agriculture will be increasing State flexibility in processing food stamp applications, as well as streamlining operational and administrative requirements for eligibility and benefit calculations. The Department of Housing and Urban Development is streamlining and consolidating existing regulations dealing with lead-based paint hazards in its effort to protect children in their homes.

We are using alternative approaches to traditional command-and-control regulations. The Department of the Interior plans to replace existing design standards with performance standards in its rules governing oil and gas leasing operations and, at the same time, replace some Federal standards with existing industry standards, and do all of this using ''plain English.'' The Environmental Protection Agency will foster the development of an active market in emissions credit trading that will give companies the flexibility to trade credits (for ozone smog precursors) without prior regulatory approval.

The Plan also contains numerous examples where agencies are doing more outreach to produce better results--working with other Federal agencies and with both those who benefit from, and those who bear the burden of, regulations. At the Department of Labor, OSHA is involved in a negotiated rulemaking regarding safety protection of ironworkers that will result in a revised construction safety standard. At the Department of Health and Human Services, HCFA has consulted extensively with the home health industry and patient interest groups in revising the conditions for participating in the Medicare program and developing a system for reporting patient outcomes.

These are only a few examples from this Regulatory Plan of agency efforts to provide Americans with basic benefits and protections by regulating the right way. It provides you, the reader, with the information you need to be a well-informed participant in the regulatory matters that affect your life. We encourage you to be an active partner in the rulemaking process. There are phone numbers, mailing addresses, fax numbers, and e-mail addresses where you can register your comments and thoughts on our regulatory

reform efforts, The Regulatory Plan, and the Unified Agenda of Federal Regulatory and Deregulatory Actions; we hope you will make use of them.

[FR Doc. 97-28889
Filed 10-28-97 10:47 am]
Billing Code 3110-01-F

REGULATORY INFORMATION SERVICE CENTER

Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing (5 U.S.C. 602). Executive Order 12866 ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993) and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry. In addition, the Office of Federal Procurement Policy Act Amendments of 1988 require the development and semiannual publication of a report on procurement regulations (41 U.S.C. 421(g)).

The Unified Agenda helps agencies fulfill all of these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication.

Section 4 of Executive Order 12866 also directs that, as part of their submissions to the October edition of the Unified Agenda, agencies prepare a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. The agency plans appear as the first section of this joint publication; the agency agendas follow.

The Regulatory Plan begins with Vice President Gore's statement, followed by an introduction, and then the regulatory plans of 30 Federal departments and agencies. Each of these agencies has also submitted a regulatory agenda describing its other regulatory actions. The regulatory agendas for these and 30 other Federal agencies appear in Parts III-LXII of this issue of the **Federal Register**, followed by indexes to both Plan and Agenda entries.

We welcome your comments on this joint publication and your suggestions for improving future ones.

ADDRESSES: Regulatory Information Service Center (MI), General Services Administration, 18th and F Streets NW., Suite 3033, Washington, DC 20405.

Electronic Availability

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since October 1995 are available in electronic form. You can search the Plan and the Agenda on the World Wide Web at:

http://reginfo.gov/ua

You may also search the Plan and the Agenda on the Government Printing Office's GPO Access, which is accessible through:

http://www.access.gpo.gov

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: Mark G. Schoenberg, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 18th and F Streets NW., Suite 3033, Washington, DC 20405, (202) 482-7350. You may also send comments to us by e-mail at:

RISC@gsa.gov

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INTRODUCTION TO THE UNIFIED AGENDA AND THE REGULATORY PLAN

What Are the Unified Agenda and The Regulatory Plan?

The **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) provides information, in a uniform format, about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983. This edition includes regulatory agendas from 60 Federal departments and agencies. Agencies of the United States Congress are not included.

The Regulatory Plan (Plan) serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. The regulatory plan of each participating agency contains two sections: (1) A narrative statement of its regulatory priorities and (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 30 departments and agencies.

The Regulatory Information Service Center (the Center) compiles Unified Agenda and the Plan for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of E.O. 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last agenda. The agendas do not contain regulations that were excluded under Executive Order 12866, such as those concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

What Are the Limitations of the Information?

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed.

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules within them or to confine their regulatory activities to those regulations that appear in these publications. The information in this edition is accurate as of October 1, 1997, in the judgment of the submitting agencies, except as otherwise noted by the agencies. In addition, some agencies submitted updates after that date.

Where applicable, individual actions will be subject to review for compliance with applicable Executive orders, the Regulatory Flexibility Act, the Office of Federal Procurement Policy Act Amendments of 1988, and the Paperwork Reduction Act at appropriate points in the regulatory process.

Why Are the Unified Agenda and The Regulatory Plan Published?

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610).

Executive Order 12866 entitled ''Regulatory Planning and Review'' (September 30, 1993; 58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears part of the October Unified Agenda.

Executive Order 12875 entitled ''Enhancing the Intergovernmental Partnership'' (October 26, 1993; 58 FR 58093) directs agencies to reduce the imposition of unfunded mandates upon State, local, and tribal governments. The Order directs agencies that are proposing to impose nonstatutory unfunded mandates to consult with affected governmental officials and

document their concerns, report those concerns to the Director of the Office of Management and Budget, and explain the agency's position supporting the continuing need to issue the regulation in light of those concerns. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government.

The *Unfunded Mandates Reform Act of 1995* (P.L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any 1 year . . . .'' The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

The *Small Business Regulatory Enforcement Fairness Act* (P.L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq*.), which defers, unless exempted, the effective date of a ''major'' rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is ''major'' if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. If the issuing agency believes that a rule may be major, it indicates this under the ''Priority'' heading of the entry. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

The Unified Agenda also helps fulfill the statutory requirement that the Office of Federal Procurement Policy (OFPP) publish a **Procurement Regulatory Activity Report** as required by the Office of Federal Procurement Policy Act Amendments of 1988 (41 U.S.C. 421(g)). In their agenda submissions, agencies indicate which regulatory actions are procurement-related, as well as whether or not there is a statutory requirement or a paperwork burden associated with the procurement-related actions. OFPP uses information that agencies publish in the Unified Agenda to produce its report.

How Are The Regulatory Plan and the Unified Agenda Organized?

The Regulatory Plan appears in Part II of this edition of the **Federal Register**. Following the Plan, each agency's agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Departments may in turn be divided into subagencies.

Each department's or agency's section of the Plan contains a narrative statement of regulatory priorities followed by a description of the department's or agency's most important significant regulatory and deregulatory actions. Each part of the Agenda begins with a preamble providing information specific to that part.

In the Agenda, each agency presents its entries under one of five headings according to the rulemaking stage of the entry. In the Plan, only the first three stages are applicable. The stages are:

1. Prerule Stage—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. Proposed Rule Stage—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. Final Rule Stage—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step in their rulemaking process.

4. Long-Term Actions—items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. Completed Actions—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

In the Agenda, an agency may use subheadings to identify regulations that it has grouped according to particular topics. When these subheadings are used, they appear above the title of the first regulation in each group.

A bullet (•) preceding an entry indicates that the entry appears in this publication for the first time.

All entries are numbered sequentially from the beginning of the Plan to the end of the Unified Agenda. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The same number is used in the indexes to enable readers to find entries on specific subjects.

For each agency that requests it, the Center provides a table of contents that appears in the Agenda after the agency preamble. In addition to listing all the agency's Agenda entries, the tables of contents identify each Plan entry by a cross-reference in bold type.

This publication contains four indexes. The first two indexes list the regulatory actions that agencies believe may have effects on small entities or levels of government. The third index lists entries for which agencies have indicated that they are conducting a periodic review under section 610(c) of the Regulatory Flexibility Act. The fourth is a subject index based on the **Federal Register Thesaurus of Indexing Terms**.

Congress generally authorizes a single Federal agency to implement, through regulation, a specific policy objective. Sometimes, however, a statute may require that several agencies issue regulations to accomplish the objective. In such cases, the agencies, working with a central coordinator, jointly publish the rulemaking documents. These regulations are known as Governmentwide common rules. Agencies participating in developing common rules report them in their individual sections of the Unified Agenda.

This edition of the Unified Agenda contains two Governmentwide common rules:

- New Restrictions on Lobbying
- Administrative Requirements for Grantees To Reflect Single Audit Act Amendments

What Information Appears for Each Entry?

All entries in the Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation. The notation ''Section 610 Review'' following the title indicates that the agency has selected

the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)).

Priority. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an ''economically significant'' rule is similar but not identical to the definition of a ''major'' rule under 5 U.S.C. 801 (P.L. 104-121). (See below.)

(2) Other Significant

A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that the agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

In addition, if an agency believes that a rule may be ''major'' under 5 U.S.C. 801 (P.L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act, the agency indicates this under the ''Priority'' heading. (The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.)

Unfunded Mandates—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to the Act, this data element will not be printed.

Reinvention—whether the action is part of the Administration's Reinventing Government effort and, if so, whether the result will be elimination of existing text in the Code of Federal Regulations (CFR) or revision of text in the CFR to reduce burden or duplication or to streamline requirements. If the action is not specifically part of this effort, the data element will not be printed.

Legal Authority—the section(s) of the United States Code (U.S.C.) or Public Law (P.L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation—the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline—whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. If a date appears in this section as 00/00/00, the date of the action is currently undetermined. A date printed in the form 10/00/98 means the agency is predicting the month and year the action will take place but not the day it will occur. ''Undetermined'' indicates the agency does not know what action it will take next. Dates after 1999 are printed in the same form as other dates, using the last two digits of the year. (Note that 00/00/00 refers to an unspecified date some time in the future, with no specific relation to the year 2000.)

Small Entities Affected—whether the rule is expected to have a significant economic impact on a substantial number of ''small entities'' as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.) and, if so, whether the small entities are businesses, governmental jurisdictions, or organizations.

Government Levels Affected—whether the rule is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Agency Contact—the name, title, address, and phone number of a person in the agency who is knowledgeable about the regulation. If available, the agency may also provide the fax number, e-mail address, and TDD for the agency contact.

Procurement—whether the action is related to procurement and, if so, whether it is required by statute and whether it involves a paperwork burden. The Procurement heading appears only if the entry is related to procurement.

Some agencies have provided the following optional information:

Compliance Cost to the Public—the estimated gross compliance cost of the action.

Affected Sectors—the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by Standard Industrial Classification (SIC) numbers.

Analysis—whether the agency is preparing a Regulatory Flexibility Analysis, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.), or any other kind of analysis or evaluation (e.g., an environmental impact statement).

Entries appearing in **The Regulatory Plan** should also contain the following information:

Statement of Need—a description of the need for the regulatory action.

Summary of the Legal Basis—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives—a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of E.O. 12866.

Anticipated Costs and Benefits—a description of preliminary estimates of

the anticipated costs and benefits of the action.

Risks—a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

Abbreviations

The following abbreviations appear throughout this publication:

ANPRM—An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles, and each title covers a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

EO—An Executive order is a directive from the President to executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal departments and agencies.

FY—The Federal fiscal year runs from October 1 to September 30.

NPRM—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL—A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 104-5 is the fifth public law of the 104th Congress.

RFA—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda and **The Regulatory Plan**, as directed by E.O. 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No.—The Sequence Number identifies the location of an entry in this publication. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers in different editions of the Unified Agenda and **The Regulatory Plan**.

USC—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, and each title covers a broad area of Federal law.

How Can Users Get Copies of the Plan and the Agenda?

Printed copies of this edition of the **Federal Register** are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, (202) 512-1800.

Copies of individual agency materials may be available directly from the agency. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since October 1995 are also available in electronic form. You can search the Plan and the Agenda on the World Wide Web at:

http://reginfo.gov/ua

You may also search the Plan and the Agenda on the Goverment Printing Office's GPO Access, which is accessible through:

http://www.access.gpo.gov

Dated: October 1, 1997.

Ronald C. Kelly,

Deputy Executive Director.

[FR Doc. 97-26070 Filed 10-28-97; 8:45 am]

BILLING CODE 6820-27-F

DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

To comply with the National Performance Review (NPR) directive to achieve regulatory reform, the Department of Agriculture is continuing an extremely important project to eliminate unnecessary regulations and improve those remaining by making them easier to understand and more user friendly. To date the Department's review and revision effort has resulted in actions on over 50 percent of our NPR commitment to regulatory reform. When the results are fully implemented, the Department will have eliminated or reinvented 81 percent of its regulatory holdings in the CFR.

Positive changes resulting from regulatory actions proposed as well as completed by the Department will reach into every corner of the country and, both directly and indirectly, touch the lives of most Americans. Those programs that offer support to specific rural and urban segments of the economy are being simplified so that persons who qualify for assistance, or some other form of participation, will find less burdensome rules. Yet high standards will be set for efficient and effective program management that makes the best use of taxpayer dollars. Farmers, ranchers, and others involved in U.S. agriculture will find significant changes in all aspects of regulations that govern their interaction with the Department and its programs. Farm credit, a mainstay of the Nation's rural economy, will be significantly streamlined by the merger of cumbersome loan-making regulations with forms and certifications simplified to facilitate the application process. The Department is undertaking a number of actions in the regulation of commodities that will increase efficiency, improve customer service, reduce intervention in markets, and allow States to assume greater responsibility in controlling the spread of plant pests or disease. The Department is also improving the regulations that serve rural communities. Several changes are being made in the rural housing programs. Nutrition programs are also being strengthened, their efficiency improved, and their integrity enhanced through regulatory reform. In the area of food safety, the Department has undertaken a significant reinvention of all policies and relationships with industry and the public. There are several important reinvention plans in the natural resources and conservation area.

Reducing Paperwork Burden on Farmers

The Department has made substantial progress under the guidance of the Chief Information Officer in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public by 25 percent by 1999. Further reductions will result from program changes, improved efficiency in the collection and management of information, and adjustments in the burden.

The Department established a Paperwork Reduction Implementation Team (PRIT), under the guidance of the Food and Agriculture Council, based on direction from the Secretary of Agriculture, to create a plan to reduce the paperwork burden on farmers. It is anticipated that the PRIT will develop a USDA Paperwork Reduction Framework—a set of standards and guidelines for the Service Center agencies. Agencies and other teams will use the framework in their execution of their paperwork reduction initiatives. This ''centralized planning-decentralized execution'' approach avoids starting from scratch, and capitalizes on the work already underway. It is estimated that it will take 6-9 months to finalize this process, which can be turned over to the appropriate USDA organizational unit to manage as a part of normal business.

Simultaneously, the PRIT will work with Service Center agencies to continue ongoing initiatives to reduce burden as quickly as possible. These agencies are working together through business process reengineering initiatives to address customer needs by integrating agency processes to streamline information collection from the farmer. This will eliminate redundant data collection, provide direct access to benefit and eligibility information, and reduce and simplify the number of regulations and forms. Agencies also have several ongoing projects to address the paperwork burden, either directly or indirectly. For example, for the Farm Service Agency, the planned reductions for FY 1998 include:

- *Noninsured Crop Disaster Assistance Program*
  -Improved worksheets reduce the time the producer needs to calculate production.
  -An improved handbook and training will improve efficiency.
- *7-Year Production Flexibility Contracts*
  -7-year contracts do not require annual renewal. New information collections are needed only if changes occur.

These information burden reductions will involve many of the programs covered by the regulations in the regulatory agenda. However, the reductions, in general, do not require regulatory changes.

The Role of Regulations

The programs of the Department are diverse and far reaching, as are the regulations that attend their delivery. Regulations codify how the Department will conduct its business, including the specifics of access to, and eligibility for, USDA programs. Regulations also specify the behavior of State and local governments, private industry, businesses, and individuals that is necessary to comply with their provisions. The diversity in purpose and outreach of our programs contributes significantly to the USDA being at or near the top of the list of Departments that produce the largest number of regulations annually. These regulations range from nutrition standards for the school lunch program, to natural resource and environmental measures governing national forest usage and soil conservation, to regulations protecting American agribusiness (the largest dollar value contributor to exports) from the ravages of domestic or foreign plant or animal pestilence and they extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply. Many regulations function in a dynamic environment which requires their periodic modification. The factors determining various entitlement, eligibility, and administrative criteria often change from year to year. Therefore, many significant regulations must be revised annually to reflect changes in economic and market benchmarks. Almost all legislation that affects Departmental programs has accompanying regulatory needs, often with a significant impact. The Farm Bill of 1996, Public Law 104-127, has considerable regulatory consequences. This key legislation affects most agencies of USDA and will result in the addition of new programs, the deletion of others, and modification to still others.

Administration Guidance—USDA Response

In developing and implementing regulations, the Department has been guided by the regulatory principles and philosophy set forth by the President in Executive Order 12866 ''Regulatory Planning and Review.'' As prescribed in

the Order, the USDA is committed to ''promulgate only those regulations that are required by law, are necessary to interpret the law, or are made necessary by compelling public need.'' When considering a rulemaking action, the Department will assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating. Our analysis will consider the costs and benefits of both quantifiable and qualitative measures, and opt for approaches that maximize net benefits.

Major Regulatory Priorities

Four agencies are represented in this regulatory plan. They include the Farm Service Agency, the Food and Consumer Service, the Forest Service, and the Food Safety Inspection Service.

This document represents summary information on prospective significant regulations as called for in Executive Order 12866. A brief comment on each of the four agencies appears below, which summarizes the agency mission and its key regulatory priorities. The agency summaries are followed by the regulatory plan entries.

Farm Service Agency

Mission: The Farm Service Agency (FSA) administers contract commodity, conservation, farm loan, commodity purchase and emergency loan programs, as prescribed by various statutes, in order to support farming certainty and flexibility while ensuring compliance with farm conservation and wetland protection requirements and to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources.

Priorities: FSA's priority for 1998 will be to continue to implement these programs and to implement the many revisions to the farm program regulations that were identified by the President's Regulatory Review Initiative. The most significant FSA regulations are those that operate the contract commodity programs and farm loans. The farm programs were significantly changed by the 1996 Farm Bill. The Farm Bill instituted the contract commodity programs, which utilize production flexibility contracts and marketing assistance loans in place of the deficiency payments and production adjustment of past programs. The contracts removed the link between income support payments and farm prices by providing for seven annual fixed but declining payments. FSA's farm loan programs provide farm ownership, operating, emergency loss, and rural youth loans to help farmers who are temporarily unable to obtain private, commercial credit. While the marketing assistance and farm loan programs have significant economic impact, they are driven by specific statutory requirements. Therefore, they are noted here to acknowledge their significance in the overall USDA Regulatory Plan, but are not further listed in the body of the plan which appears below.

Food and Consumer Service

Mission: The Food and Consumer Service (FCS) provides food assistance programs and comprehensive nutrition education efforts.

Priorities: In addition to responding to recently enacted provisions for welfare reform, FCS has established broad strategic policy goals. These goals are:

- Healthful diets for school-age children. The two major programs serving this goal are the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). This goal reflects the Agency's recognition of its national health and education responsiblities for school-age children.
- Enhanced food and nutrition security for low-income Americans. This goal represents both the continuation of the Food Stamp Program's traditional role in providing food assistance as well as improving program administration to meet future challenges. Welfare reform modified the eligibility criteria for food stamp benefits, increased State design options, and maintained the overall mission to provide food and nutrition security for low-income Americans participating in the program.
- Improved nutritional status and health of low-income women, infants and children. This goal reflects the mission of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). It emphasizes nutrition education, healthy infant feeding practices and positive health outcomes while seeking to enhance program efficiency and integrity.
- Improved nutritional status of childen in day-care settings by improving the nutritional quality of CACFP meals, program access for low-income families and program integrity.
- Low-income children consume nutritious lunches when school meals are not available. This goal seeks to extend the Agency's commitment to low-income children during the summertime when school meals are not available.
- Improved quality of food distribution commodities and service. This goal continues support for agricultural markets with an emphasis on more healthful commodities and improved program efficiency through automation, reduced Federal and State inventories and timely deliveries in FCS food distribution. It also supports the USDA gleaning intitiative for foods used in the FCS feeding programs and/or distributed by FCS programs.

Forest Service

Mission: The mission of the Forest Service is to achieve quality land management, under the sustainable multiple-use management concept, to meet the diverse needs of people. It includes:

- Advocating a conservation ethic in promoting the health, productivity, diversity, and beauty of forests and associated lands;
- Listening to people and responding to their diverse needs, in making decisions;
- Protecting and managing the National Forests and Grasslands so they best demonstrate the sustainable multiple-use management concept;
- Providing technical and financial assistance to State and private forest landowners, encouraging them to practice good stewardship and quality land management in meeting their specific objectives;
- Providing technical and financial assistance to cities and communities to improve their natural environment by planting trees and caring for their forests;
- Providing international technical assistance and scientific exchanges to sustain and enhance global resources and to encourage quality land management;
- Helping States and communities to wisely use the forests to promote rural economic development and a quality rural environment;
- Developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands; and
- Providing work, training, and education to the unemployed, underemployed, elderly, youth, and disadvantaged, in pursuit of our mission.

Priorities: The President's environmental program includes efforts to incorporate the principles of ecosystem management in natural resource decisionmaking on the National Forests. In support of that

effort, final regulations will be published governing the amendment, revision, and implementation of forest land management plans. Significantly, the regulation will also streamline the planning process and update planning procedures and requirements in order to reflect court decisions and the Agency's experience gained with the first generation of forest plans.

Food Safety and Inspection Service

Mission: The Food Safety and Inspection Service (FSIS) is responsible for ensuring the Nation's meat, poultry, and egg products are safe, wholesome, and properly packaged and labeled.

Priorities: FSIS is continuing its comprehensive review of its existing regulations in light of the July 25, 1996, final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems,'' requiring that official meat and poultry establishments develop and implement HACCP, a science-based process control system for food safety. Establishments are responsible for developing and implementing HACCP plans incorporating the controls they have determined are necessary and appropriate to produce safe products. HACCP places the responsibility for food safety firmly on meat and poultry establishments, but enables them to tailor their control systems to the needs of particular plants and processes and to take advantage of the latest technological innovations.

FSIS must revise its existing regulations to be consistent with HACCP principles; many are ''command-and-control'' regulations, prescribing the exact means establishments must use to ensure the safety of their products. Some specify, for example, precise cooking time-and-temperature combinations. Further, many of these regulations require prior approval of equipment and procedures by FSIS, therefore assigning the Agency responsibility for the means used by establishments to comply with the regulations. As a general matter, command-and-control regulations are incompatible with HACCP because they deprive plants of the flexibility to innovate and undercut the clear delineation of responsibility for food safety. Therefore, to prepare for the implementation of HACCP, FSIS is conducting a thorough review of its current regulations and, to the maximum extent possible, converting its command-and-control regulations to performance standards. Some of the Agency's recent and planned initiatives, both to convert command-and-control regulations to performance standards and to generally streamline and simplify the regulations, follow:

- FSIS is converting to performance standards the current regulations governing the production of cooked beef products, uncured meat patties, and certain poultry products.
- FSIS will be proposing to streamline, consolidate, and make consistent with HACCP the rules of practice regarding suspension and withdrawal of inspection.
- FSIS has proposed to consolidate the sanitation regulations into a single part of Code of Federal Regulations applicable to both meat and poultry establishments, eliminate unnecessary differences between the meat and poultry sanitation requirements, and convert many of the highly prescriptive requirements to performance standards.
- FSIS will be proposing to remove most requirements pertaining to partial quality control programs.

USDA—Food and Consumer Service (FCS)

PROPOSED RULE STAGE

1. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): FOOD DELIVERY SYSTEMS INTEGRITY

Priority:

Other Significant

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

None

Abstract:

A proposed rule addressing WIC Food Delivery Systems was published on December 28, 1990 (55 FR 53446). The Department provided a 120-day comment period for the proposed rule, which closed on April 29, 1991. Nearly 1,100 comments were received from a wide variety of sources. Despite the degree of preliminary input to the December 28, 1990, proposed rule, many of the commenters responding during the formal comment period suggested that the Department's food delivery regulations needed to be proposed again, rather than proceeding directly to a final rule. In addition, several members of Congress requested that the rule be reproposed in light of its impact on State agency food delivery systems. Therefore, the Department intends to issue a second proposed rule addressing WIC food delivery systems and requirements. This second rule will address all of the provisions contained in the previous rulemaking, but will contain significant modifications to some of the proposed provisions, as well as clarifications of several provisions that may not have been clearly understood in the earlier rule. (88-512)

Statement of Need:

On December 28, 1990, the Department published a proposed rule designed primarily to strengthen State agency operations in vendor management and related food delivery areas for the WIC Program. This proposal was developed with input over several years' time from State agency experts in food delivery, and with the full support of and encouragement from Congress and the Department's Office of Inspector General (OIG). The Department provided a 120-day comment period for the proposed rule, which closed on April 28, 1991. During this comment period, nearly 1,100 comments were received from State and local WIC agencies, vendors, and associated groups, public interest groups, members of Congress, members of the public, and WIC participants.

Despite the degree of preliminary input to the December 28, 1990, proposed rule, many of the commenters suggested that the Department's food delivery regulations needed to be proposed again, rather than proceeding directly to a final rule. In addition, several members of Congress requested that the rule be reproposed in light of its impact on State agency food delivery systems.

The Department has therefore drafted a second proposed rule addressing WIC food delivery systems integrity and procedural requirements. This second rule addresses all of the provisions contained in the previous rulemaking, and contains significant modifications to some of the proposed revisions, as well as clarifications to a number of provisions that may not have been clearly understood in the earlier rule. The rule will provide for more cost effective and efficient management of WIC vendors by State agencies. A 120-day public comment period will be provided with this proposed rule. The Department intends to publish a final rule, based on all of the comments received, by the middle of fiscal year 1997.

Although this rule does not have a direct impact on reducing risks to public health, safety, or the environment, it will significantly improve the operation and accountability of the WIC Program nationwide.

Alternatives:

Given the intensive input that has been gathered for the development of this rule since it was recommended by the General Accounting Office in 1988, and the comments that were received pertaining to the first proposed version of the rule in December 1990, the Department has determined that there are no viable alternatives to the provisions included in this reproposal. The alternative of proceeding directly to promulgation of a final rule based on the 1990 proposal has been rejected by Congress.

Anticipated Costs and Benefits:

The costs of this action include costs due to vendor overcharges and costs associated with the proposal. The estimated costs for implementation of the proposal include a shift of not more than $2.0 million in WIC Program Nutrition Services and Administration (NSA) funds within the 87 State agencies, partially from reduced requirements for management evaluations of local agencies and reduced costs due to elimination of representative on-site monitoring. They also include $0.5 million in additional costs to vendors to meet the proposed minimum training and authorization requirements. It should be noted that all the vendors are currently required to participate in some type of training and complete an application form for program authorization. The estimated $0.5 million in additional costs therefore represents those instances where current training and authorization requirements are below the level established in the proposal. In these instances, vendors may incur costs in attending more frequent training sessions or may be required to complete an application form at more frequent intervals. The estimated cost does not represent charges to the vendor for training or authorization. Rather, the cost represents the estimated cost of the vendor's time to participate in the training session and to complete the application form.

The gross benefit results from a significant reduction in vendor overcharges. A significant net benefit of $37 million is expected, as vendor overcharges are estimated at $39.5 million and costs associated with the proposal are a maximum of $2.5 million.

Risks:

This rule is intended to reduce and minimize the risk of vendor fraud and abuse of the WIC program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	04/00/98	
NPRM	06/00/98	
NPRM Comment Period End	10/00/98	
Final Action	06/00/99	
Final Action Effective	10/00/99	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal

Sectors Affected:

None

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USDA—FCS

2. FOOD STAMP PROGRAM: FOOD STAMP RECIPIENT CLAIM ESTABLISHMENT AND COLLECTION STANDARDS

Priority:

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

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:

7 USC 2011 to 2032

CFR Citation:

7 CFR 272; 7 CFR 273

Legal Deadline:

None

Abstract:

The Food and Consumer Service is revising Food Stamp Program regulations which cover the establishment and collection of recipient claims. This action is the result of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and is consistent with the President's regulatory reform effort. In addition, this rule revises existing discretionary areas to improve claim establishment and effective management. The inability of State agencies to establish and collect claims has continuously been cited as a deficiency by the Department's Office of Inspector General. The last significant revision to these regulations was in 1983. Subsequent activities, such as technological advances and general debt management regulations, have rendered many portions of the current rule obsolete. In addition, the current rule has been found to place unnecessary burdens on State agencies. State agencies are responsible for establishing and collecting recipient claims. (94-005)

Statement of Need:

In addition to implementing PRWORA, this rule is necessary to improve the establishment and collection of recipient claims. The last significant revision to these regulations was in 1983. Subsequent activities, such as technological advances and general debt management regulations, have rendered many portions of the current rule obsolete. The current rule has also been found to place unnecessary burdens on State agencies. State agencies are responsible for establishing and collecting recipient claims. This rule will address two dimensions of the overissuance problem: establishing claims on excess allowances, and recovering overages where possible. Data from the food stamp quality control system for 1993 show that overissuances to recipients totaled over $1.8 billion, 8.3 percent of the $22.0 billion in total food stamp issuances that year. These errors were concentrated in just 18 percent of food stamp households, which received an average of almost 50 percent more than they should have. Claims against recipients are a direct means to recover overissuances and, to the extent that recipients know that recovery of overissuances will be sought, represent a deterrent to households who quietly accept the extra food benefits.

Alternatives:

The alternative is not to revise the current rule governing this aspect of the Program. In addition, the existing

regulations must be changed to conform with the new legislative requirement. The current rule is not adequate to facilitate effective and efficient debt management. The inability of State agencies to establish and collect claims has continuously been cited as a deficiency by the Department's Office of Inspector General.

Anticipated Costs and Benefits:

Nationwide, as of October 1, 1996, there was over $1.1 billion in uncollected recipient claims. Inspector General reports have also noted that, in addition to large accounts receivable for established, uncollected claims, there are backlogs of hundreds of millions of claims that have not yet been established. These unestablished claims represent the most current, and typically the most collectable losses to the program. Updated regulations that incorporate recent debt management rules and technological advances, as well as practical suggestions and feedback received from State agencies, should improve the establishment and collection of recipient claims in the Food Stamp Program. In addition, efforts will be made to increase the degree of conformity with claims-related issues and procedures currently used in other social programs.

Risks:

The tolerance of program abuse or even the perception of such undermines the fundamental mission of the Food Stamp Program. The efficient and effective establishment and collection of recipient claims, which this rulemaking addresses, is essential in ensuring that this does not occur.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	02/00/98	
Final Action	09/00/98	
Final Action Effective	12/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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USDA—FCS

3. FOOD STAMP PROGRAM: REVISIONS TO THE RETAIL FOOD STORE DEFINITION AND PROGRAM AUTHORIZATION GUIDANCE

Priority:

Other Significant

Legal Authority:

PL 103-225; 7 USC 2012; 7 USC 2018

CFR Citation:

7 CFR 271; 7 CFR 278

Legal Deadline:

Final, Statutory, March 25, 1994.

Abstract:

It is not anticipated that this proposed rule will impact program costs. It is anticipated that the clarifications of program eligibility criteria in this proposed rule will make it easier for firms to understand and for the Food and Consumer Service to administer.

Statement of Need:

Public Law 103-225 amends the Food Stamp Act of 1977, to make changes in eligibility requirements for retail food stores to participate in the Food Stamp Program. Prior to enactment of these changes, a retail food store qualified to participate in the Food Stamp Program if more than 50 percent of its total eligible food sales were in staple foods. The new law changes that to require 50 percent of its total gross sales in staple foods. It also provides another option for stores not meeting the new 50 percent rule. Those stores can now qualify if they offer for sale, on a continuous basis, a variety of food in each of four categories of staple foods. The staple food categories are defined as ''(1) meat, poultry, or fish; (2) bread or cereals; (3) vegetables or fruits; or (4) dairy products.'' This statutory change in eligibility will require developing policy definitions for the terms ''continuous basis,'' ''variety,'' and ''perishable.''

Alternatives:

None. The new law also requires the Secretary to issue new rules providing for the periodic reauthorization of retail food stores and wholesale food concerns. This must include providing periodic notice of the definitions for ''retail food stores,'' ''staple foods,'' and ''perishable foods.''

Anticipated Costs and Benefits:

It is not anticipated that this proposed rule will impact program costs. It is anticipated that the clarifications of program eligibility criteria in this proposed rule will make it easier for firms to understand and for the Food and Consumer Service to administer.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FCS

4. FSP: PERSONAL RESPONSIBILITY PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

Priority:

Economically Significant. Major under 5 USC 801.

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:

PL 104-193

CFR Citation:

7 CFR 271; 7 CFR 272; 7 CFR 273

Legal Deadline:

Other, Statutory, August 22, 1996.

Stat. implementation deadline of 8/22/96 for sec 813, 814, 820, 821, 837, and 911 of PL 104-193; stat. implementation deadline of 7/1/97 for sec 115, and 11/22/96 for sec 824 of PL 104-193.

Abstract:

This rule will implement 13 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (96-019)

Statement of Need:

P.L. 104-193, the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, amends the Food Stamp Act of 1977, to add some new eligibility requirements and disqualifiers, and increase some existing penalties for noncompliance with food stamp rules. The new law: (1) makes individuals convicted of drug-related felonies ineligible for food stamps; (2) doubles the penalties for violating food stamp program requirements; (3) permanently disqualifies individuals convicted of trafficking in food stamp benefits of $500 or more; (4) allows States to disqualify an individual from food stamps if the individual is disqualified from another means-tested program for failure to perform an action required by that program; (5) makes individuals ineligible for 10 years if they misrepresent their identity or residence in order to receive multiple food stamp benefits; (6) makes fleeing felons and probation and parole violators ineligible for the food stamp program; (7) allows States to require food stamp recipients to cooperate with child support agencies as a condition of food stamp eligibility; (8) allows States to disqualify individuals who are in arrears in court-ordered child support payments; (9) limits the food stamp participation of most able-bodied adults without dependents to three months in a three-year period during times the individual is not working or participating in a work program; (10) prohibits an increase in food stamp benefits when households' income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action; (11) requires States to provide households' addresses, social security numbers, or photographs to law enforcement officers to assist them in locating fugitive felons or probation or parole violators; and (12) prohibits an increase in food stamp benefits when households' income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for an act of fraud by the individual under the program.

Summary of the Legal Basis:

All of the provisions of this rule are mandated by P.L. 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Alternatives:

None.

Anticipated Costs and Benefits:

Over 7 years, the provisions are expected to reduce the cost of the Food Stamp Program by approximately $5.565 billion.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Analysis:

Regulatory Flexibility Analysis; Regulatory Impact Analysis 11/00/97

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USDA—FCS

5. FSP: STATE FLEXIBILITY AND CERTIFICATION PROVISIONS OF PUBLIC LAW 104-193

Priority:

Economically Significant. Major under 5 USC 801.

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:

PL 104-193; PL 104-208; 7 USC 2011 to 2032

CFR Citation:

7 CFR 272.3; 7 CFR 273.1; 7 CFR 273.2; 7 CFR 273.4; 7 CFR 273.9(c); 7 CFR 273.9(d); 7 CFR 273.10(a); 7 CFR 273.10(c) to (f); 7 CFR 273.11(a) to (c); 7 CFR 273.11(e); 7 CFR 273.11(j); 7 CFR 273.14(b); 7 CFR 273.14(e)

Legal Deadline:

Other, Statutory, August 22, 1996.

For provisions effective upon enactment, the statutory implementation date is August 22, 1996.

Abstract:

This rule proposes to amend Food Stamp Program regulations to implement 14 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and one provision of the Omnibus Consolidated Appropriations Act of 1996. These provisions would increase State agency flexibility in processing applications for the Food Stamp Program and allow greater use of standard amounts for determining deductions and self-employment expenses. The provisions would also give State agencies options to issue partial allotments for households in treatment centers, count all of the income of an ineligible noncitizen in determining the benefits of the rest of the household, issue combined allotments to certain expedited service households, and certify elderly or disabled households for 24 months. Other changes would revise requirements for determining noncitizen eligibility and the eligibility and benefits of sponsored noncitizens, eliminate the exclusion of certain transitional housing payments and State and local energy assistance, exclude the earnings of students under 18, and require proration of benefits following any break in certification. (96-020)

Statement of Need:

This action is required by Pub. L. 104-193 and Pub. L. 104-208.

Summary of the Legal Basis:

Summary of the Legal Basis: This rule is required to implement the provisions of sections 402, 421, 801, 807, 808, 809, 811, 812, 818, 827, 828, 830, and 835 of Pub. L. 104-193 and section 552 of Pub. L. 104-208.

Anticipated Costs and Benefits:

The provision of this rule would reduce Food Stamp Program costs for FY 1997-2002 by approximately $6,605 billion.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	
NPRM Comment Period End	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

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RIN: 0584–AC40

USDA—FCS

6. FSP: NONDISCRETIONARY PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

Priority:

Economically Significant. Major under 5 USC 801.

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:

PL 104-193, sec 803; PL 104-193, sec 804; PL 104-193, sec 805; PL 104-193, sec 809; PL 104-193, sec 810; PL 104-193, sec 838; PL 104-193, sec 109; PL 104-193, sec 826

CFR Citation:

7 CFR 271.2; 7 CFR 273.1; 7 CFR 273.2; 7 CFR 273.8; 7 CFR 273.9; 7 CFR 273.10

Legal Deadline:

Other, Statutory.

Statutory Implementation Dates: PL 104-193, sec 809 - 1/1/97; PL 104-193, sec 803, 805 and 838 - 08/22/96; PL 104-193, sec 804 and 810 - 10/01/96.

Abstract:

This proposed rule amends the Food Stamp Program regulations to implement 8 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These provisions which require no interpretation or discretion: 1) freeze the minimum allotment at $10; 2) change the way the maximum allotments are calculated to use 100% of the Thrifty Food Plan as opposed to 103%; 3) freeze the standard deduction at current level and eliminate the adjustment procedures; 4) cap the excess shelter expense deduction; 5) change the household composition definition so that children under 22 years of age and living with their parents cannot be a separate household; 6) increase the time frame from 5 to 7 days for expedited service; 7) set a time limit of not more than 90 days for considering the person homeless; and 8) set the fair market value of vehicles at $4,600 through 9/30/96 and raise it to $4,650 effective 10/1/96 and eliminate future adjustments. (96-021)

Statement of Need:

This action is required by P.L. 104-193.

Summary of the Legal Basis:

This rule is required to implement the provisions of sections 109, 803, 804, 805, 809, 810, 826, and 838 of P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Alternatives:

None. The provisions are mandated by statute.

Anticipated Costs and Benefits:

The provisions of this rule would reduce Food Stamp Program costs for FY 1997-2002 by $20.4 billion.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local

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RIN: 0584–AC41

USDA—FCS

7. FOOD STAMP PROGRAM: WORK PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

Priority:

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

Legal Authority:

PL 104-193

CFR Citation:

7 CFR 273.7; 7 CFR 273.22

Legal Deadline:

None

Abstract:

This proposed rule will implement revisions to the Food Stamp Program's work and employment and training requirements, as well as new provisions for a work supplementation or support program and an employment initiative program. (96-025)

Statement of Need:

This rule is necessary to implement revisions to the Food Stamp Program's work requirements.

Summary of the Legal Basis:

All provisions of this proposed rule are mandated by Public Law 104-193.

Alternatives:

The alternative is not to revise current rules. This is not practical. The current rules have been superseded by changes brought about by Public Law 104-193.

Anticipated Costs and Benefits:

Federal costs will increase by $15 million between Fiscal Year 1997 and Fiscal Year 2002. State agencies will benefit by achieving greater flexibility to encourage work, foster personal responsibility and independence.

Risks:

An increase in food stamp rolls would result by not implementing this rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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RIN: 0584–AC45

USDA—FCS

FINAL RULE STAGE

8. IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS IN THE CHILD AND ADULT CARE FOOD PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 104-193

CFR Citation:

7 CFR 210; 7 CFR 226

Legal Deadline:

Final, Statutory, July 1, 1997. Other, Statutory, January 1, 1997.

Other deadline is for interim final rule.

Abstract:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) made a significant change in the family day care home component of Child and Adult Care Food Program (CACFP). Currently, all meals serves in family day care homes are reimbursed at a single rate by type of meal, without regard to the location of the home or the household income of the children receiving the meal, with the exception of the day care provider's own children who are subject to income eligibility requirements.

Statutory amendments resulting from P.L. 104-193 now require that a means test by child or geographic area be used to determine reimbursement levels for all meals served in homes. This change is intended to target benefits to the needy and is expected to result in a Federal budgetary savings of $2.2 billion over a 6-year period (fiscal years 1997-2002). The law requires that the Department publish an interim regulation to implement these provisions by January 1, 1997, with an effective date of July 1, 1997. (96-022)

Statement of Need:

Currently, all meals served in family day care homes are reimbursed at a single rate, by type of meal, regardless of where the home is located or the household income of the children receiving the meal. The only exception is that meals served to a provider's own child(ren) are not reimbursable unless the provider's household income is at or below 185 percent of poverty. Thus, only providers submit income eligibility applications to their sponsoring organization. As a result of providing generous levels of reimbursement for all meals served in day care homes, there has been a significant increase in CACFP costs. This growth has been especially evident among family day care homes serving middle- and upper-income children. By 1986, a study of the Child Care Food Program (CCFP) conducted for FCS by Abt Associates, Inc., showed that approximately 70 percent of children then receiving reimbursement for meals served in family day care homes would have qualified for ''paid'' meals prior to the changes to the law in 1978. (''Paid'' meals are for children from households with incomes over 185 percent of poverty.) Led by growth in the family day care portion of the CCFP--renamed the CACFP in 1989--Program expenditures increased from $300 million in 1983 to $1.44 billion by 1995.

The need to reduce overall Federal expenditures has prompted a review of many programs and led to a decision to improve the targeting of benefits in the CACFP. To accomplish this targeting, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two ''tiers'' of day care homes and reimbursement rates. Under the law, tier I homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. All meals served to enrolled children in tier I homes will receive a higher level of reimbursement. Tier II homes, in contrast, are those which do not meet the location or provider income criteria for a tier I home. The meals served in tier II homes are reimbursed at lower rates, unless the provider elects to have the sponsor collect free and reduced price applications from the households of children enrolled for day care in the home. In that case, the meals served to identified income-eligible children (i.e., children from households with incomes at or below 185 percent of the Federal income poverty guidelines) are reimbursed at the higher, ''tier I'' rates.

Alternatives:

None. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 mandates that these changes be implemented on July 1, 1997.

Anticipated Costs and Benefits:

This change is intended to target benefits to the needy and is expected to result in a Federal budgetary savings of $2.6 billion over a 6-year period (fiscal years 1997-2002). The law requires that the Department publish an interim regulation to implement these provisions by January 1, 1997, with an effective date of July 1, 1997. It also requires that the Department conduct a study of the law's impact and report to Congress by August 22, 1998.

State agencies and sponsoring organizations of family day care homes will have additional administrative burdens as a result of the change, especially during the implementation phase. Family day care providers will see a reduction in income if they do not serve needy children. It should be noted that the financial effects and administrative burden flow directly from the new statutory provisions and are only marginally affected by any discretionary authority exercised by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/07/97	62 FR 889
Final Action	11/00/97	
Final Action Effective	11/00/97	

Small Entities Affected:

Organizations

Government Levels Affected:

State

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USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

9. ● RULES OF PRACTICE

Priority:

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

Unfunded Mandates:

Undetermined

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will eliminate existing text in the CFR.

Legal Authority:

21 USC 601; 21 USC 451

CFR Citation:

9 CFR 304; 9 CFR 305; 9 CFR 306; 9 CFR 327; 9 CFR 335; 9 CFR 381; 9 CFR 460

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to revise and consolidate the regulations that address the rules of practice FSIS follows when inspection services are refused, suspended, or withdrawn. FSIS is proposing to add specific language regarding the refusal, suspension, or withdrawal of inspection when the Agency determines that an establishment's Hazard Analysis and Critical Control Points (HACCP) system is inadequate, an establishment is not meeting the Salmonella pathogen reduction performance standards, an establishment's Sanitation Standard Operating Procedure is inadequate, or an establishment is not conducting generic E. coli testing. Additionally, FSIS proposes to revise and consolidate the regulations regarding the procedures for appealing Agency decisions.

Statement of Need:

For the most part, FSIS' Supplemental Rules of Practice duplicate the Department's Uniform Rules of Practice regulations. FSIS's regulations do, however, establish procedures related to the suspension of inspection. However, these regulations are difficult to read and do not clearly outline the process.

Therefore, as part of FSIS's ongoing efforts to simplify, consolidate, and streamline the meat and poultry inspection regulations, FSIS is proposing to revise these regulations. FSIS intends to eliminate redundancy between its regulations and the Department's regulations and to more clearly identify the process and situations involved when FSIS suspends inspection prior to filing a complaint to withdraw the grant of inspection.

Summary of the Legal Basis:

Under the Federal Meat Inspection Act (21 USC 601 et seq) and the Poultry Products Inspection Act (21 USC 451 et seq), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce. The Agency also issues regulations concerning the sanitation conditions under which such products are prepared.

Alternatives:

No action.

Anticipated Costs and Benefits:

There are no direct costs or benefits associated with this proposal. At present time, there is no way to predict whether industry ''down time'' will increase or decrease under the proposed rules of practice. To the extent that disputes can be resolved in a timely and more efficient manner, there are potential benefits to both industry and the government. To the extent that clear rules of practice promote timely regulatory action there would be consumer protection benefits.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
NPRM Comment Period End	01/00/98	
Final Action	03/00/98	
Final Action Effective	05/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 0583–AC34

USDA—FSIS

10. ● ELIMINATION OF REQUIREMENTS FOR PARTIAL QUALITY CONTROL PROGRAMS

Priority:

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

Unfunded Mandates:

Undetermined

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will eliminate existing text in the CFR.

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 317; 9 CFR 318; 9 CFR 319; 9 CFR 381

Legal Deadline:

None

Abstract:

This proposed rule would amend the meat and poultry inspection regulations by removing most requirements pertaining to partial quality control (PQC) programs. A PQC program controls a single product, operation, or part of an operation in a meat or poultry establishment. The proposal would remove the design requirements affecting most PQC programs that establishments have and most requirements for establishments to have PQC programs for certain products or processes. The proposal would also remove from the thermal processing regulations the requirements for FSIS prior approval, or approval before use, of systems and devices not specified in the regulations and all requirements concerning PQC programs. The proposal would expand the alternatives available to establishments under the thermal processing regulations for ensuring the safety of their products. However, the requirements for establishments to have quality control programs to control food irradiation processing and certain slaughtering inspection systems for poultry and the requirements concerning the design and content of those programs would be unaffected by this rulemaking. This proposal is intended to allow establishments under inspection additional flexibility, consistent with the Pathogen Reduction/Hazard Analysis and Critical Control Points (HACCP) regulations, to adopt new technologies and methods that will improve food safety and other consumer protections.

Statement of Need:

FSIS carries out programs designed to ensure that meat, poultry, and egg products are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS is implementing the ''Pathogen Reduction;

Hazard Analysis and Critical Control Point (HACCP) Systems'' final rule promulgated July 25, 1996 (61 FR 38806), to reduce the risk of foodborne illness associated with consumption of meat and poultry products to the maximum extent possible. Under the Pathogen Reduction/HACCP final rule, establishments are to accomplish this objective by taking appropriate and feasible measures to prevent or reduce the likelihood of physical, chemical, and microbiological hazards in the production of meat and poultry products.

FSIS is reviewing its other regulations to determine how they can be made more consistent with the Pathogen Reduction/HACCP regulations and the regulations and the regulatory approach they embody. Included in this review are regulations concerning sanitation standards, the exclusion from the food supply of meat and poultry products with visible defects affecting safety or quality, and preventing the economic adulteration of meat and poultry products.

As stated in the December 29, 1995, advance notice of proposed rulemaking (ANPR) ''FSIS Agenda for Change'' (60 FR 67469), FSIS plans to eliminate regulations that are unnecessary and, to the extent possible, modify or replace command-and-control prescriptions with performance standards. Command-and-control requirements specify, often in great detail, how a plant is to achieve particular food safety or other regulatory objectives, while performance standards state the objectives or levels of performance to be achieved, and the plant can then choose how to achieve them. Replacing command-and-control requirements with performance standards will afford inspected establishments the flexibility to adopt technological innovations that can yield food safety benefits.

This change is also compelled by the philosophy underlying HACCP systems. Under the HACCP approach, plant management builds into its food production processes science-based controls and related measures--the HACCP plans--required to ensure food safety can vary from plant to plant.

Where appropriate, command-and-control regulations must be changed to provide greater flexibility for industry to design and implement processes and HACCP systems of control, tailored to the circumstances of each plant. This is consistent with the HACCP approach, which clearly delineates industry and Government responsibility for food safety, with plants establishing procedures they will follow to ensure the production of safe food.

Among the regulations FSIS has identified as candidates for modification or elimination to be consistent with HACCP are restrictive, command-and-control-type regulations which delimit processing and treatment methods intended to eliminate specific food safety hazards and requirements concerning PQC programs. Among these are requirements that establishments have such programs for their products or processes and requirements concerning the design of such programs.

Summary of the Legal Basis:

Under the Federal Meat Inspection Act (21 USC 601 et seq.) and the Poultry Products Inspection Act (21 USC 451 et seq.), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce. The Agency also issues regulations concerning the sanitation conditions under which such products are prepared.

Alternatives:

The alternatives to this proposed rulemaking that FSIS considered were, in addition to the alternative of no rulemaking, market sampling of finished products, mandating additional in-plant controls, sampling finished products for chemical analysis, general requirements and standards for PQC programs, and the elimination of all TQC and PQC requirements.

Anticipated Costs and Benefits:

The proposed rule could save the regulated industry up to $14,000,000 in costs associated with developing PQC programs according to FSIS specifications and in operating PQC programs that are mandated by the regulations.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	01/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

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USDA—FSIS

11. • SANITATION REQUIREMENTS FOR OFFICIAL MEAT AND POULTRY ESTABLISHMENTS

Priority:

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

Unfunded Mandates:

Undetermined

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:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 303; 9 CFR 308; 9 CFR 381; 9 CFR 416

Legal Deadline:

None

Abstract:

FSIS is proposing to consolidate the sanitation regulations into a single part applicable to both meat and poultry establishments, eliminate unnecessary differences between the meat and poultry sanitation requirements, and convert many of the highly prescriptive requirements to performance standards.

Statement of Need:

In the course of its ongoing regulatory review, FSIS identified the need to revise its sanitation requirements for official meat and poultry establishments. A number of the existing sanitation requirements are difficult to understand, redundant, or outdated. Also, there are unnecessary differences between the sanitation requirements for meat and poultry establishments. Further, some of the existing sanitation requirements are no longer needed in light of the Agency's

recently finalized HACCP and Sanitation Standard Operating Procedure (SOP) requirements. Finally, some of the current sanitation regulations are unnecessarily prescriptive, may impede innovation, and blur the distinction between establishment and inspector responsibilities for maintaining sanitary conditions.

Summary of the Legal Basis:

Under the Federal Meat Inspection Act (21 USC 601 et seq) and the Poultry Products Inspection Act (21 USC 451 et seq), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce. The Agency also issues regulations concerning the sanitation conditions under which such products are prepared.

Alternatives:

As an alternative to the present proposal, the Agency considered proposing more comprehensive and prescriptive sanitation regulations. The proposed requirements would then have included very specific definitions of terms, such as definitions for food contact surfaces or premises; more prescriptive performance standards than those proposed, such as microbial criteria for recently cleaned and sanitized food contact surfaces; detailed requirements currently contained in Agency guidance materials, such as an ambient temperature requirement from rooms in which certain processes are conducted; and a list of specific regulatory prohibitions, again largely drawn from existing regulatory and guidance material.

Anticipated Costs and Benefits:

In general, the proposed streamlining, clarification, and consolidation of the sanitation regulations would benefit FSIS, the regulated industry, and consumers. User-friendly regulations would simplify compliance and therefore could bring about food safety enhancements in individual establishments. Further, consolidation of the separate sanitation requirements for meat and poultry products and the consequent elimination of unnecessary inconsistencies could enhance competition.

This proposed rule would allow individual establishments to develop and implement customized sanitation procedures other than those currently mandated, as long as those procedures produced sanitary conditions meeting the proposed performance standards. Establishments taking advantage of the performance standards to innovate thus could benefit from savings accrued through increased efficiency. However, since the currently mandated sanitation procedures meet the proposed performance standards, establishments lacking the resources to innovate could choose to continue employing current procedures. Such establishments should incur no additional expenses as a result of this rule. FSIS therefore anticipates that sanitation performance standards would have a generally favorable economic impact on all establishments, regardless of size.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/25/97	62 FR 45045
NPRM Comment Period End	10/24/97	
Final Action	02/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 0583–AC39

USDA—FSIS

FINAL RULE STAGE

12. PERFORMANCE STANDARDS FOR CERTAIN MEAT PRODUCTS AND POULTRY PRODUCTS

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:

21 USC 451 et seq; 21 USC 60 et seq

CFR Citation:

9 CFR 301; 9 CFR 318; 9 CFR 320; 9 CFR 381

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry inspection regulations by converting the current regulations governing the production of cooked beef products, uncured meat patties, and certain poultry products into performance standards. The proposed performance standards spell out the objective level of performance establishments must meet during their operations in order to produce safe products, but allow the use of plant-specific processing procedures other than the procedures prescribed in the current regulations. All of the provisions in the current regulations meet the proposed performance standards. Therefore, establishments probably would not be required to change any current practices in response to this proposed rule. The current provisions would remain in the regulations as examples of how an establishment might comply with proposed performance standards, constituting ''safe harbors.''

Statement of Need:

Under the Federal Meat Inspection Act (21 USC 601 et seq.) and the Poultry Products Inspection Act (21 USC 451 et seq.), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce. Many of these regulations employ the command-and-control approach, prescribing a precise sequence of steps to be followed when producing food that is safe and not adulterated. The command-and-control approach to rulemaking has ensured that all establishments are subject to the same rules and that no establishment has a technological advantage over another. However, this approach has several drawbacks: it can stifle innovation in meat and poultry processing technology; it does not account for the uniqueness of individual processing procedures and needs within different establishments; and, it produces regulations that can have a negative economic impact on small businesses. Command-and-control rulemaking often fails to account for the development of innovative processing technologies. By prescribing specific steps establishments must take during

processing, command-and-control regulations often do not allow establishments to employ innovations in processing technology that may produce meat and poultry products that are as safe as, or even safer than, those produced in accordance with the command-and-control regulations. While FSIS endeavors to account for technological innovation when rulemaking, new processing technologies are developed at a faster pace than the Agency can amend the regulations. Also, command-and-control regulations often do not account for the uniqueness of individual processing procedures and needs within different establishments. FSIS command-and-control regulations require all establishments to produce meat and poultry products in the same manner. Such prescriptive regulations are impractical in many settings. Further, they can have disparate economic effects on establishments producing different volumes of the same product. By promulgating command-and-control regulations mandating the use of specific processes or technologies, FSIS often inadvertently imposes significant economic burdens on small businesses. Small establishments producing meat and poultry products at low volumes often must pay a high cost per product unit when required to employ a specific process or technology. Large establishments, however, are able to spread the cost of a required process or technology over their higher production volumes. While FSIS has attempted to incorporate prevailing industry processing practices into its command-and-control regulations in order to lessen the economic burden imposed on small establishments, many small establishments often find prevailing industry processing practices to be impractical and/or expensive. In light of these general problems, FSIS is proposing to substitute performance standards for the current command-and-control regulations governing the production of cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products. The proposed performance standards spell out the objective level of performance that establishments must meet during their operations in order to produce safe and nonadulterated products, but allow the use of plant-specific processing procedures other than the procedures prescribed in the current regulations. Accordingly, establishments could employ innovative or unique processing procedures customized to the nature and volume of their production, as long as their products meet the proposed performance standards for safe, nonadulterated food. Furthermore, all of the prescriptive, command-and-control provisions in the current regulations governing cooked beef products, uncured meat patties, and certain fully and partially cooked poultry products meet the proposed standards. Therefore, establishments producing these products would not be required to change any current practices in response to this proposed rule. By proposing performance standards that may be met through adherence to the current regulations, FSIS creates a ''safe harbor'' for establishments content with the current regulations and mitigates any negative impact this proposal could have on such establishments.

Summary of the Legal Basis:

Under the Federal Meat Inspection Act (21 USC 601 et seq.) and the Poultry Products Inspection Act (21 USC 451 et seq.), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce.

Alternatives:

FSIS could maintain the current command-and-control regulations governing cooked beef products, uncured meat patties, and certain poultry products. However, as explained above, these regulations have several drawbacks: they stifle innovation in meat and poultry processing technology; they do not account for the uniqueness of individual processing procedures and needs within different establishments; and, they can have a negative economic impact on small businesses.

Anticipated Costs and Benefits:

By allowing establishments to meet performance standards for cooked beef products, uncured meat patties, and certain poultry products by means other than those prescribed in the current regulations, FSIS hopes to encourage innovation in meat and poultry processing technology and allow establishments to customize processes to meet their individual needs. Because employing alternative means to meet the proposed performance standards would be optional, FSIS concludes that this proposal would not have a significant economic impact on small or large establishments.

Risks:

The proposed performance standards would maintain a level of food safety equivalent to that which is ensured by the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/02/96	61 FR 19564
Comment Period Extended to	09/09/96	61 FR 35990
Final Action	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

13. ● PERFORMANCE STANDARDS FOR THE PRODUCTION OF CERTAIN MEAT AND POULTRY PRODUCTS

Priority:

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

Unfunded Mandates:

Undetermined

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:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 301; 9 CFR 317; 9 CFR 318; 9 CFR 320; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS is converting into pathogen reduction performance standards the regulations governing the production of cooked beef, roast beef, and cooked corned beef products, fully-cooked, partially cooked, and char-marked meat patties, and certain fully and partially cooked poultry products.

Statement of Need:

Along with HACCP, food safety performance standards will give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight.

Summary of the Legal Basis:

Under the Federal Meat Inspection Act (21 USC 601 et seq.) and the Poultry Products Inspection Act (21 USC 451 et seq.), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in interstate commerce. The Agency also issues regulations concerning the sanitation conditions under which such products are prepared.

Alternatives:

As an alternative to this proposed rulemaking, FSIS considered merely expanding the list of time/temperature combinations previously allowed for processing ready-to-eat meat and poultry products, but otherwise maintaining the detailed processing requirements. While this option would have expanded flexibility in regard to heat treatment, establishments still would have been constrained by the remaining prescriptive processing requirements, which are inconsistent with the principles of HACCP and can impede innovation.

Anticipated Costs and Benefits:

This rule allows meat and poultry establishments to employ processing methods other than those previously mandated, as long as those methods yield products that meet the performance standards set forth in this rule. However, FSIS also will allow establishments to meet the performance standards by following the previously mandated production methods, which are being disseminated in compliance guidelines by FSIS as safe harbors. Therefore, establishments can choose to continue using their current methods of processing and probably incur no new expenses as a result of this rule. FSIS anticipates that the rule will have a generally favorable economic impact on all establishments, regardless of size. When an establishment elects to use a processing method other than one of those contained in the safe harbors, it is likely that it expects to receive increased revenues as a result. In that sense, the rule could have favorable economic consequences for firms that choose to innovate.

Risks:

None. Both establishments choosing to use innovative processes and those choosing to follow the ''safe harbors'' will be required to achieve in their finished products levels of food safety equivalent to that which is currently required.

Timetable:

Action	Date	FR Cite
NPRM	05/02/96	61 FR 19564
NPRM Comment Period End	09/09/96	
Final Action	01/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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BILLING CODE 3410-90-F

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

Sustainable, long-term economic growth is a central focus of the President's policies and priorities. The mission of the Department of Commerce is to promote job creation, economic growth, sustainable development, and improved living standards for all Americans by working in partnership with business, universities, communities, and workers to:

- Build for the future and promote U.S. competitiveness in the global marketplace by strengthening and safeguarding the Nation's economic infrastructure;
- Keep America competitive with cutting-edge science and technology and an unrivaled information base; and
- Provide effective management and stewardship of our Nation's resources and assets to ensure sustainable economic opportunities.

The Commerce mission statement, containing our three strategic themes, provides the vehicle for understanding Commerce's aims, how they interlock, and how they are to be implemented through our programs. Working collectively, the bureaus of the Department (including the Office of the Secretary) developed it with the intent that it serve as both a statement of departmental philosophy and as the guiding force behind the Department's programs.

The importance that this mission statement and these strategic themes have for the Nation is amplified by the vision they pursue for America's communities, businesses, and families. Commerce is the smallest cabinet agency, yet our presence is felt and our contributions are found in every State.

The Commerce Department touches Americans daily in many ways—we make possible the weather reports that all of us hear every morning; we facilitate the technology that all of us use in the workplace and in the home each day; we support the development, gathering, and transmitting of information essential to competitive business; we make possible the diversity of companies and goods found in America's (and the world's) marketplace; we support environmental and economic health for the communities in which Americans live.

The Department of Commerce has a clear and powerful vision for itself, for its role in the Federal Government, and for its roles supporting the American people, now and in the future. We confront the intersection of trade promotion, civilian technology, economic development, sustainable development, and economic analysis, and we want to provide leadership in these areas for the Nation. As a Department, we aspire to provide programs and services that serve our country's business, communities, and families as initiated and supported by the President and the Congress. We are dedicated to making those programs and services as effective as possible and to be delivered in cost-effective ways. We seek to function in close concert with other agencies having complementary responsibilities so that, collectively, our impact can be accurate and powerful. We seek to meet the needs of our customers quickly and efficiently with the programs, information, and services they require and deserve.

As a permanent part of the Federal Government, but serving an Administration and Congress that can vary with election results, we seek to serve the unchanging needs of the Nation, according to the priorities of the President and the Congress. We are able to do this effectively by functioning in accordance with the legislation that undergirds our programs and by working closely with the President and the committees in Congress that have program and financial oversight for our programs.

In his 1996 State of the Union message, the President said: ''Now we move to an age of technology, information, and global competition. These changes have opened vast new opportunities, but they have also presented us with stiff challenges.'' The Vice-President sounded a similar call: ''Americans also understand that in a global economy, the only way to maintain America's competitive edge is to lead the world in innovation and new technologies. Investments in science and technology mean better jobs, higher wages, and a growing economy.'' In the 1997 State of the Union address, the President said: ''Over the last 4 years, we have brought new economic growth by investing in our people, expanding our exports, cutting our deficits, creating over 11 million new jobs, a 4-year record.... We face no imminent threat, but we do have an enemy. The enemy of our time is inaction.'' He continued: ''To prepare America for the 21st century, we must harness the powerful forces of science and technology to benefit all Americans.''

These words help to make clear the role of the Commerce Department: To help keep America as the world's technology leader; to help American companies compete globally; to enable communities to conquer economic challenges; to stimulate the growth of high-pay, high-quality jobs; to preserve and protect the environment and our natural resources, as well as safeguarding the public from the adverse impacts of undesirable environmental changes; and to provide information vital for good business and policy decisions.

Commerce promotes and expedites American exports, helps nurture business contacts abroad, protects our firms from unfair foreign competition, and makes how-to-export information accessible to small- and mid-sized companies throughout the Nation so that market opportunities span the globe.

Commerce encourages development in every community, by clearing the way for private sector growth by building or rebuilding economically deprived and distressed communities. We promote minority entrepreneurship to establish businesses that frequently anchor neighborhoods and create new job opportunities. We work with the private sector to enhance competitive assets.

As the Nation looks to revitalize our industries and communities, Commerce works as a partner with private entities to build America with an eye on the future. So through technology, research and development, and innovation, we are making sure America is on the winning side.

Commerce's considerable information capacities help businesses to understand clearly where our national and world economies are going and to take advantage of that knowledge by planning the road ahead. Armed with this information, businesses can undertake the new ventures, investments, and expansions that make our economy grow.

The capacity for managing the Nation's assets and resources is another key policy driver for Commerce, an essential one in our ability to help the Nation succeed in the future. These activities—ranging from protecting our fisheries to controlling the radio frequency spectrum to protecting intellectual property—affect the economy directly.

The Department of Commerce has instituted the programs and policies that mean cutting-edge, competitive, better

paying jobs. We work everyday 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 its Cabinet-level voice.

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

The vast majority of the Department's programs and activities do not involve regulation. Only one of the Department's 12 operating units—the National Oceanic and Atmospheric Administration (NOAA)—has a regulatory action rising to the level of the most important of the Department's significant regulatory actions planned for the Regulatory Plan year.

Though not principally a regulatory agency, 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.

The Commerce Department is also refocusing on its regulatory mission by taking into account, among other things, the President's regulatory principles. To the extent permitted by law, all preregulatory 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. Moreover, we have made bold and dramatic changes, never being satisfied with the status quo. Over the past 4 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 down-sized, 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.''

When a regulation is no longer needed, the Secretary's standing order is to rescind it. In this light, one of the Secretary's first actions upon confirmation was to direct the Department's regulatory agencies to conduct periodic public meetings with regulated entities at various locations around the country. The purpose of these meetings is to provide regulated entities the opportunity to meet with key agency personnel in order to discuss issues of mutual interest. As a complement to these meetings, the Secretary further directed these agencies to conduct periodic reviews of their regulations to determine which may no longer be necessary and which may need to be updated and revised.

The Secretary has prohibited the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written in simple, plain English and 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.

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 and those that were in need of reinvention. 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 they were necessary and, if so, whether it should be rewritten to make the regulation more streamlined and user-friendly. Additionally, the regulatory review was conducted by each agency with its, as well as the Department's and Administration's, policy and program priorities clearly in mind.

The results of each agency's activities under the President's initiative comprise a total elimination or reinvention of a substantial percentage of the Department's regulations. At the time of the President's announcement, the Department had 2,878 pages of regulatory text in the Code of Federal Regulations (CFR). The Department proposed to eliminate 696 pages of existing regulations in the CFR. As of May 16, 1997, a total of 575 pages of existing regulation had been eliminated by issuance of a final rule and proposed rules to eliminate another 154 pages of existing regulations had been issued. As such, the Department has or will have eliminated 729 pages of regulations. This represents 104 percent of the total promised to the President, and 25 percent of the Department's pages in the CFR. Further, 1,859 pages of regulatory text were designated to be reinvented under the President's initiative. As of May 16, 1997, 1,232 pages of regulation had been reinvented by issuance of a final rule and 477 pages were proposed to be reinvented through issuance of a proposed rule. This activity equals 1709 pages or 90 percent of the amount promised the President and 66 percent of the Department's total pages of regulation.

The totals represent the changes achieved by the Department as a whole. However, as mentioned above, the review was conducted by the individual agencies of the Department. As such, individual agencies within the Department of Commerce should be noted for their contribution to these amounts and the substantive changes they represent. Examples are set forth below:

- The Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements), negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), and the Uruguay Round Agreements Act implementing legislation 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 affected private parties, the Department of Commerce issued a final rule, published on May 19, 1997, which translates the principles of the Antidumping Agreement and the implementing legislation into specific and predictable rules.
  In developing the final rule, the Department took several steps to enhance the regulation's effectiveness and to make them more accessible to affected parties. First, the antidumping and countervailing

duties regulations, previously contained in two separate parts of the Code of Federal Regulations, were consolidated into one part. As antidumping and countervailing duties procedures are so closely related, consolidating those portions of the regulations concerning procedures makes the regulations easier to use and makes readily apparent the identification of those instances where the procedures differ. Second, where possible, the final regulations simplify and streamline the antidumping and countervailing duties process. Finally, and possibly the most important change in the regulations, each section of the final regulations begins with a straightforward ''plain English'' explanation of the provisions of that section. This was done to ensure that non-lawyers could read, understand, and apply the regulations.

- The National Marine Fisheries Service (NMFS), a division of the Commerce Department's National Oceanic and Atmospheric Administration, regulates the United States fishing industry. NMFS regulations implement fishery management plans developed by regional fishery management councils, comprised of Federal, State, and local officials, industry participants, and other interested individuals. Previously, NMFS regulations implementing fishery management plans for particular fisheries were contained in separate parts of title 50 of the Code of Federal Regulations (CFR). As such, it was difficult for fishers to find the rules that governed their fishing activities. Furthermore, the fact that the regulations were contained in separate parts meant that there was a great deal of duplication telling fishers what actions were required and which were prohibited. Finally, because the regulations were separate, many common terms had slightly different definitions, causing confusion.

  In order to correct this situation, NMFS undertook a massive project to consolidate each of the various regulations implementing fishery management plans into CFR parts organized by region. As a result, all regulations implementing fishery management plans under the jurisdiction of each regional fishery management council were placed into a separate part of the Code of Federal Regulations for each council. This means, for example, that a fisher who fishes off the coast of New England need only look at the CFR part pertaining to New England to find all the rules for any fishery in which he or she might want to participate. In addition, these actions streamlined the regulations by eliminating duplicative provisions, harmonizing definitions, and redrafting remaining provisions in ''plain English.'' The effect was to create a body of regulations that are easier to read and simpler to use.

- In addition, NMFS has instituted a ''Fix-It'' Notice (FIN) program for the reduction or waiver of civil penalties under several of the natural resource protection statutes NOAA enforces, including the Marine Mammal Protection Act, the Endangered Species Act, and the Magnuson-Stevens Fishery Conservation and Management Act. Under the FIN program, dozens of minor, first-time violations, which are of a technical nature and which do not have a direct natural resource impact, receive a Fix-It Notice, which allows the violation to be corrected in lieu of a penalty. NOAA's Civil Administrative Penalty Schedule has been amended to reflect the FIN program. Fix-It Notices may be issued by either NOAA enforcement personnel or by U.S. Coast Guard Boarding Officers operating in their deputized capacity. As of April 15, 1997, 186 Fix-It Notices have been issued in lieu of penalties. Many of the Fix-It Notices were issued to small entities.

  The NOAA Voluntary Compliance Program (VCP), of which the FIN program is one component, was established to find a more efficient and effective way to gain compliance with NOAA regulations by seeking ways to work with the regulated fishing communities, including small entities. Under the VCP, increasing constructive communication, honing community problem-solving skills, and providing education in understanding NOAA regulations are key to the success of the program. NOAA's Office of Enforcement formally designated a select group of Fishery Patrol Officers as Voluntary Compliance Team Leaders to lead proactive compliance efforts within the regions. These officers, who are trained in community policing philosophies and problem-oriented policing strategies, administer the program and serve as Voluntary Compliance Program technical advisors. The overall goal of the VCP team is to work with the regulated communities to strengthen NOAA's stewardship of natural resources.

Description of Agency Regulations

National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration 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 commercial 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.

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.

Magnuson-Stevens Act Rulemakings

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. 3- to 200-mile Exclusive Economic Zone (EEZ). 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 a FMC, the Magnuson-Stevens Act places stringent deadlines upon NMFS in 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-Stevens 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-Stevens 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 problems 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 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.

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

The Magnuson-Stevens Act contains ten national standards against which fishery management measures are judged. NMFS has supplemented the standards with guidelines interpreting each standard and is currently in the process of updating and adding to those guidelines. 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.

Licensing of Private Commercial Remote Sensing Satellite Systems

NOAA/NESDIS is planning to issue proposed regulations revising its procedures governing the licensing of private commercial Earth remote-sensing space systems under title II of

the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 et seq. (1992 Act).

Title II of the 1992 Act requires that any person subject to the jurisdiction or control of the United States obtain a license from the Secretary of Commerce before operating a private remote sensing space system. The authority to issue licenses has been delegated to the Administrator of NOAA and redelegated to the Assistant Administrator for Satellite and Information Services.

On July 10, 1987, NOAA published final regulations implementing title IV of the Land Remote Sensing Act of 1984 (the 1984 Act) setting forth the procedural requirements for obtaining a license. In 1988, the Radio Television News Directors Association (RTNDA) filed a Petition for Rulemaking requesting NOAA to reopen these regulations in light of the President's January 5, 1988, Decision Directive encouraging commercial space development. On January 18, 1989, NOAA responded to this petition, agreeing to reopen the regulations and incorporate certain principles favorable to commercial development that were consistent with the directive. See 54 FR 1945.

Shortly thereafter, Congress began to review the 1984 Act and, on October 28, 1992, enacted the 1992 Act, which repealed and succeeded the 1984 Act. The 1992 Act made significant changes to the 1984 Act, particularly with regard to the latter's requirement that all unenhanced data must be provided on a nondiscriminatory basis. The 1992 Act also provided for judicial review of certain licensing and enforcement actions. NOAA has issued ten licenses under the regime established in the 1992 Act.

On March 9, 1994, the President issued a Policy Decision to ''support and enhance U.S. competitiveness in the field of remote sensing space capabilities, while at the same time protecting U.S. interests in national security and international obligations.'' This policy established a number of policies that promote an appropriate balance between these interests. Specifically, the President's policy announced the goal of enhancing U.S. competitiveness in a market that is projected to be worth approximately $2 billion worldwide by the year 2000, while at the same time addressing the national security concerns brought up by other Government agencies. The President's policy covers foreign access to remote sensing systems, technology, products, and data. It states that there is a presumption that systems whose capabilities are already available in the global marketplace will be ''favorably considered.'' It also elaborated eight more conditions that are to be applied to any license. The most significant of these conditions are:

1) During periods when national security or international obligations and/or foreign policies may be compromised, as defined by the Secretary of Defense or the Secretary of State, respectively, the Secretary of Commerce may, after consultation with the appropriate agencies, require the licensee to limit data collection and/or distribution by the system to the extent necessitated by the given situation. Decisions to impose such limits only will be made by the Secretary of Commerce in consultation with the Secretary of Defense or Secretary of State, as appropriate. Disagreements between Cabinet Secretaries may be appealed to the President.

2) That the licenses are not subject to foreign ownership, above a specified threshold, without the explicit permission of the Secretary of Commerce.

3) Licensees must notify the U.S. Government of its intent to enter into significant or substantial agreements with new foreign customers. Interested agencies are to be given advance notice of such agreements to allow them to review the proposed agreement in light of national security, international obligations, and foreign policy concerns. The President's policy stated that the definition of a significant or substantial agreement, as well as the time frames and other details of this process, were to be defined by the Commerce Department in regulations.

On December 4, 1995, a Notice of Inquiry and Request for Public Comment was published in the **Federal Register**, wherein NOAA sought public comment to decide whether and to what extent the 1987 regulations needed revision in light of the President's Policy and the 1992 Act and, if so, which issues should be addressed. NOAA received seven sets of comments. Additionally, NOAA held a public hearing at the Department of Commerce on June 14, 1996, at which it received additional input from interested parties. The main theme that emerged at the public hearing was the need for transparency and predictability in the regulations.

The proposed regulations would update the 1987 regulations to reflect the above described intervening events and information gathered through the public process, as well as the experience gained during recent licensing procedures. The intent of the proposed regulations would be to help promote the development of the commercial remote sensing industry by keeping Government oversight to the minimum necessary to ensure protection of U.S. national security and foreign policy interests and by making that role predictable and transparent to the affected applicants and licensees. An underlying premise is that the long-term national security and foreign policy interests of the United States are best served by helping the U.S. industry to lead this emerging market.

The proposed regulations incorporate the basic regulatory principle that any restrictions on a licensee, including those required for national security and foreign policy purposes, must be the least burdensome possible to achieve the stated objective. Moreover, the proposed rule would seek to establish predictable standards by which industry will know when their activities may be limited. Further, the proposed rule would establish a notice mechanism for allowing up to 49 percent foreign ownership in the licensee and monitoring domestic investment so that control of the remote-sensing system cannot be transferred without a formal amendment to the license. As required by the President's 1994 policy, the proposed rule would define what foreign agreements are significant or substantial and must be submitted for review. Finally, the proposed rule would set clear time frames for agency action in reviewing a license application or significant or substantial agreement and require specific enumerated objections from dissenting agencies. Agency objections would be reviewable by an administrative law judge.

DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

14. LICENSING OF PRIVATE COMMERCIAL REMOTE-SENSING SATELLITE SYSTEMS

Priority:

Other Significant

Legal Authority:

15 USC 5601 et seq

CFR Citation:

50 CFR 960.1 et seq

Legal Deadline:

None

Abstract:

The proposed regulations would update the 1987 regulations to reflect the above-described intervening events and information gathered through the public process, as well as the experience gained during recent licensing procedures. The intent of the proposed regulations would be to help promote the development of the commercial remote-sensing industry by keeping Government oversight to the minimum necessary to ensure protection of U.S. national security and foreign policy interests and by making that role predictable and transparent to the affected applicants and licensees. An underlying premise is that the long-term national security and foreign policy interests of the United States are best served by helping the U.S. industry to lead this emerging market.

Statement of Need:

On July 10, 1987, NOAA published final regulations implementing title IV of the Land Remote Sensing Act of 1984 (the 1984 Act) setting forth the procedural requirements for obtaining a license. In 1988, the Radio Television News Directors Association (RTNDA) filed a Petition for Rulemaking requesting NOAA to reopen these regulations in light of the President's January 5, 1988 Decision Directive encouraging commercial space development. On January 18, 1989, NOAA responded to this Petition, agreeing to reopen the regulations and incorporate certain principles favorable to commercial development that were consistent with the Directive (see 54 FR 1945).

Shortly thereafter, Congress began to review the 1984 Act and, on October 29, 1992, enacted the 1992 Act, which repealed and succeeded the 1984 Act. The 1992 Act made significant changes to the 1984 Act, particularly with regard to the latter's requirement that all unenhanced data must be provided on a nondiscriminatory basis. The 1992 Act also provided for judicial review of certain licensing and enforcement actions. NOAA is planning to issue proposed regulations revising its procedures governing the licensing of private commercial Earth remote-sensing space systems under title II of the Land Remote Sensing Policy Act of 1992, 15 USC 5601 et seq (1992 Act).

Summary of the Legal Basis:

Title II of the 1992 Act requires that any person subject to the jurisdiction or control of the United States obtain a license from the Secretary of Commerce (Secretary) before operating a private remote sensing space system. The authority to issue licenses has been delegated to the Administrator of NOAA and redelegated to the Assistant Administrator for Satellite and Information Services.

Alternatives:

The proposed regulations incorporate the basic regulatory principle that any restrictions on a licensee, including those required for national security and foreign policy purposes, must be the least burdensome possible to achieve the stated objective. Moreover, the proposed rule would seek to establish predictable standards by which industry will know when their activities may be limited. Further, the proposed rule would establish a notice mechanism for allowing up to 49 per cent foreign ownership in the licensee and monitoring domestic investment so that control of the remote-sensing system can not be transferred without a formal amendment to the license. As required by the President's 1994 policy, the proposed rule would define what foreign agreements are significant or substantial and must be submitted for review. Finally, the proposed rule would set clear time frames for agency action in reviewing a license application or significant or substantial agreement and require specific enumerated objections from dissenting agencies. Agency objections would be reviewable by an administrative law judge.

The fundamental goal of the proposed rule will be to support and enhance U.S. industrial competitiveness in the field of remote-sensing space capabilities while at the same time protecting U.S. national security and foreign policy interests. The measures included in the proposed rule will be those necessary to protect U.S. interests. The alternative to the measures proposed would be the establishment of national security and foreign policy controls that would hinder or prevent growth of the commercial market or allowing unrestricted commercial operations that could harm U.S. national security and foreign policy interests.

Anticipated Costs and Benefits:

The intent of the proposed regulations would be to help promote the development of the commercial remote-sensing industry by keeping Government oversight to the minimum necessary to ensure protection of U.S./national security and foreign policy interests and by making that role predictable and transparent to the affected applicants and licensees. An underlying premise is that the long-term national security and foreign policy interests of the United States are best served by helping the U.S. industry to lead this emerging market. Failure to provide a regulatory regime which nurtures and fosters the development of this high-skilled, high-wage industry is likely to result in the United States losing not only its advantage in this technology, but also a great percentage of the projected growth in economic value of this industry. The costs of the licensing procedures would be borne, for the most part, by the Federal Government and would not be significant.

Timetable:

Action	Date	FR Cite
ANPRM	12/04/95	60 FR 62054
Notice of Public Meeting	05/14/96	61 FR 24480
NPRM	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 3510-BW-F

DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department, consisting of three military departments (Army, Navy, and Air Force), nine unified combatant commands, 15 Defense agencies, and nine DoD field activities. It has over 1,430,000 military personnel and 760,000 civilians assigned as of May 31, 1997, and over 500 military installations and properties in the continental United States, U.S. territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order (E.O.) 12866 ''Regulatory Planning and Review'' of September 30, 1993.

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

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

The regulatory program within DoD fully incorporates the provisions of the President's priorities and objectives under E.O. 12866. Promulgating and implementing the regulatory program throughout DoD presents a unique challenge to the management of our regulatory efforts.

Coordination

Interagency

DoD annually receives regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations are reviewed, and comments are forwarded to the Office of Management and Budget. The system is working in the Department, and the feedback from the Defense components is most encouraging, since they are able to see and comment on regulations from the other agencies before they are required to comply with them. The coordination process in DoD continues to work as outlined in E.O. 12866.

Internal

Through regulatory program points of contact in the Department, we have established a system that provides information from the Vice President and the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system can provide feedback from DoD regulatory personnel to the Administrator, OIRA. DoD continues to refine its internal procedures, and this ongoing effort to improve coordination and communication practices is well received and supported within the Department.

Overall Priorities

The Department of Defense needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done at a time when there is significant ongoing downsizing in the Department, and it must react to the contradictory pressures of providing more services with fewer resources.

The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in E.O. 12866 as amplified below.

Problem Identification

Congress typically passes legislation to authorize or require an agency to issue regulations and often is quite specific about the problem identified for correction. Therefore, DoD does not generally initiate regulations as a part of its mission.

Conflicting Regulations

DoD plans to issue one significant regulation this year, and the probability of developing conflicting regulations is low. Conversely, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist, using the coordination processes that exist in the DoD and other Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and without the Department.

Alternatives

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality-of-life, and others to achieve the desired regulatory results.

Risk Assessment

Assessing and managing risk is a high priority in the DoD regulatory program. The Department is committed to risk prioritization and an ''anticipatory'' approach to regulatory planning that focuses attention on the identification of future risk. Predicting future regulatory risk is exceedingly difficult due to rapid introduction of new technologies, side effects of Government intervention, and changing societal concerns. These difficulties can be mitigated to a manageable degree through the incorporation of risk prioritization and anticipatory regulatory planning into DoD's decisionmaking process, which results in an improved regulatory process and increases the customer's understanding of risk.

Cost-Effectiveness

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. When a regulation is required, DoD considers incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public, Government, and regulated entities, using the best available data or parametric analysis methods, in the

cost-benefit analysis and the decisionmaking process.

Cost-Benefit

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

Information-Based Decisions

The Defense Department uses the latest technology to provide access to the most current technical, scientific, and demographic information in a timely manner through the world-wide communications capabilities that are available on the ''information highway.'' Realizing that increased public participation in the rulemaking process improves the quality and acceptability of regulations, DoD is committed to exploring the use of Information Technology (IT) in rule development and implementation. IT provides the public with easier and more meaningful access to the processing of regulations. Furthermore, the Department endeavors to increase the use of automation in the Notice and Comment rulemaking process in an effort to reduce time pressures in the regulatory process. For example, the proposed rule concerning munitions was developed with extensive input from the public and other Federal agencies. A draft version of the rule was placed on the World Wide Web, meetings with representatives from State organizations, meetings with public groups, and meetings with other Federal agencies were critical in the formulation of the current version of the proposed rule.

Performance-Based Regulations

Where appropriate, DoD is incorporating performance-based standards that allow the regulated parties to achieve the regulatory objective in the most cost-effective manner.

Outreach Initiatives

DoD endeavors to obtain the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory efforts. Historically, this has included such activities as receiving comments from the public, holding hearings, and conducting focus groups. This reaching out to organizations and individuals who are affected by or involved in a particular regulatory action remains a significant regulatory priority of the Department and, we feel, results in much better regulations.

Coordination

DoD has enthusiastically embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. Annually, DoD receives regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD components indicates that this communication among the Federal agencies is a major step forward in improving regulations and the regulatory process, as well as in improving Government operations.

Minimizing Burden

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition area. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action. But, in coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD is initiating significant reforms in acquisition so as to effect major reductions in the regulatory burden on personnel in Government and the public sectors.

As part of the fiscal year (FY) 1996 information collection budget submitted to the Office of Management and Budget, DoD prepared and implemented an Information Streamlining Plan (ISP): A multiyear strategy for reducing the paperwork burden imposed on the public. The plan identified the 15 largest information collections in the Department with specific goals and timetables for reduction. This plan shows that DoD has met and will exceed the goals set forth in the Paperwork Reduction Act, which requires a 25 percent reduction in each agencies' burden by the end of FY 1998. DoD has already achieved a 25 percent reduction at the end of FY 1996. In addtion, DoD anticipates a 27 percent burden hour reduction for FY 1997 and FY 1998, resulting in an estimated cumulative total of a 52 percent reduction in the paperwork burden from DoD's FY 1995 baseline. The bulk of this reduction will be achieved through acquisition reforms resulting from the elimination of data delivery burdens imposed on contractors. DoD continues to actively work on further reductions. For example, one significant reduction in the burden imposed on the public was achieved as a result of the review of the information collection requirement in support of the Department of Defense acquisition process, solicitation phase. This information collection requirement pertains to information that an offeror must submit to DoD in response to DoD solicitations not covered by another OMB clearance. As a result of recent initiatives to streamline the acquisition process and increased use of enhanced information technology techniques, DoD reduced the burden hours imposed on the public under this information collection requirement by an estimated 15 million hours per year.

Plain English

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

DoD recognizes that it has a responsibility for drafting clearly written rules that are reader-oriented and easily understood. Rules will be written for the customer using natural expressions and simple words. Stilted jargon and complex construction will be avoided. Clearly written rules will tell our customers what to do and how to do it. DoD is committed to a more customer-oriented approach and uses plain English rules, thereby improving compliance and reducing litigation.

In summary, the rulemaking process in DoD should produce a rule that addresses an identifiable problem, implements the law, incorporates the President's policies defined in E.O. 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary. Moreover, the proposed rule or the elimination of a rule should simply make sense.

Specific Priorities

For this regulatory plan, there are five specific DoD priorities, all of which reflect the established regulatory principles. One of these, ''Closed, Transferred, and Transferring Ranges Containing Military Munitions,'' which was withdrawn and resubmitted in 1997, is a significant regulatory action as defined by E.O. 12866. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulation that incorporate not only the provisions of the President's priorities and objectives under the Executive order but also those of the National Performance Review, dated September 1993.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the five priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning base closures, wetlands, acquisition, health care delivery, and munitions ranges.

Base Realignment and Closure (BRAC) Activities

During FY 1998, the Base Closure and Community Reinvestment (BCCR) Office is not proposing any significant regulations as defined by E.O. 12866. BCCR will, however, be publishing two rules that make further refinements to the base realignment and closure process. The first rule establishes procedures for implementing a new real property transfer authority that allows base closure property that is still needed by DoD or another Federal agency to be transferred to a Local Redevelopment Authority (LRA). As a condition of the transfer, the LRA is required to lease the property back to DoD or the Federal agency at no cost. This authority, called a ''leaseback,'' allows an LRA to have certainty over the future use of the property (they will own it and can use it when the Federal component vacates) while still ensuring that continuing Federal property needs are met. On February 21, 1997, the Department published a proposed rule promulgating policies and procedures for using the leaseback authority. The rule was open for public comment until April 22, 1997, during which time the Department received numerous public comments. These comments are being reviewed by the Department and a final rule is scheduled for publication by the end of the calendar year.

The second rule will amend the Department's final rule implementing the various components of the President's five-point plan to assist closure-impacted communities. This amendment will provide technical revisions, as well as removing the 5-year limitation on interim leases in response to a statutory change.

Preserve Quality and Quantity of Wetlands

During FY 1998, the U.S. Army Corps of Engineers is not proposing any significant regulations as defined by E.O. 12866. The Office of the Assistant Secretary of the Army (Civil Works) and the Corps will propose and complete two regulations initiated as part of the President's August 24, 1993, Wetlands Protection Plan and the President's 1995 Regulatory Reinvention Initiative. The wetlands protection plan provides for a fair, flexible, and effective approach to protecting America's wetlands through both regulatory and nonregulatory mechanisms. The regulatory reinvention initiative reinforced those provisions and included additional regulatory reform and streamlining provisions.

During 1997 and 1998, the Corps will propose and finalize three regulations pursuant to its authorities under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. The first regulation establishes the wetland delineator certification program. This regulation was proposed on March 14, 1995, and will be finalized by the end of 1997. This program provides for training and certification of individuals, as provided for by section 307(e) of the Water Resources Development Act of 1990, to submit for approval, wetland delineations in accordance with the current Federal wetland delineation manual. Individuals can be certified as meeting certain standards, resulting in an expedited decision by the Corps on their submitted wetland delineation. The goal of the certification program is to improve the quality of consultant-prepared wetland delineations that are submitted to the Corps so that they can be reviewed and approved expeditiously.

The second regulation will establish an administrative appeal process whereby permit applicants and landowners can appeal permit denial decisions and jurisdictional determinations. This regulation was proposed on July 19, 1995, and will be finalized in 1997. The administrative appeal process will increase fairness to applicants and landowners in the permitting process by establishing a recourse to Corps permit denial decisions and jurisdictional determinations without pursuing litigation. The process will also provide for third-party involvement when the Corps reconsiders a previous denial. The final regulation will be a consolidation of the Corps rulemaking and guidance, including the above regulations, that have been issued since the last consolidation of regulations dated November 13, 1986. The regulations will also be reorganized to make them clearer and easier to use.

Reform Defense Acquisition

The Department continues its efforts to reengineer its acquisition system to achieve its vision of acquisition system that is recognized as being the smartest, most efficient, most responsive buyer of best value goods and services that meet the warfighter's needs from a globally competitive base. To achieve this vision, the Department will focus in the acquisition regulations arena during this next year on implementing and institutionalizing initiatives that may include additional changes to existing and recently modified regulations to ensure that we are achieving the outcomes we desire (continuous process improvement). The Department will focus on reengineering the process by which it acquires services, focusing on the use of performance-based work statements. The Department also intends to improve its use of electronic commerce/electronic data interchange.

The Department is committed to acquisition reform and continues to make significant improvements in this area, consistent with the National Performance Review and E.O. 12866. DoD led the Governmentwide effort to implement the Federal Acquisition Streamlining Act of 1994 (FASA) in the Federal Acquisition Regulation (FAR). The legislation provided comprehensive authority to facilitate commercial item acquisition and simplified and streamlined many contract actions. Subsequent legislation, the Clinger-Cohen Act, enacted into law on February 10, 1996, provided further authority to facilitate commercial item acquisition and simplify and streamline contract actions. DoD led the Governmentwide effort to implement this legislation in the FAR and in the Defense FAR Supplement, as appropriate.

In addition, DoD is leading the following initiatives to reform the acquisition process:

- Rewrite of the FAR part 15 Contracting by Negotiation. This is the method used to award the bulk of our acquisition dollars. The goals of the FAR part 15 rewrite are to infuse innovative techniques into the source selection process, simplify the process, and facilitate the acquisition of best value. The rewrite emphasizes the need for contracting officers to use efficient acquisition methods and minimizes burdens on industry and Government contracting officers.
- Rewrite of FAR part 45 Government Property. The goals of the FAR part 45 rewrite are to reduce contractor and Government costs to manage property in the possession of contractors by streamlining recordkeeping requirements; eliminating requirements to track, report, and inventory property valued at $1,500 or less during contract performance; replacing five inventory schedules with a single inventory disposal schedule; and shortening screening times prior to property disposal. The FAR part 45 rewrite also encourages the dual use of Government property by introducing commercial rental practices and reducing property rental costs.
- Review and rewrite the FAR guidance pertaining to progress payments. The goals of this initiative are to simplify the progress payments process and to minimize the burdens imposed on contractors and contracting officers.
- Revise the Defense FAR Supplement to authorize the use of industry-standard guidelines for earned value management systems. Since DoD's cost/schedule control systems criteria are considered to be equivalent to earned value management systems, contractors' previously approved cost/schedule control systems will be acceptable under the earned value management systems criteria. It will no longer be necessary for DoD contractors to create or maintain DoD-unique cost/schedule control systems at facilities where acceptable earned value management systems exist.

Improve Health Care Delivery in the Defense Department

DoD operates an extensive system of military medical treatment facilities, in support of two missions: Wartime readiness and peacetime benefits. The readiness mission maintains the peacetime health of active duty personnel and makes preparations to attend the sick and wounded in war; the benefits mission provides a health benefit as a condition of service to DoD's eligible beneficiaries, including dependents of active duty personnel and retired military personnel and their dependents and survivors.

The principal health-related regulatory publications of the Department involve CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services (32 CFR part 199). Through CHAMPUS, DoD shares in the cost of civilian care obtained by eligible beneficiaries when services are unavailable in military medical treatment facilities. CHAMPUS regulations comprehensively address such issues as eligibility, benefits, authorized providers, claims payment, appeals procedures, and the like. They also address TRICARE, a major health care initiative intended to improve the management and integration of health care delivery in military medical treatment facilities and CHAMPUS by offering enrollment in an HMO-like option, and two options that do not require enrollment: A preferred provider-like option and the standard program. TRICARE is designed to increase access to health services, control health care costs, and strengthen quality assurance activities.

Changes to the CHAMPUS regulations are coordinated by DoD with the Departments of Transportation (U.S. Coast Guard), Health and Human Services (Public Health Service), and Commerce (National Oceanographic and Atmospheric Administration), which also have beneficiaries eligible for CHAMPUS.

Amendments to the CHAMPUS regulations generally focus on program changes arising from revisions to the program's statutory base or from DoD initiatives to improve the program. Over the next year, changes in management of high-cost care, revisions to reimbursement approaches for providers, and streamlining administrative requirements for providers and beneficiaries will be among DoD's regulatory priorities.

Closed, Transferred, and Transferring Ranges Containing Military Munitions

The range rule identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. The rule contains a five-part process that is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, then a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted, and an administrative close-out phase also is included.

This regulation is proposed under the authorities of the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701 et seq.; the DoD Explosive Safety Board (DDESB), 10 U.S.C. 172 et seq.; and section 104 of the CERCLA, 42 U.S.C. 9601 et seq., as delegated to the DoD by E.O. 12580 (59 FR 2923, January 23, 1987).

The proposed rule was developed with extensive input from the public and other Federal agencies. A draft version of the rule was placed on the World Wide Web; meetings with representatives from State organizations, meetings with public groups, and meetings with other Federal agencies were critical in the formulation of the current draft version of the proposed rule.

DOD—Office of the Secretary (OS)

PROPOSED RULE STAGE

15. • CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Priority:

Other Significant

Legal Authority:

10 USC 172 et seq; 10 USC 2701 et seq; 42 USC 9601 et seq; EO 12580

CFR Citation:

32 CFR 178

Legal Deadline:

None

Abstract:

The proposed Department of Defense (DOD) rule is in response to EPA's ''sunset'' provision. The DOD proposal addresses the unique explosives safety considerations associated with military munitions (including UXO) and the need for environmental protection, and it does so under DERP, 10 USC 172

et seq, and CERCLA authorities rather than under RCRA.

Statement of Need:

The proposed DOD rule identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. The rule contains a five-part process that is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (which may include various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, then a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted in accordance with a schedule specified in the rule, and an administrative close-out phase also is included.

Summary of the Legal Basis:

This regulation is proposed under the authorities of the Defense Environmental Restoration Program (DERP) in 10 USC 2701 et seq; the DOD Explosive Safety Board (DDESB) in 10 USC 172 et seq; and 42 USC 9601, section 104 et seq (CERCLA), as delegated to the DOD by EO 12580 (59 FR 2923, January 23, 1987).

Alternatives:

A single, specific process is necessary to avoid confusion and to ensure that effective response activities are undertaken in a fiscally responsible manner. That process must recognize and consider the unique explosives safety hazards associated with military munitions, and concomitantly, with any response activity conducted on closed, transferred, or transferring ranges. The process must ensure that the public and regulators are fully informed and engaged at every stage of the process, including substantial and meaningful public and regulator participation in the response selection and implementation. The process must be accessible and consistent, and lead to informed decisionmaking.

DOD considered several alternatives to address military munitions on closed, transferred, or transferring ranges. In doing so, DOD examined the relative merits of conducting responses under any one of the statutorily based processes (DERP, CERCLA, RCRA, 10 USC 172 et seq) or the status quo in meeting the goal of establishing a single, logical, and comprehensive process that addresses explosives safety, human health, and environmental concerns.

Anticipated Costs and Benefits:

Implementing the proposed rule equates to national incremental costs of $709,000,000 over a period of 10 to 15 years with estimated annual costs of $71,000,000 per year for a 10-year period or $47,000,000 per year for a 15-year period. These costs are less that those of other alternatives. Benefits include: increased protection of the public; increased protection to unexploded ordnance response workers; consistent process; increased public involvement in responses; substantial role for regulatory agencies; and substantial role for other Federal land managers. Implementing a comprehensive approach to respond to these ranges while ensuring public safety, worker safety, and protection of human health and the environment is essential and would be a beneficial outcome of this rule.

Risks:

The degree of risk to the public is lessened by assuring a single, comprehensive process to respond to potential risks to safety, human health, and the environment at all closed, transferred, and transferring ranges. Public and regulatory acceptance of the rule is heightened through pre-proposal dialogue with stakeholders. DOD will continue to work with both public and governmental stakeholders and regulators in developing this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
Public Meetings Begin	10/00/97	
NPRM Comment Period End	11/00/97	
Public Meetings End	11/00/97	
Final Action	05/00/98	
Final Action Effective	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Tribal, Federal

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BILLING CODE 5000-04-F

DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory and Deregulatory Priorities

General

The Department supports States, local communities, institutions of higher education, and others to improve education nationwide. The Department's roles include leadership and financial support for education to agencies, institutions, and individuals in situations where there is a national interest; monitoring and enforcing of civil rights in the area of education; and supporting research, evaluation, and dissemination of findings to improve the quality of education. ED works in partnership with parents, neighborhoods, schools, colleges, educators, business leaders, communities, and States across the country.

Since the announcement of President Clinton's ''Regulatory Reinvention Initiative'' on March 4, 1995, the Department has conducted a comprehensive review of its programs, legislation, and implementing regulations to enhance partnerships, increase flexibility, and improve accountability. To date the Department has eliminated 36 percent of its regulations published in the Code of Federal Regulations and reinvented another 35 percent, for a total of 71 percent. An additional 25 percent of the Department's regulations will be eliminated or reinvented as a result of recently enacted or currently pending legislation.

The Department has accomplished this through a departmentwide effort that recognizes that students and educational partners are best served by regulations that focus on critical steps and results, allow as much flexibility as possible consistent with statutory and program goals, and impose the least possible burden.

As part of its regulatory reinvention efforts, the Department also seeks to draft all of its regulations and related documents clearly and concisely in plain language, so that potential program beneficiaries will better understand benefits and requirements.

Woven throughout the Department's reinvention is a commitment to provide quality customer service in the spirit of continuous improvement to assure that we are truly ''putting people first.'' The Department listens to our customers to identify their needs and incorporates their suggestions into program goals and strategies.

In order to provide information and support enhanced exchange, the Department instituted 1-800-USA-LEARN to connect our customers to a ''one-stop-shopping'' center for information about departmental programs and initiatives; 1-800-4FED-AID for information on student aid; and an on-line library of information on education legislation, research, statistics, and promising programs. More than 10,000 people take advantage of these resources every week.

The Department has forged effective partnerships with customers and others to develop policies, regulations, guidance, technical assistance, and compliance approaches. The Department has an impressive record of successful communication and shared policy development with affected persons and groups, including parents, representatives of State and local government, institutions of higher education, school administrators, teachers, students, special education and rehabilitation service providers, professional associations, advocacy organizations, business, and labor.

In particular, the Department continues to seek greater and more useful customer participation in its rulemaking activities through the use of consensual rulemaking and new technology. When rulemaking is determined to be absolutely necessary, customer participation is essential and sought at all stages—in advance of formal rulemaking, during rulemaking, and after rulemaking is completed in anticipation of further improvements through statutory or regulatory changes. The Department has expanded its outreach efforts through the use of satellite broadcasts, electronic bulletin boards, and teleconferencing. For example, the Department now invites comments on all proposed rules through the Internet.

The Department is streamlining information collections, reducing burden on information providers involved in ED programs, and making information maintained by the Department easily available to the public. Coordinating similar information collections across programs may be one approach to reduce overlapping and inconsistent paperwork requirements. To the extent permitted by statute, regulations will be revised to eliminate barriers that inhibit coordination across programs (such as by creating common definitions), to reduce the frequency of reports, and to eliminate unnecessary data requirements.

The Department's Principles for Regulating, developed in October 1994 during planning to implement the Improving America's Schools Act of 1994, determine when and how it will regulate. Through aggressive application of the following principles, the Department has eliminated outdated or unnecessary regulations and identified situations in which major programs could be implemented without any regulations or with only limited regulations.

Principles for Regulating

The Department will regulate only if regulating improves the quality and equality of services to the Department's customers, learners of all ages. The Department will regulate only when absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Whether to Regulate:

- When essential to promote quality and equality of opportunity in education.
- When a demonstrated problem cannot be resolved without regulation.
- When necessary to provide legally binding interpretation to resolve ambiguity.
- Not if entities or situations to be regulated are so diverse that a uniform approach does more harm than good.

How to regulate:

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

Regulatory and Deregulatory Priorities for the Next Year

Student Financial Aid Improvements

For student financial aid programs, the Department is continuing the significant improvements that have been made over the past 4 years to reduce paperwork, create less complex applications, and provide faster access to funds. Working closely with the postsecondary education community, the Department is continuing to design new approaches that will reduce burden while maintaining program integrity. The two student financial aid regulations listed in the Department's

regulatory plan for 1998 will 1) require borrowers to make satisfactory repayment arrangements in order to receive the benefits of loan consolidation and 2) eliminate certain differences in the requirements for the Federal Family Education Loan and the William D. Ford Federal Direct Loan Programs.

Individuals with Disabilities Education Act Amendments of 1997

On June 4, 1997, the President signed into law Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997, amending the Individuals with Disabilities Education Act (IDEA). Enactment of these amendments provides an opportunity to consider improvements in all of the regulations implementing the IDEA, including both formula and discretionary grant programs, that would strengthen the Federal effort to give every child a world-class education based on high standards. The Department is also reviewing the impact of these regulations on small entities in accordance with section 610(c) of the Regulatory Flexibility Act. The Secretary has invited public comment on the development of the regulations for educating all children with disabilities in a notice published in the Federal Register on June 27, 1997 (62 FR 35052)

ED—Office of Postsecondary Education (OPE)

PROPOSED RULE STAGE

16. ● STUDENT ASSISTANCE GENERAL PROVISIONS, FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM, AND WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM (PARITY)

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:

20 USC 1071 to 1087-2; 20 USC 1087 et seq

CFR Citation:

34 CFR 668; 34 CFR 682; 34 CFR 685

Legal Deadline:

None

Abstract:

These regulations would eliminate certain differences in requirements for the FFEL and Direct Loan Programs and would modify certain other requirements in order to clarify and update guidance and reduce burden.

Statement of Need:

Section 455(a) of the Higher Education Act of 1965, as amended, provides that, unless otherwise specified in statute, Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, and Federal Direct PLUS Loans shall have the same terms, conditions, and benefits, and be available in the same amounts, as Federal Stafford Loans, Federal Unsubsidized Stafford Loans, and Federal PLUS Loans.

Summary of the Legal Basis:

The Secretary will issue these regulations under the applicable legal authorities for the programs.

Alternatives:

The proposed changes reflect statutory requirements that must be incorporated in the regulations or changes that would clarify the regulations and reduce burden.

Anticipated Costs and Benefits:

These regulations would reduce administrative burden and increase flexibility by clarifying and conforming requirements in the FFEL and Direct Loan Programs. There are no significant additional costs associated with these regulations.

Risks:

These proposed regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
Final Action	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

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ED—OPE

17. ● FEDERAL PERKINS LOAN PROGRAM, FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM, AND WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM (CONSOLIDATION)

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:

20 USC 421 to 429; 20 USC 1071 to 1087-2; 20 USC 1087a et seq

CFR Citation:

34 CFR 674; 34 CFR 682; 34 CFR 685

Legal Deadline:

None

Abstract:

These regulations would require borrowers to make satisfactory repayment arrangements on defaulted loans in order to consolidate those loans under the FFEL and Direct Loan Programs. Additionally, for the Direct Loan Program only, the regulations would prohibit the consolidation of defaulted loans in administrative wage garnishment, Federal salary offset, judgment, or litigation.

Statement of Need:

In the preamble discussion to FFEL regulations published on December 1, 1995 (60 FR 61820) the Secretary made a commitment to reconsider the policy of allowing borrowers to consolidate defaulted loans without making any prior payments on these loans, if repayment patterns on the consolidation loans showed an unacceptable level of repeat defaults.

Summary of the Legal Basis:

The Secretary will issue these regulations under the applicable legal authorities for the programs.

Alternatives:

The Department's experience in tracking delinquency rates indicates that borrowers who did not make satisfactory repayment arrangements prior to loan consolidation were more likely to become delinquent on the consolidated loans. Therefore, the Secretary has determined that requiring payments on defaulted loans prior to consolidation is a prudent management decision for the FFEL and Direct Loan Programs.

Anticipated Costs and Benefits:

The regulations would support program integrity and protect Federal funds. The benefits of loan consolidation and the income contingent repayment plan would be denied to some borrowers with defaulted loans.

Risks:

These proposed regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/00/98	
Final Action	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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ED—Office of Special Education and Rehabilitative Services (OSERS)

PROPOSED RULE STAGE

18. ● ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES (SECTION 610 REVIEW)

Priority:

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

Unfunded Mandates:

Undetermined

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:

20 USC 1400 et seq

CFR Citation:

34 CFR 300

Legal Deadline:

None

Abstract:

These regulations would implement the Individuals with Disabilities Education Act Amendments of 1997 (Pub. L. 105-17, enacted June 4, 1997).

Statement of Need:

These regulations would implement new legislation and are expected to reduce regulatory burden and increase flexibility by improving the regulations implementing the Individuals with Disabilities Education Act (IDEA). The Department is also completing its scheduled review of these regulations under section 610(c) of the Regulatory Flexibility Act.

Summary of the Legal Basis:

Pub. L. 105-17, enacted June 4, 1997.

Alternatives:

In addition to implementing new legislation, the purpose of reviewing these regulations is to determine whether there are appropriate alternatives.

Anticipated Costs and Benefits:

Existing regulatory provisions may be eliminated or improved as a result of this review.

Risks:

These proposed regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Notice	06/27/97	62 FR 35052
NPRM	10/00/97	
Final Action	04/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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BILLING CODE 4000-01-F

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory Priorities

The Department of Energy's (DOE) 1997 regulatory plan reflects its continuing commitment to enhance safety, cut costs, reduce regulatory burden, and increase responsiveness to the public. Since 1993, the Department has moved aggressively to eliminate obsolete regulations, reduce regulatory burden, and streamline its regulatory processes, while increasing public involvement. Specifically, the Department has eliminated 33 percent and reinvented 60 percent of its regulations, has made fundamental changes to its contracting practices to improve results at lower cost, has instituted new procedures to fully engage the public in establishing energy efficiency standards for consumer appliances and commercial equipment, and has moved to establish new health and safety requirements through public notice and comment rulemakings.

The Department makes vital contributions to the Nation's welfare through its extraordinary scientific and technical capabilities in energy research, environmental remediation, and national security. Among the Department's top priorities are:

- Enhancing the Nation's energy security by developing and deploying clean and affordable energy supplies and by improving the energy efficiency of our economy;
- Ensuring a safe and reliable nuclear weapons stockpile and reducing the global nuclear danger;
- Cleaning up former nuclear weapons sites and addressing the complex challenge of disposing of nuclear wastes; and
- Leveraging science and technology to advance fundamental knowledge and our country's competitiveness with stronger partnership with the private sector.

While not considered to be a major Federal regulatory agency, the Department's regulatory activities are essential to achieving its critical mission and priorities.

Energy Efficiency Program for Consumer Products and Commercial Equipment

In July 1996, the Department formalized the new policies and procedures for establishing energy efficiency standards for appliances and equipment. The new process provides for greater public input and improved analytical approaches, encourages consensus-based standards that streamline the regulatory process, and reduces the time and cost of developing new standards.

One key element of the new process is the systematic development of rulemaking priorities with input from stakeholders. At least annually, the Department will review, in consultation with interested parties, its priorities and schedules for all efficiency standards activities. The rulemaking process is dynamic and the schedule for and specific actions taken in the conduct of a particular rulemaking may change as new data and analytical results become available.

Rulemakings related to energy efficiency standards and determinations have been categorized as high, medium, or low priority based on public input and the criteria listed in the procedural rule. The schedules in this Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions reflect priorities established with significant input from the public.

In January 1997, the Department established an Advisory Committee on Appliance Energy Efficiency Standards to review annually the implementation of the process improvements and the progress being made on updating appliance and equipment efficiency standards. The Advisory Committee is made up of interested stakeholders and is chaired by the Assistant Secretary for Energy Efficiency and Renewable Energy.

During fiscal year 1997, the Department published a final rule to revise energy efficiency standards for the next generation of refrigerators and freezers. The new efficiency standards will reduce the energy use of a typical refrigerator-freezer by 30 percent. The Department also published a final rule to establish energy efficiency standards for room air conditioners, which will result in a 10 percent energy saving. In addition, the Department conducted several public workshops, including: A workshop to refine the process for determining manufacturer impacts due to energy efficiency standards, a standards workshop on fluorescent lamp ballasts, a screening analysis workshop for water heaters, and a standards workshop for clothes washers. Finally, the Department published several final rules for test procedures. These rules include test procedures for residential furnaces/boilers, vented home heating equipment and pool heaters, fluorescent and incandescent reflector lamps, and clothes washers.

The Department expects to take substantial action during fiscal year 1998 with respect to the high priority rulemakings (i.e., distribution transformers; clothes washers; fluorescent lamp ballasts; water heaters; kitchen ranges, ovens, and microwaves; and residential central air conditioning and central air conditioning heat pumps). Additional information and timetables for these actions are presented below. Information concerning the medium priority rulemakings (i.e., small electric motors and high intensity discharge lamps) and low priority rulemakings (i.e., clothes dryers, dishwashers, mobile home furnaces, residential furnaces and boilers, pool heaters, direct heating equipment, 1-200 HP motors, and fluorescent and incandescent lamps) appears in the Long-Term Action section of the Department's unified agenda.

Nuclear Safety Regulations

The Department is committed to openness and public participation as it addresses one of its greatest challenges—managing the environment, health, and safety risks posed by its nuclear facilities. Two departmental rulemakings on radiation protection (10 CFR parts 834 and 835) will establish additional reporting, monitoring, and discharge requirements and a dose limitation system for protecting the environment and the public, as well as the Department's Federal and contractor workforce. The new nuclear safety management regulation (10 CFR part 830) will codify and strengthen requirements applicable to contractors and subcontractors who manage the Department's nuclear facilities.

In August 1995, the Department published a notice of limited reopening of the comment period to request public comments on the part 830 and part 834 rulemakings. For the most part, the Department has completed the comment resolution process and has addressed the major issues raised by the Defense Nuclear Facilities Safety Board. During this period, the Department undertook an integrated safety management initiative to ensure that safety activities at a DOE site or facility are integrated and appropriate for the work and hazards. One outcome of this initiative, incorporated as part of the contract reform final rule published on June 27, 1997, requires contractors to manage and perform work in accordance with a documented safety management system that satisfies a minimum set of requirements. Part 830 is currently being reviewed to ensure its regulatory

framework is consistent with integrated safety management. By coordinating the issuance of part 830 and the development of integrated safety management, the Department will maximize the efficient use of resources and avoid duplicative or counterproductive efforts. The Department expects to complete final action on parts 830 and 834 by the end of this calendar year and revisions to part 835 in April 1998.

In May 1997, the Department issued a notice of intent to form an advisory committee on beryllium. The purpose of this committee is to provide advice, information, and recommendations for a proposed rulemaking on occupational exposures to beryllium, which the Department expects to publish in August 1998. As an interim measure, the Department has issued a 1-year administrative directive to establish a chronic beryllium disease prevention program that enhances an existing worker protection program.

Contract Reform

In February 1994, the Department issued its report on contract reform, ''Making Contracting Work Better and Cost Less,'' which recommended a number of changes principally in areas affecting the Department's management and operating contractors. Most recently, the Department has taken the following steps to complete the recommended reforms:

- In a final rule published on September 26, 1995, the Department relieved its contractors from the prescriptive tenets of Federal procurement practices (i.e., ''Federal norm'') and allowed them to employ more efficient commercial business practices.
- In a final rule published in June 1997, the Department changed its long-standing policy regarding competition for its management and operating contracts. Under the previous policy, contracts were usually extended. This rulemaking establishes competition as the norm for these contracts by affirming the Department's commitment to competition through a reliance on Governmentwide authorities, rather than unique Department of Energy authorities.
- On June 27, 1997, the Department published a final rule that addressed the remaining key recommendations of the departmentwide contract reform initiative, including: Provision for performance-based management contracting; a revised policy covering reimbursement of costs such as fines, penalties, third-party liability, and property loss; requirements for contractor make-or-buy plans; hiring preferences for displaced workers; procedures for determining the application of laws, regulations, and Department directives to contractors; requirements for a safety management system covering the environment, safety, and health; new controls on contractor overtime management; and a policy that requires DOE contractors to develop and meet diversity performance goals as part of their business operations.

Regulatory Reform

The Department is committed to making its regulations less burdensome, more cost-effective, and more responsive to the needs of our stakeholders. In July 1994, the Secretary of Energy approved sweeping changes to the Department's rulemaking process. Based on results of an employee quality team review, these changes were designed to streamline the Department's rulemaking process, to improve the quality of the Department's rules, and to enhance the public's participation.

In addition, the President's Regulatory Reform Initiative announced in February 1995 directed Federal agencies to review their regulations and determine which could be eliminated or modified. Agencies were asked to conduct a ''page-by-page'' review of existing regulations and to establish plans for eliminating or reinventing existing regulations. The Department integrated the President's directive with an ongoing internal initiative to target existing regulations for modification or elimination. As a result, the Department eliminated 729 of its pages (33 percent) from the Code of Federal Regulations and issued final or proposed rules to reinvent 1273 of its pages (60 percent).

The Department views these actions as a significant step in a continuing process to improve the design and operation of its regulatory programs as it pursues its goal of more effective, less burdensome, and more cost-effective regulations. Some examples of recent improvements include the following:

- *State Energy Program.* On May 14, 1997, the Department published a final rule to consolidate the State Energy Conservation Program and the Institutional Conservation Program. These programs provided grants to the States and institutions, such as schools and hospitals, for a variety of energy conservation measures. Under the consolidated program, the Department will no longer make grants directly to individual institutions but will provide block-like grants to the States for their administration. The rule also removes the prescriptive energy audit procedures that conflict with the President's regulatory reform program. The States will benefit both from having greater control and increased flexibility in the use of the grant monies. This action was taken in direct response to public recommendations on possible improvements in the Department's regulatory programs.
- *National Environmental Policy Act Implementing Regulation.* On July 8, 1996, the Department published a final rule amending its regulation governing compliance with the National Environmental Policy Act (NEPA). By streamlining the process, the amendments will reduce the Department's costs and document preparation time without sacrificing quality. This step is part of an overall plan to save $26 million in the Department's NEPA compliance process over 5 years. This action was taken in direct response to public recommendations on possible improvements in the Department's regulatory programs.
- *Procurement Regulations.* Approximately 3 years ago, the Department began an aggressive effort to review and streamline its acquisition process with the objective of cutting the Department of Energy Acquisition Regulations in half. With the last of three procurement rulemakings published on August 9, 1996, the Department achieved its goal. Over 170 pages of regulations containing excessive and obsolete prescriptive requirements for awarding and administering contracts have been eliminated. As a result, the Department's ability to obtain high quality goods and services on time and at reasonable prices has been enhanced.
- *Financial Assistance Regulation.* On February 26, 1996, the Department published a final rule that reduced the number of steps required for award and administration for many financial assistance actions and the length of time typically required for an applicant to receive an award, to extend an existing award, or to complete all paperwork on expired awards. This was accomplished by raising internal thresholds for approvals, eliminating delays in making awards, and reducing

reporting and closeout procedures. This new regulation will apply to approximately $1.7 billion in grants and cooperative agreements that the Department approves each year.

- *Departmental Directive Reduction Initiative.* Directives provide formal communication of the expectations for performance of work within the Department by Federal employees and contractors. By 1991, the headquarters directives system included 312 overly-prescriptive, duplicative, and often times burdensome directives and a development and approval process that sometimes took over 3 years to issue a document. These directives and the lengthy development process were barriers to efficient work performance in the Department. To address the problem, the Department redesigned its headquarters directives system based on customer input and began implementation in December 1993. The Department also began several reduction efforts. As a result, the number of directives was halved from 312 to 156 by September 1995, representing a 67 percent reduction in the number of pages (from 7,200 to 2,400). The Department eliminated another 22 directives from the headquarters system in fiscal year 1996 representing an additional 14 percent reduction from the previous year. In addition, the Department's Operation's Offices also eliminated 1248 field directives by September 30, 1996, a reduction of 86 percent from the 1993 baseline.
- *Information Collection Burden Reduction.* As of September 1995, the estimated burden imposed by the Department's information collections totaled approximately 5.6 million hours. About 85 percent of the total represented information collections related to procurement activities and the management of the Department's contractor-operated facilities. The remaining 15 percent was associated with various statistical and energy data collections. Through the elimination and streamlining of regulations and internal directives, the Department reduced the estimated burden of its information collections by approximately one million hours or over 16 percent by September 30, 1996. The Department plans to reduce the burden of its information collection activities by an additional one-half million hours by the end of fiscal year 1997 and has initiated a comprehensive review of its information collection activities as a basis for considering further reductions.

DOE—Energy Efficiency and Renewable Energy (EE)

FINAL RULE STAGE

19. ENERGY EFFICIENCY STANDARDS RULEMAKINGS AND DETERMINATIONS FOR HIGH PRIORITY CONSUMER PRODUCTS AND COMMERCIAL EQUIPMENT

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

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 6295

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Statutory, January 1, 1992, (fluorescent lamp ballasts, water heaters, and ranges, ovens and microwave ovens).

Final, Statutory, January 1, 1994, (central air conditioners and heat pumps).

Final, Statutory, May 14, 1996, (clothes washers).

Abstract:

This is the initial review of the statutory standards for fluorescent lamp ballasts, water heaters, ranges, ovens, microwaves, central air conditioners, and heat pumps to determine whether standards need to be amended. This is the second review of the standard levels for clothes washers. A determination will be made on whether standards should be proposed for distribution transformers. These actions are covered by RINs 1904-AA67, 1904-AA75, 1904-AA76, 1904-AA77, 1904-AA84, and 1904-AA85.

Statement of Need:

These rulemakings are required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle cost. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of the Legal Basis:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment and generally requires DOE to undergo rulemakings, at specified times, to determine whether the standard for a covered product should be made more stringent.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were recently announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternative standards. For example, DOE will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs, and benefits of alternative standard levels. In addition, the Department will solicit and consider information on non-regulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Costs and Benefits:

The specific costs and benefits for these rulemakings have not been established because the final standard levels have not been determined. Nevertheless, existing appliance standards are projected to save 23 quadrillion Btu's of energy from 1993 to 2015, resulting in estimated consumer savings $1.7 billion per year in the year 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides in the year 2000. Under the existing standards, the discounted energy savings for consumers are 2.5 times greater than the up-front price premium paid for the appliance.

Risks:

Without appliance efficiency standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing appliance energy efficiency reduces atmospheric emissions as such carbon dioxide and nitrogen oxides. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in a loss of jobs or other adverse economic impacts.

Timetable:

1904-AA67 (Clothes Washers)
ANPRM 11/14/94 (59 FR 56423)
Screening Workshop 11/15/96
Supplemental ANPRM 01/00/98
Impact Workshop 08/00/98
NPRM 12/00/98
Final Action 10/00/99

1904-AA75 (Fluorescent Lamp Ballasts)
ANPRM 09/28/90 (55 FR 39624)
NPRM 03/04/94 (59 FR 10464)
Impact Workshop 03/18/97
Reissue NPRM 08/00/98

1904-AA76 (Water Heaters)
ANPRM 09/28/90 (55 FR 39624)
NPRM 03/04/94 (59 FR 10464)
Screening Workshop 06/24/97
Notice of Availability 01/00/98
Impact Workshop 03/00/98
Reissue NPRM 07/00/98
Final Action 07/00/99

1904-AA77 (Central Air Conditioners and Heat Pumps)
ANPRM 09/08/93 (58 FR 47326)
Screening Workshop 07/00/98
Supplemental ANPRM 04/00/00
NPRM 05/00/01
Final Action 11/00/01

1904-AA84 (Kitchen Ranges, Ovens, and Microwaves)
ANPRM 09/28/90 (55 FR 39624)
NPRM 03/04/94 (59 FR 10464)
Final Action 11/00/97

1904-AA85 (Electric Distribution Transformers)
Determination Notice 12/00/97

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 1904–AA67

DOE—Departmental and Others (ENDEP)

PROPOSED RULE STAGE

20. OCCUPATIONAL PROTECTION PROGRAM FOR EXPOSURES TO BERYLLIUM

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR Not yet determined

Legal Deadline:

None

Abstract:

This action will add requirements for the control of occupational exposures to beryllium at DOE and DOE contractor facilities and operations. This action reflects the Department's ongoing commitment to strengthen the protection of health, safety, and the environment from the hazards posed by its facilities.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to provide a safe and healthy workplace is fulfilled.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health, and safety of workers and the public affected by its operations.

Alternatives:

The Department could continue to impose health and safety requirements through directives made applicable to DOE contractors through the terms of their contracts.

Anticipated Costs and Benefits:

The incremental costs of the proposed rule should be minimal. Full compliance with these requirements will enhance occupational health and safety at certain DOE facilities.

Risks:

This rulemaking should reduce the risk of an occupational hazard by clarifying worker protection program requirements applicable to DOE contractors.

Timetable:

Action	Date	FR Cite
NPRM	04/00/98	
Final Action	04/00/99	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 1901–AA75

DOE—ENDEP

FINAL RULE STAGE

21. NUCLEAR SAFETY MANAGEMENT

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 2201; 42 USC 7191

CFR Citation:

10 CFR 830

Legal Deadline:

None

Abstract:

This action will add regulations under 10 CFR 830 to establish nuclear safety management requirements for the Department's nuclear facilities. These requirements stem from the Department's obligations to assure adequate protection and to hold contractors who manage and operate these facilities accountable and responsible for safe operations. Under phase 1 of this action, major requirements will include conduct of operations, safety analysis reports,

technical safety requirements training, maintenance, unreviewed safety questions and occurrence reporting. Under phase 2 of this action, major requirements will include nuclear design criteria, fire protection, natural phenomena hazards mitigation, and nuclear criticality safety. An initial phase adopted a quality assurance rule and definitions.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to protect health and safety is fulfilled and to provide, if needed, a basis for the assessment of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988. This action is consistent with the Department's commitment to the issuance of all new nuclear safety requirements to using notice and comment rulemaking.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations.

Alternatives:

The Department could continue to impose nuclear safety requirements through directives made applicable to DOE contractors through the terms of their contracts.

Anticipated Costs and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Initial Phase
- NPRM 12/09/91 (56 FR 64316)
- Final Action 04/05/94 (59 FR 15843)

Phase 1
- NPRM 12/09/91 (56 FR 64316)
- Notice Reopening Comment Period 08/31/95 (60 FR 45381)
- Final Action 12/00/97

Phase 2
- NPRM 03/00/98
- Final Action 12/00/98

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 1901–AA34

DOE—ENDEP

22. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 834

Legal Deadline:

None

Abstract:

This action would add a new 10 CFR 834 to DOE's regulations establishing a body of rules setting forth the basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear, radiological, and chemical hazards posed by these DOE activities. Major elements of the proposal included a dose limitation system for protection of the public, requirements for liquid discharges; reporting and monitoring requirements; and residual radioactive material requirements.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to protect health and safety is fulfilled and to provide, if needed, a basis for the assessment of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988. This action is consistent with the Department's commitment to the issuance of all new nuclear safety requirements using notice and comment rulemaking.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations and the protection of the environs around its facilities.

Alternatives:

The Department could continue to impose nuclear safety requirements through directives made applicable to DOE contractors through the terms of their contracts.

Anticipated Costs and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Action	Date	FR Cite
NPRM	03/25/93	58 FR 16268
NPRM Comment Period End	06/22/93	
Final Action	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

Federal

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RIN: 1901–AA38

DOE—ENDEP

23. OCCUPATIONAL RADIATION PROTECTION—AMENDMENT

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 835

Legal Deadline:

None

Abstract:

10 CFR part 835 establishes the basic requirements for DOE contractor and subcontractor activities to ensure radiation protection of occupational workers at DOE facilities. See 58 FR 65458 (December 14, 1993). The proposed amendment to part 835 would include items not previously covered such as sealed radioactive source accountability and control, posting of areas where radioactive material is present, and surface contamination values for tritium. Several additional changes are proposed to ensure continuity in DOE's system of radiation protection standards by codifying in part 835 critical provisions of the ''DOE Radiological Control Manual'' which is no longer a mandatory document. DOE also proposes to exclude explicitly from part 835 radiological transportation conducted in compliance with applicable DOE Orders and certain activities conducted on foreign soil. This rulemaking stems from DOE's ongoing effort to strengthen the protection of health and safety from the nuclear and radiological hazards that may exist at these DOE facilities.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to protect health and safety is fulfilled and to provide, if needed, a basis for the assessment of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations and the protection of the environs around its facilities.

Alternatives:

The Department could continue to impose protection standards through directives made applicable to its contractors through the terms of their contracts.

Anticipated Costs and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractural obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving performance.

Timetable:

Action	Date	FR Cite
NPRM	12/23/96	61 FR 67600
NPRM Comment Period End	03/31/97	
Final Action	04/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 6450-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory and Deregulatory Priorities

Departmentwide Priorities

This statement of regulatory priorities begins with an ''Overall Priorities'' overview, followed by statements of priorities for those components of the Department with major regulatory responsibilities—the Health Care Financing Administration, the Food and Drug Administration, and the Administration for Children and Families.

Overall Priorities

The Department of Health and Human Services (HHS) is statutorily obligated to protect and promote the health and the social and economic well-being of all Americans, and, in particular, of those least able to help themselves—children, the elderly, persons with disabilities, and the disadvantaged—by helping them and their families develop and maintain healthy, productive, and independent lives.

HHS's responsibilities range from some of the largest programs in Government (Medicare, Medicaid) to some of the smallest; from improving infant health to providing care for the elderly; from gathering basic national health statistics to providing front-line clinical and Head Start services; from sponsoring pioneering biomedical research to ensuring the safety of products that account for 25 cents of every dollar spent by the American people. The Department's regulatory priorities essentially involve effective management of the regulations necessary for implementation of these and other statutory authorities.

Over the foreseeable future, the Department's regulatory priorities will reflect emerging policy agendas in welfare reform; health insurance reform; the combating of waste, fraud, and abuse in the health care system; and children's health and food safety. Also, the Balanced Budget Act (BBA) of 1997 alone includes numerous provisions requiring regulatory action that will substantially affect the characteristics and administration of the Medicare Program, touching upon areas such as changes in Medicare reimbursement rules for graduate medical education; revisions to payment procedures for hospice and home health services; and negotiated rulemaking to establish solvency standards for provider-sponsored organizations.

The Department's early response to the BBA has been a focus on the new title XXI State Children's Health Insurance Program. This optional program allows States to initiate and expand child health assistance to uninsured, low-income children by providing health benefits coverage for those children. Federal funding will support the State-selected benchmark benefits package, providing at least certain basic services; that is, inpatient and outpatient hospital services, physicians' surgical and medical services, laboratory and x-ray services, and well-baby and well-child care, including age-appropriate immunization. The Department published, on September 12, **Federal Register** documents that provide information to States as to the level of financial allotments available to implement their program.

To address concerns about the integrity of services and quality of care delivered to beneficiaries in need of home health services, we are also planning to implement quickly the BBA requirement for surety bonds for Home Health Agencies. The requirement will help to assure that the agencies providing those health services to Medicare and Medicaid beneficiaries are sound and stable business concerns, legitimately providing protection to that vulnerable population in need of that care.

The Health Insurance Portability and Accountability Act of 1996, in addition to its health insurance reforms, gives the Department major new responsibilities concerning health data standards and health record privacy. Enacted with bipartisan support and at the urging of industry, these provisions require the Secretary to adopt a series of data standards to support electronic data interchange for health insurance and related transactions, such as claims processing and enrollment. The standards will apply to the entire health industry, not just Federal programs. Adoption of the standards will involve a significant regulatory activity and extensive consultation with the industry. It is estimated that this initiative could save as much as $9 billion a year in the health sector administrative costs.

Underlying these initiatives in 1998 and beyond, there will remain the new focus and discipline that the September 1993 issuance of Executive Order 12866 brought to the Department's regulatory program. Under the principles enunciated by the Order and through the Administration's subsequent regulatory reform initiative, the Department assures that rules:

- Focus specifically on clearly identified problems, avoiding overly broad one-size-fits-all approaches;
- Emphasize performance standards and market incentives over prescriptive command-and-control requirements;
- Regularly use benefit-cost analysis to achieve policy objectives in the most cost-effective manner; and
- Are developed in consultation with those most affected, especially our partners in the Federal system at the State and local levels.

Efforts to comply with these principles have been a major undertaking of the Department since 1993. The changes in our rulemaking approach are resulting in reduced burden, better communication with our customers, solid consensus building, and a less adversarial environment, while maintaining the health and safety protections that American people expect. A few recent illustrative examples include:

- A final rule with comment period published on January 13, 1997, reflecting close cooperation with the State governments, that allows States additional time to make Medicaid eligibility redeterminations without losing Federal financial participation because of changes in the link between Medicaid eligibility and the new systems introduced by the 1996 welfare reform legislation.
- A final rule published in June 1997 concerning substances prohibited from use in animal food or feed, which reflected the results of a comprehensive cost-benefit analysis and an intensive dialogue with affected industries. This FDA rule was intended to prevent bovine spongiform encephalopathy—otherwise known as ''mad cow disease''—from becoming established in the United States cattle population through animal feed.
- A proposal published on July 23, 1997, after consulting widely with grantees and other affected organizations, to clarify, streamline, simplify, and unify the Federal child care block grant program. Under this proposal, the Department would revise existing regulations in light of the child care amendments contained in the welfare-reform legislation and thus assure the health and safety of children in child care, achieve a balance between program flexibility and accountability, and recognize that child care is a key support for work as envisioned in the Temporary

Assistance to Needy Families program.

- A final rule published on August 8, 1997, developed through the involvement of all concerned constituencies in a formal negotiated rulemaking process, determined the wage index that is used to adjust Medicare payment rates to hospices.

Health Care Financing Administration

The Health Care Financing Administration (HCFA) continues to pursue the President's and Vice President's initiatives for reinventing health care financing regulations, through a focus on action to reduce unnecessary burden throughout the Medicare and Medicaid systems while ensuring continual improvement in the quality of services to beneficiaries.

For example, on March 10, 1997, HCFA revised criteria that home health agencies must meet to participate in the Medicare and Medicaid programs. These criteria reflect HCFA's movement toward a patient outcome-based system, with a focus on quality assessment, performance improvement, and an interdisciplinary team approach to home health care delivery. A final rule is being prepared.

Similar rules for hospitals and for end-stage renal disease facilities are also under development. HCFA has worked closely with industry and beneficiary groups in developing the new standards. These two rules would also provide for the collection and analysis of patient care data needed for continuous quality improvement and performance evaluation, to increase consistency of requirements across providers, and ask the customer to provide input on what the outcome measures should be and evaluate the services they received.

On April 8, 1997, HHS, in partnership with the Departments of Labor (DOL) and Treasury, promulgated a rule implementing major provisions of the Health Insurance Portability and Accountability Act of 1996, concerning access, portability, and renewability requirements for group health plans. On the same day, HCFA also published a regulation detailing similar protections in the individual health insurance market. And, HCFA is working with DOL and Treasury on implementation of the provisions of both the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996. These statutes provide, respectively, for parity in the application of limits on certain mental health benefits with limits on medical and surgical benefits, and for the protection of mothers and their newborn children with respect to the length of hospital stays following fht birth of a child.

HCFA also issued a notice with comment period May 14, 1997, specifying the formula to be used to allocate the enhanced Federal matching funds for increased administrative costs resulting from welfare reform. Under another rule to be published jointly with the Administration on Children and Families, HCFA will address cases where a parent is unemployed. The rule will facilitate coordination among the Temporary Assistance for Needy Families (TANF) program, Medicaid, and foster care programs, where a State has expanded coverage under its TANF plan beyond the definition of unemployed parent contained in existing rules. It will revise the definition of unemployment of a principal wage earner for purposes of coverage of dependent children of unemployed parents, and it will allow States to eliminate inequitable policies that are disincentives to family unity.

HCFA will also act to meet its obligations to combat fraud and abuse. New rules will promote the integrity of the Medicare program through HCFA contracts with eligible entities to perform certain program integrity functions. They include the review of provider and supplier activities, including medical fraud and utilization review; audit of cost reports; Medicare secondary payer provision; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and quality assurance issues; and developing and updating a list of durable medical equipment items subject to prior authorization. The proposed rule would also define entities eligible to perform Medicare program integrity activities, the services to be procured, and other areas of the Medicare Integrity Program. An additional proposed rule would apply stricter standards for durable medical equipment suppliers.

HCFA and the Centers for Disease Control and Prevention (CDC), which share a responsibility for the Clinical Laboratory Improvement Act (CLIA) program, have continually taken actions to reduce burden and improve the entire CLIA system. Final rules concerning the categorization of waived tests are under development, as are revisions to the CLIA implementing regulations. Tests classified under the new criteria are waived from certain CLIA requirements. These rules will not only improve the waiver approval process, but will also generally reduce the burden on laboratories, allowing them to perform more tests at a lower cost, and increase physician access to high quality clinical laboratory testing.

Food and Drug Administration

The Food and Drug Administration's (FDA) regulatory strategy involves three main goals: (1) To eliminate unnecessary burdens on industry; (2) to provide more information to consumers so that they may use FDA-regulated products more safely or effectively; and (3) to reflect new technologies or programs that will benefit the public, affected industries, and the agency or further protect the public health.

For example, on January 29, 1997 (62 FR 4221), FDA proposed to amend its regulations pertaining to biological establishments. Under preexisting regulations, biological product manufactuers had to name a ''responsible head'' who would exercise control of the manufacturing establishment in all matters and would represent the manufacturer in all pertinent matters with FDA. However, because biological product manufacturing encompasses a range of complex functions, each with its own specific expertise, it became impractical to expect manufacturers to find one ''responsible head.'' Thus, to reduce unnecessary regulatory burdens on the biologics industry, the agency proposed to eliminate this requirement.

Better consumer information was the goal of another proposed rule, which appeared in the **Federal Register** on February 27, 1997 (62 FR 9024). The proposal would create a standardized format for over-the-counter (OTC) drug product labeling. As health costs increase and OTC drugs—including some drugs that were once available only by prescription—become increasingly available, consumers are engaging in more frequent self-medication. Consequently, it is increasingly important that consumers read and understand OTC drug product labeling, and so FDA's proposal is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information so they can use OTC drug products safely and effectively.

Other FDA regulations were designed to provide greater benefits or greater protection to the public health. One proposed rule concerned the treatment use of investigational devices (December 19, 1996). This rule was intended to make promising new therapeutic and diagnostic devices available to patients

with serious or immediately life threatening diseases or conditions, when no comparble or satisfactory device, drug, or other therapy exits, as early in the device development process as possible.

Another important rule involved iron-containing supplements and drugs. In response to acute iron poisonings, including deaths, in children under 6 years of age due to accidental overdoses of iron-containing products, FDA published a final rule in the **Federal Register** on January 15, 1997 (62 FR 2218), to require warning statements on iron-containing food supplements and drugs. The warning statement explained that the accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. The warning also said that the product should be kept out of reach of children, and that, if an accidental overdose occurs, to call a doctor or poison center immediately. The final rule also required unit dose packaging for iron-containing drug products in dosage forms of 30 milligrams or more per dosage unit. This type of packaging would help ensure against an accidental overdose.

FDA regulations also address new technologies and new public health risks. On March 20, 1997, FDA issued a final rule on electronic records and signatures. The rule was intended to provide the widest possible use of electronic technology compatible with FDA's responsibility to promote and protect public health. On June 5, 1997 (62 FR 30936), FDA issued a final rule concerning substances prohibited from use in animal food or feed. This rule was intended to prevent bovine spongiform encephalopathy (BSE)—commonly known as ''mad cow disease''—from becoming established and spreading in the United States cattle population through animal feed. BSE may be associated with a fatal human disease called new variant Creutzfeldt-Jakob disease. Thus, by preventing BSE from becoming established and spreading in cattle, the final rule minimizes the risk of BSE to animals and humans.

Plan Entries

FDA's plan continues to reflect the Agency's goals of eliminating unnecessary burdens on the industry, providing more information to consumers so that they may use FDA-regulated products more safely or effectively, using new programs to benefit the public and affected industries, and protecting the public.

The Plan includes a proposed rule that would establish requirements for a comprehensive food safety assurance program for domestically produced and imported juices based on Hazard Analysis Critical Control Points (HACCP) principles. This initiative is a response to several outbreaks of illness associated with juice products. FDA's current view is that a HACCP system of preventative controls would be an effective and efficient way to ensure that these products are safe.

Another proposal would require manufacturers of human cellular and tissue-based products to register with FDA and to submit a list of all products. The proposal is designed to provide a rational, comprehensive, and clear framework for a rapidly growing industry that produces human cellular and tissue-based products.

A third propsal would amend the regulation for hearing aids. Current regulations require consumers to be examined by a physician before they purchase a hearing aid, but also allow for a waiver. Because this waiver provision may be misused, FDA is considering whether to eliminate the waiver provision and instead require a medical evaluation when certain previously undiagnosed conditions are found or when the prospective hearing aid user is under 18 years of age. Additionally, the proposal would restrict the dispensing of a hearing aid to patients who have undergone a comprehensive hearing assessment within the past 12 months and evaluated to select and fit a hearing aid. This proposal reflects changes in the nature of hearing aids because, in the past, hearing loss often was caused by medically treatable conditions. Due to advances in health care, such cases of hearing loss are less common today so there may be less need for a medical examination. However, advances in hearing aid technology necessitate proper testing in order for a hearing aid to be effective.

The plan includes a final rule that would require manufacturers to assess the safety and effectiveness of new drugs and biological products in pediatric patients. A limited class of new drug and biological products will require pediatric studies so that the products will have sufficient data and information to support directions for pediatric use for the claimed indications.

Finally, the plan includes a final rule on OTC drug product labeling to standardize the format and content requirements for such labeling. The final rule will include legibility and design features of such information as the product's uses, directions for use, warnings, drug interactions, precautions, active ingredients, and other information that consumers need to know to use a product safely and effectively.

Administration for Children and Families

The Administration for Children and Families (ACF) continues to pursue regulatory reform as an integral part of the Agency's mission to improve the lives of children and families. With the passage of major welfare reform legislation in August 1996 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), ACF has a unique opportunity to meet its responsibilities to implement this comprehensive new law in ways to reflect both the letter and spirit of the President's Regulatory Reinvention Initiative.

For example, in developing proposed regulations on the Temporary Assistance for Needy Families (TANF) program, as well as on the child care program, the child support enforcement program, and other welfare reform-related provisions, ACF conducted extensive consultations with hundreds of State and local government officials, advocates, labor organizations, academics, researchers, and technical experts. ACF also met with other Federal agencies and held a series of policy discussions within the Department. These productive consultations informed our work throughout the regulatory development process. As a result, the proposed welfare reform regulations benefited from the broad input we received.

ACF's regulatory plan describes our regulatory initiative governing key provisions of the new welfare block grant program known as the Temporary Assistance for Needy Families—or TANF—program. The regulation addresses the work, accountability, 5-year time limit, and data collection and reporting provisions of the TANF program. It provides States with a basic set of rules which will assist them in implementing welfare reform; emphasizes the importance of work participation and the potential impact of TANF on needy children and families; demonstrates our good faith in implementing the law and assuming our new Federal role; and encourages and supports State flexibility, innovation, and creativity.

ACF is committed to continuing this important process of consultation as we work with our partners in the coming year to develop and publish final regulations to implement the welfare reform law.

HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

24. HEARING AIDS; PROFESSIONAL AND PATIENT LABELING; CONDITIONS FOR SALE

Priority:

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

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

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:

21 USC 351; 21 USC 352; 21 USC 360d; 21 USC 371; 21 USC 360j(e)

CFR Citation:

21 CFR 801.420; 21 CFR 801.421

Legal Deadline:

None

Abstract:

FDA is considering revising its present regulation governing the labeling and conditions for sale of hearing aids. The present rule requires an examination by a physician before purchase of a hearing aid, but permits an informed adult to waive that requirement. There is some evidence that this waiver provision is being misused. FDA is considering eliminating the waiver provision and instead requiring a medical evaluation when certain previously undiagnosed medical conditions are found or when the prospective hearing aid user is under 18 years of age. In addition, FDA is considering restricting the dispensing of a hearing aid to patients who have undergone a comprehensive hearing assessment within the past 12 months and an evaluation to select and fit a hearing aid, both of which would be required to be conducted by hearing care professionals licensed by the States as competent to conduct such assessments and evaluations. FDA is also considering revisions to its professional and patient labeling requirements to require updated information.

Statement of Need:

FDA has become aware of changes in the nature of the causes of hearing loss and the technology of hearing aids that necessitate reconsideration of the regulations governing the types of testing needed before a hearing aid purchase and the labeling for health professionals and patients. In the past, hearing loss often was caused by medically treatable conditions: because of advances in health care, this is less common. Therefore, there may be less need for medical evaluation. On the other hand, advances in hearing aid technology necessitate proper testing in order for a hearing aid to be effective.

Summary of the Legal Basis:

Under 21 USC 360j(e), FDA has the authority to restrict the sale, distribution, or use of a medical device, if FDA determines that, without such restrictions, there cannot be reasonable assurance of its safety and effectiveness. Under 21 USC 352, FDA has the authority to require that the labeling of a medical device include adequate directions for use.

Alternatives:

FDA considered applying the rule only to first time purchasers of hearing aids. FDA believes, however, that this would not adequately protect present users of inappropriate or unneeded hearing aids. FDA also considered requiring additional tests, but has preliminarily determined to list these tests as recommended only in order to provide additional flexibility.

Anticipated Costs and Benefits:

FDA has estimated the costs of the mandatory testing required by the rule would add an additional $24.8 million to $51.7 million depending upon the assumptions concerning present practices. On the average, FDA estimates that this would add about $24 to the cost of a hearing aid. FDA expects that the benefits from the rule would include: (1) Improving the quality of life of hearing aid users; (2) avoiding the cost of inappropriate hearing aid purchase; (3) reducing doctor visits for hearing aid evaluations; (4) lowering treatment costs due to early detection of serious conditions; and (5) encouraging the dissemination of accurate information concerning the benefits and limitations of hearing aids.

Risks:

If the hearing aid purchaser inappropriately waives the medical evaluation requirement under the existing rule, treatable causes of hearing loss may go undetected. Many purchasers who have not had proper testing before a hearing aid purchase will forego the use of a hearing aid because the one purchased does not adequately improve their hearing ability. At this time, FDA believes that many hearing impaired people who may benefit from a hearing aid do not purchase one because they fear that they will not benefit from one due to inaccurate information.

Timetable:

Action	Date	FR Cite
ANPRM	11/10/93	58 FR 59695
ANPRM Comment Period End	01/10/94	
NPRM	03/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State

Additional Information:

Previously reported under RIN 0905-AE46.

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RIN: 0910–AA39

HHS—FDA

25. DEVELOPMENT OF HAZARD ANALYSIS CRITICAL CONTROL POINTS FOR CERTAIN UNPASTEURIZED FRUIT AND VEGETABLE JUICES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321 et seq; 42 USC 264

CFR Citation:

21 CFR 120

Legal Deadline:

None

Abstract:

FDA announced in an advance notice of proposed rulemaking of August 4, 1994, its plans to consider the development of regulations establishing requirements for a new comprehensive food safety assurance program for both domestically produced and imported foods that would be based on the principles of Hazard Analysis Critical Control Points (HACCP). The new food safety program would respond to new challenges, such as new food processing and packaging technologies, new food distribution and consumption patterns, exposure to industrial chemicals and chemical waste, the increasing importation of foods, new microbial pathogens, and resource constraints. Current information shows that the most serious of these challenges is presented by food-borne pathogens. The number of recognized food-borne pathogens has broadened considerably, as has the awareness of long-term complications from certain food-borne illnesses--such as arthritis, heart disease, and kidney and neurological damage. To meet such challenges, FDA intends to shift the focus of its food safety assurance program away from periodic visual inspection and end-product testing and toward prevention of food safety risks and problems, utilizing the HACCP state-of-the-art preventive approach. A first step was taken when FDA published a HACCP regulation for fish and fishery products on December 18, 1995. Consistent with FDA's HACCP efforts, USDA published a HACCP regulation for meat and poultry on July 25, 1996. As a next step in this food safety program, FDA will propose a HACCP regulation for the processing of juice. As part of the development of this document, FDA is considering information obtained during agency HACCP pilot activities, and comments and scientific and technological information relating to fresh juices provided during and after an agency public meeting on juice held on December 16 and 17, 1996. As a separate rulemaking, the agency intends to propose to require label warning statements on juice products that have not been treated to destroy harmful bacteria that may be present. This requirement for warning labels will serve as an interim measure to reduce the risk of food-borne illness until regulations are promulgated and implemented to require that juice be processed under a HACCP program.

Statement of Need:

In this proposed rule, the Food and Drug Administration (FDA) is proposing to adopt regulations that would establish requirements for a new comprehensive food safety assurance program for both domestically produced and imported juices that would be based on the principles of Hazard Analysis Critical Control Points (HACCP). FDA will propose a juice HACCP regulation because there have been a number of outbreaks of illnesses associated with juice products, including some directly affecting children, and because the agency believes that a system of preventive controls is the most effective and efficient way to ensure that these products will be safe.

Summary of the Legal Basis:

Failure of a processor to have and implement a HACCP system will render the food products of that processor adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act. Whether a processor's actions are consistent with ensuring the safety of food will be determined through an evaluation of the overall implementation of the firm's HACCP system.

Alternatives:

The two principal alternatives to HACCP are end-product testing and comprehensive current good manufacturing practices (CGMPs). FDA has concluded, based on available information at this time, that these alternatives lack the distinct advantages of a HACCP-based approach. End-product testing does not address the root causes of food safety problems, is not preventive by design, and requires that a large number of samples be analyzed to ensure product integrity. CGMPs are not practical because they are plant-wide operating procedures and do not concentrate on the identification and prevention of food hazards.

Anticipated Costs and Benefits:

In general terms, HACCP focuses on prevention and is designed to prevent the occurrence of hazards affecting food; HACCP permits more effective and efficient oversight by Federal, State, and local governments; and HACCP appropriately places primary responsibility for ensuring food safety appropriately on the food manufacturer/distributor to analyze in a rational, scientific manner its production processes in order to identify critical control points and establish critical limits and monitoring procedures. FDA anticipates that costs to industry generated by implementation of HACCP would be offset in four ways: (1) by reducing the amount of food-borne illnesses (for example, total illness reduction benefits estimated to result from FDA's HACCP-based requirements for seafood regulation are between $15 and $75 million per year); (2) by increasing public confidence in the Nation's food supply; (3) by enabling U.S. food companies to compete more effectively in the world market (for example, current recommendations of the Codex Alimentarius Commission's Committee on Food Hygiene encourage the international use of the HACCP system, and the European Community (EC) has begun to require that foods produced within the EC be processed under HACCP requirements); and (4) by decreasing the number of future product recalls.

Risks:

Any potential for contamination of the food supply with industrial chemicals or microbial pathogens must be considered a highly serious risk because of the possibility that such contamination would be widespread, affecting whole segments of the population, causing some severe long-term effects and even loss of life. FDA made a decision to adopt a HACCP-based approach to regulation of seafood, based on a considerable body of literature and expertise in this area. Likewise, FDA has reviewed current information on hazards associated with unpasteurized juice, and intends to propose that processors use HACCP in the manufacture of certain juice products.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/94	59 FR 39888
ANPRM Comment Period End	12/02/94	
Notice of Intent	08/28/97	62 FR 45593
NPRM	01/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Additional Information:

Previously reported under RIN 0905-AE60.

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RIN: 0910–AA43

HHS—FDA

26. ESTABLISHMENT REGISTRATION AND LISTING OF HUMAN CELLULAR AND TISSUE-BASED PRODUCTS

Priority:

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

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 264

CFR Citation:

21 CFR 1271

Legal Deadline:

None

Abstract:

This action is a continuation of FDA's approach for the regulation of human tissues and is part of FDA's reinventing government initiative. The proposed rule would require manufacturers of human cellular and tissue-based products to register with the agency and submit a list of all such products produced. Future regulations would include the promulgation of good tissue practices (GTP) that will provide good manufacturing standards and regulations for donor screening and testing, promotion and labeling, and compliance and procedural issues. The proposed approach would provide a rational, comprehensive, and clear framework under which tissue processors can develop and market their products without being subjected to unnecessary regulation and without sacrificing the protection of the public health.

Statement of Need:

Presently, FDA can only approximate the numbers of manufacturers involved in the production of human cellular and tissue-based products. Recent innovations in the methods of manipulating human cells and tissues for therapeutic purposes has resulted in the rapid growth of the industry producing human cellular and tissue-based products. The growth has occurred in industry segments that normally communicate with the agency as well as in segments that have not previously had any contact with FDA. In order to characterize the industry and establish a basis for communication with that industry, FDA is proposing that all manufacturers of human cellular and tissue-based products register with FDA and submit lists of all their products to the agency.

Summary of the Legal Basis:

The Public Health Service Act (42 USC 216 et seq.) and the Federal Food, Drug, and Cosmetic Act (21 USC 321 et seq.) authorize FDA to regulate biological products and to ensure that the products are safe, pure, potent, and effective. The Public Health Service Act also contains the authority under which FDA can promulgate regulations designed to prevent the spread of communicable diseases. In order to meet these objectives, FDA must be able to identify those manufacturers participating in activities that may be subject to regulation. FDA proposes the registration and listing as a simple and efficient means of acquiring the needed information.

Alternatives:

FDA has considered two alternatives. The first alternative would be an information collection undertaken by the agency that would be entirely dependent on voluntary compliance. FDA considers this alternative inefficient and lacking in any compliance inducements.

The second alternative is to compel the registration of manufacturers and require registrants to list their products with the agency. Such a system has been proposed to industry and gained general acceptance. Manufacturers would simply fill out an electronically available, registration and listing form and fax or mail the completed form to the agency with periodic updates. No other paperwork should be required.

Anticipated Costs and Benefits:

Registration and listing will enable FDA to characterize the industry without imposing any significant procedural or monetary burdens. Registration and listing would provide effective means by which FDA can monitor the production of human cellular and tissue-based products. The costs of registration and listing are expected to be minimal because, as stated above, the process would require only the information necessary for FDA to identify the affected industry.

Risks:

FDA believes that the risks posed by requiring registration and listing of human cellular and tissue-based products are minimal. In contrast, failure to identify manufacturers involved in the production of human cellular and tissue-based products would subject the public to the great and avoidable risk of contracting debilitating communicable diseases. Without any mechanism to target regulations intended to ensure the safety, purity and potency of human cellular and tissue-based products, FDA's oversight of the industry would be severely hindered and the protection of the public health jeopardized.

Timetable:

Action	Date	FR Cite
NPRM	03/00/98	
NPRM Comment Period End	06/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AB05

HHS—FDA

27. ● REGULATIONS REQUIRING MANUFACTURERS TO ASSESS THE SAFETY AND EFFECTIVENESS OF NEW DRUGS AND BIOLOGICAL PRODUCTS IN PEDIATRIC PATIENTS

Priority:

Other Significant

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 352; 21 USC 355; 21 USC 371; 21 USC 502; 42 USC 262

CFR Citation:

21 CFR 200; 21 CFR 312; 21 CFR 314; 21 CFR 601

Legal Deadline:

None

Abstract:

The final rule requires pediatric studies of a limited class of new drug and biological products so that the products will have sufficient data and information to support directions for pediatric use for the claimed indications.

Statement of Need:

Many new drugs and biological products represent treatments that are, at least at times, the best available treatment for children, but most of them have not been adequately tested in the pediatric population. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. The absence of pediatric labeling information poses a number of disadvantages to pediatric patients, including the potential for under- or over-dosing leading to ineffective treatment or excessive or unanticipated side effects. It may also result in the failure to provide optimal treatment to children because of the lack of appropriate scientific data.

Despite previous efforts to increase the amount of pediatric use information in drug labeling, the majority of new drugs and biological products are still insufficiently tested in the pediatric population and their labeling carries little or no information on pediatric safety and effectiveness. The final rule would help address this lack of pediatric information.

Summary of the Legal Basis:

Under 502(a), 502(f), 505(d)(7), and 201(n) of the Federal Food, Drug, and Cosmetic Act (the act), FDA may require a product to carry labeling that provides safety and effectiveness information on use in subpopulations in which the product is customarily or commonly used. Section 505(i) of the act that authorizes the issuance of regulations governing the use of investigational drugs, and the provision 505(k) of the act, which requires regulations issued under 505(i) to have ''due regard * * * for the interests of patients,'' together authorize FDA to impose conditions on the investigation of new drugs, including conditions related to the interests of patients. Section 351 of the Public Health Service Act (42 USC 262) provides authority to regulate the labeling and shipment of biological products.

Alternatives:

With OMB's concurrence FDA previously published proposed and final rules in an attempt to encourage manufacturers to include pediatric labeling on specific drug products known to be prescribed to pediatric patients despite the lack of directions for use. These previous attempts included a NPRM published on October 16, 1992 (57 FR 47423), and a final rule published on December 13, 1994 (59 FR 64240). These previous attempts which stopped short of requiring studies failed to produce the desired results. This final rule will be a step towards correcting those deficiencies.

Anticipated Costs and Benefits:

Estimated costs will range from $13.5 million to $20.9 million when implemented. The rule will result in fewer adverse reactions in children (i.e., drug reactions that occur because of the use of inadvertent drug overdoses or other drug administration problems that can be avoided with better information on appropriate pediatric use); and will help prevent the under treatment of children with potentially safe and effective drug products because the physician either prescribed an inadequate dosage regimen, prescribed a less effective drug, or did not prescribe a drug, due to the physician's uncertainty about whether the drug or the dose was safe and effective in children. Approved pediatric indications should therefore increase sales of affected products to pediatric patients.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	08/15/97	62 FR 43899
NPRM Comment Period End	11/13/97	
Final Action	10/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AB20

HHS—FDA

FINAL RULE STAGE

28. OVER-THE-COUNTER HUMAN DRUGS; LABELING REQUIREMENTS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 321; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 357; 21 USC 360; 21 USC 371

CFR Citation:

21 CFR 330

Legal Deadline:

None

Abstract:

The final rule will provide standardized format and content requirements for OTC drug product labeling, including legibility and design features of such information as the uses for the drug, directions for use, warnings, drug interactions, precautions, active ingredients, and other information that the consumer would need to know to use the product safely and effectively.

Statement of Need:

Currently, the design, format, and placement of required labeling information vary considerably among OTC products. As a result, consumers often have difficulty finding, reading, and understanding this labeling information. Modifying and simplifying the manner in which the information is presented can improve the legibility and understandability of OTC drug product labeling. Therefore, this final

rule will establish a standardized format for the labeling of all marketed OTC drug products. This action is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products.

Summary of the Legal Basis:

FDA's legal authority to modify and simplify the manner in which certain information is presented in OTC drug product labeling derives from sections 201, 502, 505, 507, and 701 of the Federal Food, Drug, and Cosmetic Act (the act). Regulating the order, appearance, and format of OTC drug product labeling is consistent with the agency's authority to ensure that drug labeling convey all material information to the consumer (21 USC 321(n) and 352(a)), and that the labeling communicates this information in a manner that is ''likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' (21 USC 352(c)). Regulating the content of OTC drug product labeling is consistent with FDA's authority to ensure that the products are safe and effective for use (sections 201(n) and (p), 502, 505, and 507 of the act).

Alternatives:

FDA considered several alternatives. First, the agency considered but rejected a voluntary labeling scheme, as previous industry efforts have been unsuccessful in achieving both a uniform format and an acceptable minimum print size for a majority of the products on the market. Second, the agency considered but rejected revising all OTC monographs on an individual basis because this approach would not achieve a standardized labeling format for a majority of the marketed products in a timely manner. Third, the agency considered alternative implementation periods but chose the option proposed because it believed that the chosen approach provides significant reduction in cost while meeting the agency objective of achieving a standardized labeling format for a majority of the products in a timely manner.

Anticipated Costs and Benefits:

The final rule is expected to cost a total of $14 million when implemented. This cost includes a 1-year extension for implementation time of individual OTC drug products having sales of less than $25,000 per year.

In general, the rule will benefit consumers by allowing them to make more appropriate choices for self-treatment, and to reduce trial and error approaches to self-medication. Consequently, this could lead to decreased overall health care costs resulting from reduced visits to the doctor or hospital for treatment. Additionally, the easy to read, standardized format will directly benefit consumers by helping ensure the safe and effective use of the product.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	02/27/97	62 FR 9024
NPRM Comment Period End	10/06/97	62 FR 33379
Final Action	07/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AA79

HHS—Health Resources and Services Administration (HRSA)

FINAL RULE STAGE

29. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK RULES

Priority:

Other Significant

Legal Authority:

42 USC 1320b-8 sec 1138 of the Social Security Act; 42 USC 274 sec 372 of the Public Health Service Act; 42 USC 274b sec 374 of the Public Health Service Act; 42 USC 216 sec 215 of the Public Health Service Act

CFR Citation:

42 CFR 121

Legal Deadline:

None

Sections 215, 372 and 374 of the PHS Act provide general authority to regulate the activities of the Organ Procurement and Transplantation Network (OPTN) established under section 372.

Abstract:

Section 1138 of the Social Security Act requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) as established by section 372 of the Public Health Service Act. Section 1138 also requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. No other entity (for example, a histocompatibility laboratory) is required to be a member of or abide by the rules of the OPTN under the provisions of the statute. It is the Department's position that no rule, requirement, policy, or other issuance of the OPTN will be considered to be a ''rule or requirement'' of the Network within the meaning of section 1138 unless the Secretary has formally approved that rule. The OPTN is currently in operation and these rules will impose no further cost.

Statement of Need:

These regulations are needed to establish a legally binding framework for the operation of the OPTN and for participation in the OPTN by transplant hospitals and OPOs.

Summary of the Legal Basis:

Section 215 of the Public Health Service Act, along with the provision of sections 372 and 374 of the Act (42 USC 216, 274 and 274, respectively) provide authority to issue OPTN regulations. In addition section 113B of the Social Security Act (42 USC 1320b-8) requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) as established by section 372 of the Public Health Service Act (42 USC 274).

Alternatives:

The alternative was to continue without codifying existing policies.

Anticipated Costs and Benefits:

There are no anticipated costs beyond the cost of preparing the regulations (approximately $100,000.00). The anticipated benefit is that the regulations will make mandatory adherence to the policies set forth in the regulations.

Risks:

None known.

Timetable:

Action	Date	FR Cite
NPRM	09/08/94	59 FR 46482
NPRM Comment Period End	12/07/94	
Final Action	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

Previously reported under RIN 0905-AD26.

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RIN: 0906–AA32

HHS—Health Care Financing Administration (HCFA)

PROPOSED RULE STAGE

30. REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION (BPD-745-P)

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 1395x; 42 USC 1302; 42 USC 1395(cc); 42 USC 1395(hh); 42 USC 1320(b-8)

CFR Citation:

42 CFR 416; 42 CFR 482; 42 CFR 485; 42 CFR 489

Legal Deadline:

None

Abstract:

This proposed rule would revise the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The revised requirements focus on patient care and the outcomes of that care, reflect a cross-functional view of patient treatment, encourage flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are necessary to reflect advances in health care practices since the requirements were last revised in 1986.

Statement of Need:

The purpose of the hospital conditions of participation is to protect patient health and safety and help assure that quality care is furnished to all hospital patients. Hospitals must meet the conditions of participation in order to participate in Medicare or Medicaid. Revised conditions are necessary to ensure that our regulations focus primarily on the actual quality of care furnished to patients, and the outcomes of that care, rather than on procedural compliance. These changes are intended to give hospitals the flexibility needed to achieve high-quality outcomes in the most cost-effective manner.

In addition, the regulations are intended to promote a cross-functional, interdisciplinary approach to hospital performance, instead of an approach geared towards evaluating each department of a hospital as a stand-alone entity. This approach is in line with current best practices in hospitals, in which patients routinely encounter many caregivers and services that often cut across department lines.

Summary of the Legal Basis:

Section 1861(e) of the Social Security Act (the Act) provides that a hospital participating in the Medicare program must meet certain specified requirements. In addition, section 1861(e)(9) of the Act specifies that a hospital also must meet such requirements that the Secretary finds are necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in regulations the requirements that a hospital must meet to participate in Medicare. These requirements are set forth in regulations at 42 CFR part 482, Conditions of Participation for Hospitals. Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii), hospitals generally are required to meet the Medicare conditions of participation in order to participate in Medicaid.

Alternatives:

HCFA considered the possibility of revising individual sections of the current hospital regulations. However, we determined that the best means of achieving the systematic changes needed in the regulations was to revise the hospital conditions in their entirety. The specific areas that are likely to form the core of the revised requirements include patient rights, patient assessment, patient care, quality assessment and improvement, and information management.

Anticipated Costs and Benefits:

There would not be significant costs associated with this proposed rule. The benefits that would be derived from the rule are discussed in the Need section, above.

Risks:

By revising these regulations to focus on the quality of the actual care given to an individual and the effectiveness of that care for the individual patient, we hope to reduce risks to beneficiaries' health and safety. Revised procedures can better focus on ensuring that the care being given to a patient is the care that is actually necessary and effective for that patient. No quantitative estimates of risk reductions are available yet.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

BPD-745

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RIN: 0938–AG79

HHS—HCFA

31. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (BPD-818-P)

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 1395rr

CFR Citation:

42 CFR 400; 42 CFR 405; 42 CFR 406; 42 CFR 409; 42 CFR 410; 42 CFR 412; 42 CFR 413; 42 CFR 414; 42 CFR 489; 42 CFR 492

Legal Deadline:

None

Abstract:

This proposed rule would revise the current conditions for coverage for end stage renal disease (ESRD) facilities approved to provide ESRD service under Medicare. It would update the conditions to reflect developments in technology and equipment, emphasize the total patient experience and develop performance expectations for the facility that result in quality, comprehensive care for the dialysis patient.

Statement of Need:

Section 1881(b)(1) of the Social Security Act stipulates that payment is made to individuals, providers of services, and renal dialysis facilities that meet the requirements for institutional dialysis services and supplies that are determined by the Secretary. These requirements are the end-stage renal disease (ESRD) conditions for coverage.

Our decision to propose major changes to the existing conditions is based on several considerations. Revising the ESRD requirements is part of HCFA's effort to move toward a patient outcome-based system that focuses on quality assessment and performance improvement. We believe that revising the conditions will encourage improved outcomes of care for beneficiaries. The ESRD conditions for coverage have not been comprehensively revised since their inception in 1976. The existing requirements emphasize the policies and procedures that must be in place to support good patient care, and they focus on a facility's capacity to furnish care rather than on the actual provision of quality care to patients and the outcomes of that care.

During the 1980's and early 1990's major changes took place in the delivery of services to dialysis patients, and these advances are not reflected in the existing requirements. Thus we have concluded that significant revisions to the conditions for coverage for ESRD facilities are essential. The regulation would have an emphasis on the patient's total experience with dialysis. The proposed changes, which were undertaken in a collaborative effort with the renal community, reflect improvements in standard care practices, the use of more advanced technology and equipment, and, most notably, the adoption of quantifiable performance measures that are viewed in the renal community to be related, at least in part, to the quality of care provided to dialysis patients.

Following publication of the proposed rule, we will consult further with the industry.

Summary of the Legal Basis:

Section 1881(b)(1) of the Act authorizes the Secretary to prescribe health and safety requirements (known as conditions for coverage) that a facility providing dialysis and transplantation services to dialysis patients must meet to qualify for Medicare reimbursement. In addition, section 1881(c) of the Act establishes ESRD network areas and network organizations to assure that dialysis patients are provided appropriate care. The requirements from section 1881(b) and (c) are implemented in regulations at 42 CFR part 405, subpart U, Conditions for Coverage for ESRD Facilities.

Section 1138(b)(1)(D) of the Act requires hospitals to be members and abide by the rules and requirements of the Organ Procurement and Transplant Network. Section 1861(s)(2)(F) of the Act describes ''medical and other health services'' covered under Medicare to include home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies, and section 1862(a) of the Act specifies the exclusions from coverage.

Section 1869(e)(9) of the Act requires hospitals to meet such other requirements as the Secretary finds necessary in the interest of health and safety of individuals who are furnished services in the institution.

Alternatives:

In the past, HCFA has revised sections of the ESRD regulations. However, we have determined that a complete and thorough revision would be a more effective mechanism for developing a comprehensive approach to quality care for the dialysis patient. In addition, this approach provides greater potential for successful implementation. Another option is to update the current regulations and maintain the process-oriented standards without focusing on patient outcome. However, for the reasons discussed, we believe it is important to move forward with a proposed regulation that is patient-centered and intended to stimulate improvements in processes and outcomes of care.

Anticipated Costs and Benefits:

The purpose of this proposed rule is to ensure that ESRD beneficiaries are receiving quality care dialysis and transplantation. We believe that revised regulations are necessary to ensure that all facilities are using the most effective technology and equipment. The primary benefit of updating the conditions for coverage is the development of performance expectations for the facility that would result in the comprehensive, integrated care and outcomes the patient needs and wants. As a result, the beneficiaries would receive an improved quality of care. The revised regulations would also address the issue of adequacy of dialysis, which would have a significant impact on ensuring that patients are not being underdialyzed.

Items that have the potential to affect the cost of the ESRD program include data gathering, infection control, and achieving the specified outcome measure. However, at this time the cost or savings to the Medicare program have not yet been established, but costs should not be significant.

Risks:

If the ESRD conditions are not updated, our regulations will not reflect new

developments in the industry, thereby denying the improved protections to patients' health care that would result from this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/98	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

BPD-818

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RIN: 0938–AG82

HHS—HCFA

32. ADDITIONAL SUPPLIER STANDARDS (BPD-864-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1302; 42 USC 1395hh; 42 USC 1395m(j)

CFR Citation:

42 CFR 424.57

Legal Deadline:

None

Abstract:

This rule would establish additional standards for entities seeking to qualify as Medicare suppliers for purposes of submitting claims for durable medical equipment and supplies. This rule is part of HCFA's regulatory reform initiative and includes changes related to Surety Bonds required by the Balanced Budget Act of 1997.

Statement of Need:

Section 131 of The Social Security Act Amendments of 1994, established additional requirements that a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) must meet, effective January 1, 1996, in order to obtain a number to bill the Medicare program. In addition, the Amendments gave the Secretary of HHS responsibility to develop other supplier standards. The requirements are designed to protect beneficiaries from abusive practices by suppliers. These legislative changes indicate that the Congress has serious concerns about the business practices employed by certain suppliers, and that beneficiaries require additional protection from these practices. We believe it is the Congress' intent to strengthen existing supplier standards in order to protect the public interest. Three of the standards spontaneously required by section 1834(j)(i)(B) were addressed in a final rule with comment period published in the Federal Register on December 11, 1995, (60 FR 3440). At the same time we incorporated the statutorily required standards items in regulations, we intensified our oversight of fraudulent and abusive supplier practices and identified a number of additional requirements that, if implemented, would provide additional safeguards. Failure to comply with any one of the standards may result in revocation of the supplier billing number.

Summary of the Legal Basis:

Section 131 of the Social Security Act Amendments of 1994 (Public Law 103-432, enacted on October 31, 1994) added a new subsection (j) to section 1834 of the Act dealing with supplier standards and required the Secretary to promulgate regulations setting forth additional standards after consulting with representatives of suppliers, carriers and consumers. Section 4312 of the Balanced Budget Act of 1997 (Pub. L. 105-33) requires Durable Medical Equipment suppliers to provide the Secretary with a surety bond in an amount that is not less than $50,000. The Secretary also issues regulations under the general authority of section 1102 of the Social Security Act.

Alternatives:

We believe it was the Congress' intent to strengthen DMEPOS supplier standards to protect beneficiaries and the Medicare program from potential fraud and abuse in billing practices. The statutorily listed supplier standards are minimal safeguards and we attempted to balance any additional requirements against possible barriers to competition and adding burdens on the many small businesses involved in this area of activity. For example, imposing requirements with respect to liability insurance but not proposing a specified minimum amount. Similarly, we are proposing a requirement that suppliers obtain a surety bond but suggest use of a sliding scale so that the final bond amount will not discourage new participants to the Medicare program.

Anticipated Costs and Benefits:

In that the regulation will diminish the possibility of abusive suppliers getting or retaining a Medicare billing number, the Trust Funds will not suffer from fraudulent and abusive practices found in the past. It should be noted that HCFA also is energetically pursuing other opportunities to find and stop abusive practices of all those who furnish services to our beneficiaries. Therefore, the savings specifically associated with this rule are indeterminable at this time.

Risks:

Durable Medical Equipment associations and leaders of the industry join us in a quest to strengthen supplier standards in order to keep out fraudulent suppliers. As noted, many of the proposed requirements are good business practices currently being met voluntarily. The supplies that Medicare patients need are abundantly available in all sections of the country, so that no scarcity will result. Rather we believe that what these standards would do in terms of protecting the health and safety of beneficiaries and preserving the Medicare Trust Fund far outweighs any slight cutback in the overall number of suppliers.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

BPD-864

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RIN: 0938–AH19

HHS—HCFA

33. MEDICARE PROGRAM; MEDICARE INTEGRITY PROGRAM (OFH-020-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 104-191

CFR Citation:

42 CFR 421

Legal Deadline:

None

Abstract:

This proposed rule would implement section 1893 of the Social Security Act (added by section 202 of the Health Insurance Portability and Accountability Act of 1996) by establishing the Medicare Integrity Program to carry out Medicare payment integrity activities. Under this program HCFA may enter into new contracts with entities to perform these activities. This proposed rule would identify the services to be procured, set forth competitive requirements, establish procedures for identification, evaluation, and resolution of conflicts of interest, and rules regarding contractor liability. In addition, this proposed rule would revise the list of intermediary and carrier functions set forth in existing regulations to make them consistent with sections 1816, 1842, and 1893 of the Social Security Act.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 creates the Medicare Integrity Program (MIP). Among other things, it requires the Department to set forth procedures for entering into contracts for the performance of specific Medicare program integrity activities.

The MIP will help us shift emphasis from post-payment recoveries on fraudulent claims to prepayment strategies to ensure claims are paid correctly the first time. It will allow us to broaden our use of contractors to include a variety of contractors with new and different skill sets, bringing innovation into the fraud and abuse prevention arena. Through conflict of interest provisions, it will permit us to deal with the current phenomenon of diversification of ownership arrangements, especially where Medicare intermediaries and carriers become closely allied with managed care and other providers and suppliers.

Summary of the Legal Basis:

Sections 1816(a) and 1842(a), (b) and (f) of the Social Security Act, which pertain to contracting with intermediaries and carriers remain in effect. HIPAA added a new section 1893 to the Act, under which HCFA is required to use competitive procedures in awarding MIP contracts as established in Federal Acquisition Rules.

Alternatives:

We considered identifying specific situations in which we would never award a contract because potential conflicts of interest existed. We favor an approach that permits an offeror to mitigate conflicts, thereby opening competition to both current Medicare contractors and other entities. We also considered whether the regulation should specify all the information that would be needed in all situations to determine whether a conflict of interest exists. We decided on an approach that gives us flexibility to tailor our requirements for information to the specific procurement.

Anticipated Costs and Benefits:

The Congress provided a direct apportionment from the Health Insurance Trust Funds for carrying out the Medicare Integrity Program. We expect that, on average, every dollar expended in fiscal year 1998 to perform integrity functions will save $12 in Medicare program costs.

Risks:

The statute provides that we may enter into MIP contracts without final rules having been published. However, the statute requires that we establish, by regulation, competitive procedures to be used in awarding those contracts, as well as procedures for identifying, evaluating, and resolving conflicts of interest, and procedures under which a contract may be renewed noncompetitively. It also requires that we provide, in regulations, for limitation of a contractor's liability under the contract. We believe that this proposed rule should be published as soon as possible so that the procedures related to conflicts of interest can be established in regulations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

OFH-020-P, PL 104-1191, sec. 202

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RIN: 0938–AI09

HHS—HCFA

34. ● CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 1999 RATES (HCFA-1001-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1395ww

CFR Citation:

42 CFR 412; 42 CFR 413

Legal Deadline:

NPRM, Statutory, April 1, 1998. Final, Statutory, August 1, 1998.

Abstract:

Medicare pays for hospital inpatient services under a prospective payment system (PPS) in which payment is made at a predetermined specific rate for the operating and capital-related costs associated with each discharge. These rules would announce the prospective payment rates for operating and capital-related costs for FY 1999 that reflect changes made by the Balanced Budget Act of 1997. We would also revise the Medicare hospital inpatient prospective payment systems for operating and capital-related costs to implement necessary changes arising from our continuing experience with the systems.

Statement of Need:

Section 1886(e)(5) of the Social Security Act, as amended by section 4644(a)(1) and (b)(1) of the Balanced Budget Act of 1997, requires the Secretary to publish a proposed rule on

prospective payment system policies and payment rates in the Federal Register by April 1 and a final rule by August 1.

Summary of the Legal Basis:

As noted above, publication of proposed and final rules concerning hospital prospective payment system policies and payment rates is required by law. The statute sets forth several specific requirements concerning what must be included in the prospective payment system proposed and final rules. (See sections 1886(b)(3)(B), 1886(d)(1)(A), 1886(d)(2)(H), 1886(d)(3)(A), 1886(d)(3)(E), 1886(d)(4)(C), 1886(e)(5), and 1886(G)(1)(A).)

Alternatives:

Publication of these rules is not discretionary. Thus, no alternatives exits.

Anticipated Costs and Benefits:

Estimates of the economic impact that will stem from these rules have not yet been completed.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	04/00/98	
Final Action	08/00/98	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal

Additional Information:

HCFA-1001

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RIN: 0938–AI22

HHS—HCFA

35. ● CHILDREN'S HEALTH INSURANCE: PROGRAM IMPLEMENTATIONS; STATE PLAN APPROVAL; STATE PAYMENT; COORDINATION WITH STATE MEDICAID PROGRAM

Priority:

Economically Significant

Legal Authority:

PL 105-33, sec 4901 to 4913

CFR Citation:

42 CFR ch IV

Legal Deadline:

None

Abstract:

Several proposed rules will include regulations for States on the implementation of the new State Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act and corresponding changes to title XIX (Medicaid). The CHIP program was established to provide Federal funding to help States to initiate and expand child health assistance to uninsured, low-income children. The regulations will address a variety of aspects of CHIP, including but not limited to the procedure for approving state child health plans, policies on the issuance of grants and the distribution of payments to States with approved plans and the coordination of a State's approved child health plan with its Medicaid program. The following changes related to title XIX will be included among the regulations: (1) the Medicaid option for targeted low-income children; (2) Medicaid optional presumptive eligibility for children; and (3) the Medicaid option to accelerate phase in of poverty level group for children up to 19. The regulations will also establish financial rules that would apply to the treatment of various program expenditures.

Statement of Need:

The statutory authority afforded by CHIP necessitates the promulgation of regulations to complement the statute. Title XXI allows for States to submit state plans and, if approved, receive Federal matching funds each year up to the specified allotments for use by the States in the provision of insurance coverage and other child health assistance for targeted low- income children for periods beginning October 1, 1997. The Department of Health and Human Services must issue regulations on a timely basis in order for States to carry out the provisions of the statute to comply with plan approval requirements, requirements for State payment and requirements for coordination of the child health plan with the State's Medicaid program. Absent such regulatory guidance, there is the potential that the intent of the legislation to provide health coverage for low-income, uninsured children will not be realized.

Summary of the Legal Basis:

Title XXI of the Social Security Act constitutes budget authority in advance of appropriations (Section 2101(c)) and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under section 2104 of the Act.

Alternatives:

This is a new program for Federal oversight and is optional for States. Once States elect the option to establish a CHIP program under title XXI, there are no alternatives to providing Federal funding under approved State child health plans for approved program expenditures.

Anticipated Costs and Benefits:

Section 2104 of the Social Security Act specifies the following Federal funding allotment amounts that are to be provided to States and Territories: $4.275 billion each for FY 1998, FY 1999, FY 2000, and FY 2001; $3.150 billion for FY 2002, FY 2003, and FY 2004; $4.050 billion for FY 2005 and FY 2006; and $5 billion for FY 2007. Benefits: More low-income children will receive needed health coverage.

Risks:

Unknown at this time.

Timetable:

Allotments and State Payment Policies
NPRM with comment period 01/00/98
Other CHIP Activities
NPRM with comment period 04/00/98

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

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HHS—HCFA

FINAL RULE STAGE

36. REVISIONS TO REGULATIONS IMPLEMENTING CLIA (HSQ-226-F)

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 263a

CFR Citation:

42 CFR 493

Legal Deadline:

None

Abstract:

This rule will respond to public comments received on a final rule with comment period published on February 28, 1992. The rule revised regulations applicable to laboratories and implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The regulations apply to laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. They specify the performance requirements, based on test complexity and risk factors related to erroneous test results as required by CLIA. They also list requirements that permit waiver of the certification and inspection requirements for laboratories performing only limited testing.

Statement of Need:

On October 31, 1988, the Congress enacted comprehensive changes to existing laboratory regulations in CLIA. This statute requires the regulation of any facility (including physician offices) that performs tests on human beings for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. CLIA requires that the Department regulate by test, using what is commonly referred to as the ''complexity model'' to categorize individual laboratory tests based on the experience, skills, and judgement required to perform each test accurately. Requirements vary as a function of the complexity of the tests the laboratory conducts.

The law requires the Secretary to implement the numerous provisions through regulation to ensure the quality of laboratory testing, regardless of where it is provided or who is providing the testing. The law also requires that the CLIA program be operated through the assessment of user fees paid by entities subject to these requirements.

On May 21, 1990, the Department published proposed rules to implement CLIA and received public comments from over 60,000 commenters. Based on analysis of these comments, the Centers for Disease Control and Prevention together with Health Care Financing Administration developed a final rule with comment period that set forth standards for all entities performing laboratory testing based on test complexity. This rule was published on February 28, 1992, and was effective September 1, 1992. This regulation was revised by regulations with comment periods published on January 19, 1993, December 6, 1994, April 24, 1995, and May 12, 1997.

Issues addressed in this rule include quality control; quality assurance; personnel standards; cytology requirements; proficiency testing (PT) requirements; employee workplace drug testing; and other issues raised by commenters based on experience with CLIA implementation.

The Clinical Laboratory Improvement Advisory Committee (CLIAC), which is composed of members of professional organizations and private citizens, is actively involved in making recommendations regarding technical and scientific aspects of the regulations. In addition, we actively solicit comments from outside organizations such as the American Medical Association, the Association of State and Territorial Public Health Laboratory Directors, and other professional and medical organizations regarding the interpretive guidelines for surveyors.

Summary of the Legal Basis:

This rule summarizes and responds to CLIA recommendations and public comments to several previously published CLIA regulations.

Alternatives:

We continually assess ongoing program experience and input from laboratories and our partners in carrying out CLIA-related activities. Issues not requiring regulation changes are addressed using administrative mechanisms.

Anticipated Costs and Benefits:

It is not possible to project costs and benefits of the rule at this time. These regulations serve to ensure consistent, reliable laboratory testing that is an integral part of ensuring that individuals receive appropriate treatment.

Risks:

Inferior and inappropriate laboratory testing can result in misdiagnosis causing patient harm. CLIA reduces the potential for inaccurate diagnosis resulting from poorly performed laboratory testing since entities must meet requirements (e.g., quality assurance, proficiency testing, quality control, personnel requirements) that have a direct impact on laboratory testing results. Overly stringent standards could, however, discourage needed testing and reduce early detection of health problems. The Department does not at this time have an estimate of the magnitude and severity of these types of risks, but believes that both the original regulations and the revisions will, on balance, contribute to better diagnosis.

Timetable:

Action	Date	FR Cite
NPRM	05/21/90	55 FR 20896
Comment Period End	09/21/90	
Final Rule With Comment Period	02/28/92	57 FR 7002
Comment Period End	04/28/92	
Effective Date	09/01/92	
Final Rule with Comment Period	01/19/93	58 FR 5215
Final Rule Effective Date	01/19/93	
Comment Period End	03/22/93	
Final Rule	09/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HSQ-226

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RIN: 0938–AE47

HHS—HCFA

37. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (BPD-819-F)

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 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bbb

CFR Citation:

42 CFR 484

Legal Deadline:

None

Abstract:

This final rule will revise home health agency conditions of participation to center on the patient, using outcome-oriented measures. Most of the current HHA conditions of participation have remained unchanged since home health services became a Medicare benefit in 1966. Some limited modifications have been made over the years to comply with legislative changes. As a result, most of the conditions of participation continue to be structure and process oriented. They do not effectively support the mandate of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) to develop a patient-centered, outcome-oriented survey process that focuses on the organization and delivery of quality care services.

Statement of Need:

Because the existing survey process continues to focus on structure and process measures, the discrepancy between a Congressional mandate for outcome-oriented care and the authority for measuring the actual performance capabilities of HHAs in patient care services remains a problem. It presents difficulties for both providers and surveyors in areas of survey/certification, medical review, developing data based performance standards for HHA management and monitoring, and implementing a continuous quality improvement system for outcomes of care.

Regulations containing the Medicare HHA conditions of participation must be revised in order to provide a regulatory basis for a patient-centered, outcome-oriented system of home health quality assurance. The implementation of such a system will enhance Medicare's ability to ensure that high-quality care is furnished to the patients of Medicare-certified home health agencies. The Social Security Act authorizes us to regulate this area and no improvements in the survey process can be made without underlying regulatory authority.

The Health Care Financing Administration has already met with a variety of provider and consumer representatives to discuss the development of revised standards. Representatives of consumers, providers, and States participated in this effort. Additional consultations are ongoing.

Summary of the Legal Basis:

Section 1861(o) of the Social Security Act (the Act) specifies certain requirements that a home health agency must meet to participate in the Medicare program. In particular section 1861(o)(6) provides that a home health agency must meet the conditions of participation specified in section 1891(a) of the Act and such other conditions of participation as the Secretary finds necessary in the interest of the health and safety of patients. Section 1891(a) of the Act establishes specific requirements for home health agencies in several areas, including patient rights, home health aide training and competency and compliance with applicable Federal, State and local laws. Under this authority, the Secretary has established in regulations at 42 CFR part 484, the requirements that a home health agency must meet to participate in Medicare. Regulations at 42 CFR 440.70(d) provide that home health agencies participating in the Medicaid program must also meet the Medicare conditions of participation.

Alternatives:

Congress has mandated the implementation of an outcome-oriented quality assurance system for home health. Therefore, the Medicare home health agency conditions of participation must be revised to provide the basis for implementation of such a system. Because of this mandate, no alternatives to this action have been considered.

Anticipated Costs and Benefits:

The primary benefit of this rule will be the implementation of a more effective, efficient, and patient-centered system of quality assurance for HHAs. We do not anticipate that the provisions of this final rule will have a substantial economic impact on most HHAs. In general, this rule will decrease the administrative burden related to compliance with detailed Federal requirements, thus reducing costs incurred by the typical HHA. However, in the few situations where the requirements result in some immediate costs to an HHA, we believe that the changes that the HHA will make produce real, though difficult to estimate, long-term economic benefits.

Risks:

This rule will have the potential for reducing risks to patient health and safety. Failure to publish this final rule would jeopardize broad-based improvement in the quality of care furnished to home health patients.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End	06/09/97	
Final Action	06/00/98	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

BPD-819

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RIN: 0938–AG81

HHS—HCFA

38. CLIA PROGRAM: CATEGORIZATION OF WAIVED TESTS (HSQ-225-F)

Priority:

Other Significant. Major under 5 USC 801.

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 263a

CFR Citation:

42 CFR 493.2; 42 CFR 493.7; 42 CFR 493.8; 42 CFR 493.9; 42 CFR 493.15; 42 CFR 493.20; 42 CFR 493.25; 42 CFR 493.35; 42 CFR 493.37; 42 CFR 493.39; 42 CFR 493.45; 42 CFR 493.47; 42 CFR 493.49; 42 CFR 493.53; 42 CFR 493.1775

Legal Deadline:

None

Abstract:

As part of the CLIA program (see RIN: 0938-AE47), this rule will revise our current process of evaluating tests against generic criteria. A waiver will be granted to any test that meets the statutory criteria, provided that scientifically valid data are submitted verifying that the criteria were met.

Statement of Need:

This final rule will clarify the waiver criteria and streamline the waiver process so that more tests may be categorized as waived; that is, exempt from CLIA performance and personnel requirements.

Summary of the Legal Basis:

The CLIA statute specifically authorizes the Secretary to determine which simple laboratory procedures have an insignificant risk of an erroneous result, and to waive otherwise applicable quality standards for these procedures. Additionally, the Clinical Laboratory Improvement Advisory Committee (CLIAC) was established to advise and make recommendations on technical and scientific aspects of the regulations. The CLIAC recommended that the criteria for categorizing tests as waived be better defined. As a result of the comments concerning waived tests and the CLIAC recommendations, the Centers for Disease Control and Prevention developed criteria for placing tests in the waived category as outlined in this proposal.

Alternatives:

Performance standards based on current analysis of specific criteria would continue to limit technology and inhibit expansion of waived tests.

Anticipated Costs and Benefits:

This regulation decreases burden, especially for physician office laboratories performing waived tests due to virtually no regulatory oversight. It increases access to a greater variety of waived tests. Physician office laboratories may expand the range of tests they perform without an increase in costs/burden. The regulation creates incentives for manufacturers to develop more test systems that meet the clarified waiver criteria and criteria for approval for home use. It eliminates inspection fees for many of the 60,000 physician offices and other small laboratories performing tests that will fall into the waived category as a result of the clarifications to the waived criteria.

Risks:

The clarification of the waived criteria and development of a process protocol will provide for consistent application of detailed standards in order to ensure that tests categorized as waived preclude any reasonable risk of harm to a patient as a result of a testing error.

Timetable:

Action	Date	FR Cite
NPRM	09/13/95	60 FR 47534
NPRM Comment Period End	11/13/95	
Final Action	03/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HSQ-225

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RIN: 0938–AG99

HHS—HCFA

39. USE OF THE OASIS AS PART OF THE CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES (HSQ-238-F)

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 1302; 42 USC 1395hh; 42 USC 1395x(o); 42 USC 12395bb

CFR Citation:

42 CFR 484

Legal Deadline:

None

Abstract:

This final rule adds requirements to the recently proposed revision of the conditions of participation for home health agencies (HHAs). Specifically, this final rule requires that HHAs use a standard core assessment data set, the ''Outcome and Assessment Information Set'' (OASIS) when evaluating adult, non-maternity patients receiving home health care. This final rule is an integral part of the Administration's efforts to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs.

Statement of Need:

This final rule is a fundamental component in the transition to a quality assessment and performance improvement approach that focuses on stimulating measurable improved outcomes of care and patient satisfaction in the Medicare home health benefit and in home care services in managed care. The information that an HHA derives from

its quality assessment and performance improvement program will enable the HHA to implement real and lasting change to enhance outcomes of care. We intend that the OASIS become one of the most important aspects of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment program such as the OASIS into its own more comprehensive assessment system, an HHA can use the data set as the foundation for valid and reliable information for patient assessment care planning, and service delivery as well as to build a strong and effective quality assessment and performance improvement program. The implementation of a final rule requiring use of the OASIS will enhance Medicare's ability to ensure that high-quality care is furnished to the patients of Medicare-certified home health agencies.

Summary of the Legal Basis:

Home health services are covered for the elderly and disabled under the Hospital Insurance (part A) and Supplemental Medical Insurance (part B) benefits of the Medicare program and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, an HHA that participates in the Medicare program. Section 1816(o) of the Act specifies certain requirements that a home health agency must meet to participate in the Medicare program. In particular, section 1861(o)(6) provides that an HHA must meet the conditions of participation specified in section 1891(a) of the Act and such other conditions of participation as the Secretary finds necessary in the interest of the health and safety of patients of HHA's. Section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws. Under this authority, the Secretary has established in regulations at 42 CFR part 484 the requirements that HHAs must meet to participate in Medicare. Regulations at 42 CFR 440.70(d) provide that HHAs participating in the Medicaid program must also meet the Medicare conditions of participation.

Alternatives:

We considered an alternative to requiring use of the OASIS. Specifically, rather than requiring HHAs to incorporate the OASIS items into their own assessment systems, we considered permitting HHAs to choose, with our approval, among sets of measures including those they devise themselves. We rejected this option because the OASIS is the only rigorously validated and reliable core assessment data set available today in home care. Use of the OASIS is essential for the development of an accurate data set that HHAs can use to enhance outcomes of care. In time we will entertain the possibility of other standard data sets if they meet our needs.

Anticipated Costs and Benefits:

HHAs will incur some additional cost from implementation of the proposed OASIS rule. These costs are allowable costs and will be paid on a reasonable cost basis subject to the applicable Medicare rules. Most of these costs are associated with the collection of information. These costs can be divided into two categories: startup costs and ongoing costs. We estimate that the start-up cost for each HHA will be $2,256. Nationally, there are 9,187 HHAs. Therefore, we expect a total national start-up cost of $20.7 million. We estimate that the average yearly ongoing cost per HHA will be $2,583, for a total national ongoing cost of $25.9 million.

The information derived from use of the OASIS will benefit individual HHAs and the home health industry as a whole. An HHA will be able to use outcome reports in its quality assessment and performance improvement program to identify its strengths and weakness. Aggregate HHA outcome reports will be in the public domain. These can be used for such purposes as comparative performance assessment.

Risks:

While we have anecdotal evidence that some home care companies have already incorporated the OASIS into their existing comprehensive assessment protocols, there may be some negative reaction from some large HHAs and support companies that have their own quality management systems and products. These organizations may see the OASIS as a threat to their business or as requiring them to undo what they have already built and to rebuild using the OASIS.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11035
NPRM Comment Period End	06/09/97	
Final Action	06/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Local

Additional Information:

HSQ-238

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RIN: 0938–AH74

HHS—HCFA

40. MEDICARE PROGRAM; REVISIONS TO PAYMENT POLICIES AND ADJUSTMENTS TO THE RELATIVE VALUE UNITS UNDER THE PHYSICIAN FEE SCHEDULE, OTHER PART B PAYMENT POLICIES FOR CALENDAR YEAR 1998 (BPD-884-FC)

Priority:

Other Significant

Legal Authority:

42 USC 1395w-4

CFR Citation:

42 CFR 410; 42 CFR 414

Legal Deadline:

None

Abstract:

This rule will update physician payments by Medicare as required by section 1848 of the Social Security Act. It includes a provision to limit practice expense RVUs and certain codes in 1998 and increase practice expense RVUs for office visits. It also will include several policy changes involving services and supplies incident to a physician's service, supervision of diagnostic tests, geographic practice cost index changes, general surgical services, clinical psychologist services, and drugs and biologicals covered incident to a physician's services.

Statement of Need:

As pertinent to this regulation, the Balanced Budget Act of 1997-- (1) Delayed implementation of the resource-based system for determining practice expense relative value units until January 1, 1999 and provided for a 4-year transition. (2) Expanded coverage of screening mammography services, effective January 1, 1998, to provide for payment for annual screening for all women beneficiaries age 40 and over. (3) Provided for Medicare coverage of colorectal cancer screening tests effective for services provided on or after January 1, 1998. (4) Provided for new coverage of screening pelvic exams (including a clinical breast exam) for all women beneficiaries subject to certain frequency and payment limitations. (5) Provided for a limitation on practice expense RVUs and reinstated payment for transportation of EKG equipment. (6) Required that physical and occupational therapy services provided incident to a physician's service are furnished under the same standards as when the services are performed by independently practicing physical or occupational therapists.

Furthermore, since we established the physician fee schedule on January 1, 1992, our experience indicates that some of our part B payment policies need to be reconsidered. This final rule is intended to correct inequities in physician payment. In addition, we are finalizing the 1997 interim work RVUs and are issuing interim work RVUs for new and revised codes for 1998.

Summary of the Legal Basis:

Since January 1, 1992, Medicare has paid for physician services under section 1848 of the Social Security Act (the Act), ''Payment for Physicians' Services.'' This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a sustainable growth rate system for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform RVUs based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to the conversion factors (CFs) to preserve budget neutrality.

Section 1848(e)(1)(C) of the Act requires us to review and, if necessary, adjust the geographic practice cost indices (GPCIs) at least every 3 years and implement only one-half of any adjustment if more than 1 year has elapsed since the last GPCI revision. The GPCIs were first implemented in 1992 and have not been reviewed since that time. Thus, we are required to complete the first GPCI review and implement only one-half of any adjustment by 1998 and one-half in 1999.

There is no definition of ''actual charge'' in the Medicare statute. However, we believe that section 1871(a) of the Act grants us broad authority to interpret the term in a manner that is reasonable and consistent with the Medicare law. Thus, we are defining the term ''actual charge'' in the context of what the physician, supplier, or other person has voluntarily agreed to accept as payment in full for the service furnished to the beneficiary.

Alternatives:

If this final rule is not published, we would not implement the Balanced Budget Act of 1997 provisions related to physician services. Also, we would not review and adjust the geographic practice costs indices. In addition, known payment problems would not be resolved for the 1998 physician fee schedule and for other payment policies.

Anticipated Costs and Benefits:

The reallocation of the practice expense relative value units will result in a shift among relative value units not to exceed $390 million.

The statute requires that revisions to payment policies not cause total annual physician fee schedule payments to differ by more than $20 million from what they would have been had the revisions not be made. If this threshold is exceeded, we would make adjustments to the conversion factor to preserve budget neutrality provision.

Risks:

We expect some reaction to the newly required levels of physician supervision of diagnostic tests. We expect that some physicians will argue that the levels are either too high or too low for a group of tests and that physicians may ask for exceptions for specific tests within a group.

Timetable:

Action	Date	FR Cite
NPRM	06/18/97	62 FR 33158
NPRM Comment Period End	08/18/97	
Final Action	11/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

BPD-884-P

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RIN: 0938–AH94

HHS—HCFA

41. ● MEDICARE + CHOICE PROGRAM; REGULATORY PROGRAM TO IMPLEMENT CERTAIN MEDICARE PROVISIONS OF THE BALANCED BUDGET ACT OF 1997 (OMC-030-IFC)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1935m

CFR Citation:

42 CFR 417

Legal Deadline:

Other, Statutory, June 1, 1998.

Interim Final Rule.

Abstract:

This interim final rule with a comment period establishes rules for the Medicare + Choice Program. It implements section 4001 and other appropriate provisions of the Balanced Budget Act of 1997 (Pub. L. 105-33).

Statement of Need:

The Balanced Budget Act of 1997, (Pub. L. 105-33) significantly expanded the types of organizations that may be eligible for contracts with

us to provide all Medicare part A and Medicare part B items and services directly to beneficiaries on a prospective reimbursement basis. In addition, the current Medicare requirements for managed care organizations, with respect to reimbursement, beneficiary participation, beneficiary and program protections, organizational requirements, marketing activities, and provider participation, have been significantly revised by the Congress. The Act requires that the Secretary promulgate implementing regulations through an interim final rule by June 1, 1998.

Summary of the Legal Basis:

Section 1876 of the Social Security Act (42 U.S.C. 1935mm) established the authority for Medicare reimbursement of managed care organizations that meet specific requirements. Regulations implementing the statutory requirements are found at 42 CFR 417.400 et. seq. The Balanced Budget Act (BBA) establishes a new part C statutory authority under title XVIII of the Social Security Act. Provisions in the new part C establish the conditions under which entities may qualify to contract directly with HCFA as ''Medicare + Choice'' plans to provide all Medicare part A and part B services to beneficiaries. Part C also establishes significant new program requirements in the following areas: contractor reimbursement, beneficiary eligibility and enrollment, information dissemination, solvency standards, marketing, quality of care, data reporting, access and coverage.

Alternatives:

The Balanced Budget Act of 1997 requires that the provisions in part C be implemented through regulations.

Anticipated Costs and Benefits:

These rules will accomplish the objectives of increasing availability of services and access for beneficiaries that reside in rural and underserved urban areas of the country. The implementation of statutory provisions at part C will also result in significant Medicare program cost savings, by expanding the types of entities that can elect to receive payment on a capitated basis, and by revising the reimbursement methodology for such payments.

We do not anticipate any impact on Medicare program costs since the payment provisions were designed to be budget neutral.

Risks:

Regulated industries and providers have a significant stake in the provisions of the final rules and we anticipate significant volume and complexity of comments once the rules are published. Publication will demonstrate the Administration's position on various sensitive and political issues related to the legislative provisions.

One possible risk is that beneficiaries will be confused by the wide array of choices and make selections that are not in their best interest. The comparative information provided by HCFA will facilitate plan selection.

Timetable:

Action	Date	FR Cite
Interim final rule w/comment period	06/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 0938–AI29

HHS—HCFA

42. ● SURETY BOND AND CAPITALIZATION REQUIREMENTS FOR HOME HEALTH AGENCIES (BPO-152-FC)

Priority:

Other Significant

Legal Authority:

42 USC 1302; 42 USC 1395(hh); 42 USC 1395x(v)(1)(A)

CFR Citation:

42 CFR 413; 42 CFR 484; 42 CFR 489

Legal Deadline:

None

Abstract:

This final rule with comment establishes that each home health agency (HHA) must obtain a surety bond in the amount of $50,000 or 15 percent of its prior year's Medicare payments, whichever is greater. The rule implements section 4312(b) of the Balanced Budget Act of 1997 (Pub. L. 105-33). The rule also sets forth capitalization requirements for HHAs, consistent with a commitment that the Department would publish a rule requiring new HHAs to have enough funds on hand to operate for the first three to six months.

Statement of Need:

Section 4312(b) of the Balanced Budget Act of 1997 requires each Medicare participating HHA to obtain a surety bond by January 1, 1998 regardless of the date its Medicare participation began. Requiring HHAs to obtain surety bonds will improve HCFA's ability to collect overpayments received by an HHA as a result of fraudulent or abusive HHA billings.

Frequently, HHAs are not sufficiently capitalized in relation to the operating expenses as reflected in their annual operating budget to sustain their operations. This rule requires HHAs entering the Medicare program on or after January 1, 1998 to demonstrate to their Medicare intermediary that they have adequate initial reserve operating funds with which to start the business and operate it for the first six months. The HHA cannot receive a provider agreement until it has met this requirement by providing the information to the intermediary and showing evidence that the appropriate resources exist and are committed to the business.

Summary of the Legal Basis:

Sections 1861(o) and 1891 of the Social Security Act (the Act) provide the basis for conditions that an HHA must meet in order to participate in Medicare. Specific participation requirements for HHAs are located in our regulations at 42 CFR part 484. As a participating supplier of services, HHAs also must comply with applicable requirements for supplier approval located in our regulations at 42 CFR part 489.

Section 4312(b)(1) of the Balanced Budget Act of 1997 (Pub. L. 105-33), enacted August 5, 1997, amended section 1861(o) of the Act to require each HHA, on a continuing basis, to furnish us with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000.

Section 4312(b)(2) of the Balanced Budget Act of 1997 amended the definition of ''reasonable cost'' in section 1861(v)(1)(H) of the Act to

provide that the cost of a surety bond is not included as an allowable Medicare cost.

Section 1891(b) of the Act provides that it is the responsibility of the Secretary to assure, among other things, that the conditions of participation and the requirements in section 1861(o) of the Act and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of the HHA and to promote the effective and efficient use of public moneys. Section 1861(o)(5), in conjunction with 1861(z)(1), and further implemented in 42 CFR 484.14(i), requires that an HHA have an annual operating budget. Section 1861(o)(7) authorizes the Secretary to establish requirements that the Secretary finds necessary for the effective and efficient operation of the program, and section 1861(o) provides that an HHA is to meet such requirements.

Alternatives:

We did not choose the alternative of requiring a surety bond in the minimum statutory amount of $50,000. Instead, to provide the maximum protection to Medicare we have required that the bond amount be the greater of $50,000 or 15 percent of the HHA's prior year Medicare payments. Although we are authorized to waive the surety bond requirement if an HHA provides a comparable surety bond under State law, we have not implemented that waiver authority in this rule. The limited amount of time available to us, between the enactment of the Balanced Budget Act of 1997 and the effective date of the surety bond requirement, did not permit us sufficient time to effectively analyze the potential specifications of a waiver provision.

The capitalization requirement is to establish the financial stability of HHAs. Without this provision, an under-funded HHA may be forced to close pending development of an adequate and reliable stream of revenue. When an HHA is forced to close, the Medicare program is harmed financially if it is unable to recover payments owed to the program. More importantly, the closing of an HHA adversely affects the quality of care to its patients and, in turn, the health and safety of those patients. Therefore, the Department finds no alternative to this requirement.

Anticipated Costs and Benefits:

Using 1996 data, if all Medicare participating HHAs, including all government-operated HHAs, purchased surety bonds, we estimate the cost of the surety bond requirement to be approximately $22.5 million. Exempting government-operated HHAs from purchasing surety bonds lowers the estimated cost of the surety bond requirement to approximately $18.4 million. This rule will assist to reduce losses to the Medicare program due to fraudulent and abusive HHA billings. We expect this rule to have a ''significant impact'' on an unknown number of HHAs, effectively preventing some of them from repeating their past aberrant billing activities. In addition, we believe this rule reinforces the behavior of HHAs that are not currently billing inappropriately, by encouraging them to continue billing only for appropriate Medicare services.

Sections 1861(o)(5) and (z)(1) of the Act already require that an HHA must submit an operating budget, the budget to be used for determining an HHA's capitalization requirement. Therefore, this requirement calls for no additional HHA costs in developing an operating budget. The capitalization requirement will help ensure that only financially stable HHAs enter the Medicare program, resulting in fewer HHAs unexpectedly closing. Therefore, the Department will minimize its financial liability in the case of agencies that are forced to close while indebted to the Medicare program. In addition, since unexpected HHA closings jeopardize the quality of care of HHA patients, the capitalization requirement is being implemented to minimize those events.

Risks:

The Congress has mandated that we establish a surety bond requirement for HHAs. There is a risk that the HHAs whose required surety bond amount is above the minimum mandated by the statute may protest their additional cost. HCFA believes the public interest is best served by establishing the requirement in such a way that it largely addresses the risk of unrecoverable losses to the Medicare Trust Funds, and will likely have the greatest impact on those HHAs that receive the largest Medicare payments. We believe that most HHAs will not be adversely affected to a significant degree as a result of this requirement. Moreover, we discern no adverse effects on the health and safety of Medicare beneficiaries. We do not believe the capitalization requirement will be a significant barrier because, although an HHA must demonstrate that it has funds to meet the requirement, up to 50 percent of the amount does not have to be equity of the HHA. That is, up to half the required amount could be in the form of loans or in a line of credit.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/97	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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HHS—HCFA

43. ● HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996: ADMINISTRATIVE SIMPLIFICATION

Priority:

Other Significant

Legal Authority:

42 USC 1320-d; 42 USC 1320-d1 to 1320-d8; 42 USC 1302; 42 USC 1395(hh)

CFR Citation:

45 CFR 142

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

We are proposing six regulations to adopt standards that would implement the administrative simplifications provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. These regulations would establish four unique identifiers, ten transactions and security safeguards.

Statement of Need:

The administrative simplification provisions of HIPAA are intended to reduce the costs and administrative

burdens of health care by making possible the standardization of electronic transmission of certain administrative and financial transactions which are currently carried out manually on paper. To accomplish this goal, the law requires the Secretary to adopt national uniform standards for these transactions. The law requires that the standards be followed any time the transactions are conducted electronically.

Summary of the Legal Basis:

Subtitle F of title II of HIPAA added to title XI of the Social Security Act a new part C, entitled ''Administrative Simplification.'' Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers concerning the electronic transmission of health information specific transactions and providers penalties for noncompliance. They also establish a process for developing and adopting standards for code sets; unique identifiers for health care providers, health plans, employers and individuals; the transactions; and security safeguards.

Alternatives:

In order to determine which standards to propose for adoption, we surveyed industry standards and compared them against selection criteria that we developed. There is more than one standard from which to choose for a number of standards; our proposed regulations discuss our reasons for choosing the standards that we are proposing.

Anticipated Costs and Benefits:

We estimate that, although there will be initial one-time costs to some plans and providers in the health care industry for conversion to the new standards, over a five-year period there will be $1.5 billion savings to the health care industry.

Risks:

Since the implementation of these regulations will have an effect on the entire health care industry, any mistakes that are made will have an industry-wide impact. We have tried to mitigate any negative effect by developing these rules through the Administrative Procedure Act by requiring public review and comment, as well as, by having an unprecedented representation of the health care industry involved in the development of the standards we propose to adopt through these regulations.

Timetable:

Action	Date	FR Cite
Final Action	02/00/98	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

State, Local, Federal

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HHS—Administration for Children and Families (ACF)

PROPOSED RULE STAGE

44. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

Priority:

Other Significant

Legal Authority:

42 USC 601; 42 USC 601 note; 42 USC 603 to 604; 42 USC 606 to 611; 42 USC 613; 42 USC 617; 42 USC 619; 42 USC 862a; 42 USC 1302; 42 USC 1308

CFR Citation:

45 CFR 270 to 275

Legal Deadline:

None

Abstract:

This regulation governs key provisions of the new welfare block grant program enacted in August 1996 as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This new program, called the Temporary Assistance for Needy Families -- or TANF -- program, replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program. The regulation addresses the five-year time limit, work, accountability, and data collection and reporting provisions of the new TANF program.

Statement of Need:

This regulation is necessary to provide States with a basic set of rules which will assist them in implementing the TANF program.

Alternatives:

There are no viable alternatives.

Anticipated Costs and Benefits:

No additional costs to the public.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Tribal, Federal

Additional Information:

This action includes information previously reported under RIN 0970-AB64 and RIN 0970-AB76.

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RIN: 0970–AB77

BILLING CODE 4150-04-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

Revitalizing HUD's Mission

The regulatory plan of the Department of Housing and Urban Development (HUD) for fiscal year 1998 reflects the revitalized mission that Secretary Andrew Cuomo has established for HUD. While HUD's traditional goals remain the same—fighting for fair housing, increasing the supply of affordable housing and opportunities for homeownership, reducing homelessness, promoting jobs and economic development—the Secretary determined that HUD's mission must be updated, renewed, and refocused. If HUD is going to be a significant, value-added player, helping American communities move from an industrial to an information economy, with welfare reform hanging in the balance, HUD must strive to empower people, giving them the tools they need to succeed. HUD must be an ally to communities, not a bureaucratic adversary; a creator of opportunities, not obstacles. At the same time, in a balanced-budget environment, HUD must refocus its energy, ingenuity, and resources on eliminating waste, fraud, and abuse in all HUD programs. Therefore, two distinct, yet interrelated missions for HUD are evident as we approach the 21st century:

The Departmental Mission: Empower communities and their residents, particularly the poor and disadvantaged, so that, together with HUD, they can develop viable urban communities, provide decent housing and suitable living environment for all citizens, without discrimination, in order to improve themselves, both as individuals and as a community, to succeed in today's time of transition.

The Secretary's Personal Mission: Restore the public trust by achieving and demonstrating competence.

Under the empowerment mission, HUD will focus on shifting: (1) From top-down programs with inflexible mandates to bottom-up, community-driven partnerships that demonstrate a comprehensive community development strategy; (2) from long-term dependence programs to those that nurture self-sufficiency and self-reliance; (3) from working in isolation to collaboration with other Federal agencies to provide vital community resources; and (4) from working against the free market to harnessing market forces wherever possible to use these forces to help people become self-sufficient.

Under the public trust mission, HUD will focus on moving from process and perpetuation to performance and product. HUD will consolidate programs and reorganize and retrain staff to align the Agency's resources; develop and implement stringent internal controls; and increase program monitoring and measurement to ensure higher performance.

To accomplish these two revitalizing missions, the Secretary has directed HUD to focus on the following strategic objectives that are designed to reflect the core business of HUD:

1. Empower communities to meet local needs.

2. Help communities and States establish a full continuum of housing and services designed to assist homeless individuals and families in achieving permanent housing and self-sufficiency.

3. Increase availability of affordable housing in standard condition to families and individuals.

4. Reduce the isolation of low-income groups within a community or geographical area.

5. Provide empowerment and self-sufficiency opportunities to support low-income individuals and families as they make the transition from dependency to work.

6. Increase homeownership opportunities, especially in central cities, through a variety of tools, such as expanding access to mortgage credit.

7. Promote equal housing opportunities for those protected by law.

To assist HUD in fulfilling its missions and in accomplishing these strategic objectives, the Secretary has requested the Congress to pass legislation that will reform public housing, reform the management of multifamily properties, and consolidate the homeless assistance programs. In the absence of this legislation, HUD will continue to pursue through regulations, to the extent possible given the statutory parameters, the program reforms and consolidations that are needed to help HUD fulfill its mission. The regulatory priorities set forth in HUD's regulatory plan for fiscal year 1998 and the regulations set forth in HUD's semiannual regulatory agenda are designed to implement HUD's mission and address the core business of HUD.

Regulatory Priorities

Regulatory Action: Homeless Assistance Fund Regulation

This rule would implement legislation that consolidates McKinney Act homeless assistance funding into a formula-based flexible program as proposed in the President's FY 1997 Budget. The proposed legislation would totally reorganize the currently fragmented approach to HUD's homeless assistance efforts by streamlining program requirements and application processes. Cities and States, in partnership with nonprofit homeless providers and others, would be empowered to design and implement community-based continuum of care systems in their jurisdictions.

(Furthers Strategic Objective 2)

Regulatory Action: CDBG National Objective to Eliminate Slums or Blighting Conditions

This rule is designed to facilitate the redevelopment of underutilized property for housing or economic development purposes. The rule will increase CDBG recipients' flexibility to undertake activities which meet the national objective of preventing or eliminating slums or blighting conditions. The criteria for meeting the slum/blight national objective will be revised to specifically recognize economic obsolescence of buildings and the presence of environmental contaminants as blighting influences on an area or property.

(Furthers Strategic Objective 4)

Regulatory Action: Clarification of the Nature of Required CDBG Expenditure Documentation and Accounting for Applicable Credits

The rule will clarify the level of expenditure and documentation that is needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of funds provided for assisted activities. This rule ensures better grantee and subrecipient accounting for all CDBG expenditures, as well as applicable credits to those expenditures.

(Furthers Strategic Objective 1)

Regulatory Action: Performance Grants for Urban Empowerment Zones and Enterprise Communities

This rule will identify activities that are eligible for funding with performance grants proposed in the President's FY 1998 Budget. These grants would be used to carry out

activities described in EZ/EC Strategic Plans. Grants would be provided for funding that is not available, for gap financing, or for leveraging with other funds. A key criterion in awarding grants will be the performance of the EZ or EC in carrying out the activities contemplated in the Strategic Plan and reflected in the performance review process. Support for welfare-to-work initiatives that promote self-sufficiency of poor persons and families residing in empowerment zones and enterprise communities would be encouraged.

(Furthers Strategic Objectives 1 and 5)

Regulatory Action: Replacement Housing Factor in Public Housing Modernization Funding

Since the elimination of the statutory requirement of one-for-one replacement of public housing units demolished and the cessation of appropriations for new public housing development, PHAs have been struggling to find sources of funding to replace units that they determine are not able to be restored to decent, safe, and sanitary condition. Thus far, the Department has been able to address nearly all unmet replacement housing needs by providing tenant-based vouchers to replace demolished units. However, replacement vouchers do not meet some local needs as well as hard replacement units do. Therefore, the Department is proposing to add a factor to the modernization formula for funding PHAs with more than 250 units to offset the loss in funding over a 5-year period that would otherwise occur as a result of demolition and the resulting decrease in number of units for PHAs that use the resulting funding for replacement housing.

(Furthers Strategic Objectives 3 and 4)

Regulatory Action: Section 8 Rental Voucher and Certificate Programs—Section 8 Management Assessment Program (SEMAP)

Under the section 8 Management Assessment Program established by the rule, HUD assesses whether the section 8 tenant-based assistance programs operate effectively to achieve the intended result of helping eligible families afford decent rental units at a reasonable subsidy cost. SEMAP establishes an objective system for HUD to measure HA performance in key section 8 program areas to enable the Department to ensure program integrity and accountability. SEMAP also provides procedures for HUD to identify housing agency management capabilities and deficiencies in order to target monitoring and program assistance more effectively.

(Furthers Strategic Objective 3)

Regulatory Action: Assessment of the Reasonable Revitalization of Certain Public Housing

On September 26, 1996, the Department published at 61 FR 50632, a notice to implement section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996) (OCRA). Section 202 requires PHAs to identify certain distressed public housing developments that cost more than section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory. The September 26, 1996, notice invited public comments. This interim rule takes into consideration the comments received on the September 26, 1996, notice and codifies the modified requirements in a new part 971.

(Furthers Strategic Objective 4)

Regulatory Action: Public Housing Admission and Occupancy Reforms and Streamlining

This rule includes provisions that help make public housing a more desirable place to live. It provides Public Housing Agencies (PHAs) the authority to screen out applicants and to terminate tenancies of tenants, who are engaged in criminal and antisocial behavior. Specifically, PHAs will take action against those involved in drug or alcohol abuse that ''may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project'' or who have been evicted previously for drug-related criminal activity. The screening process is to include appropriate criminal background checks. These changes implement legislation enacted in 1996 (the Housing Opportunity Program Extension Act of 1996, Pub. L. 104-120, 110 Stat. 834). Additional changes are being made to streamline the rule and to respond to relevant recommendations made by the statutorily created Public and Assisted Housing Occupancy Task Force, which issued its report in April 1994.

(Furthers Strategic Objective 3)

Regulatory Action: Housing Opportunity Program Extension Act of 1996 Implementation Provisions and Section 8 Certificate, Voucher, and Moderate Rehabilitation Admission and Occupancy Policies Revisions

This rule will amend the admission and occupancy requirements for the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs as follows: Make certain applicants ineligible for admission if evicted from housing assisted under the United States Housing Act of 1937; terminate assistance to tenant-based certificate and voucher participants evicted for serious lease violations; screen out illegal drug users and alcohol abusers; and terminate assistance to illegal drug users and alcohol abusers.

(Furthers Strategic Objective 3)

Regulatory Action: Strengthening the Title I Property Improvement Loan Insurance Program

This rule would amend the Department's Title I regulations to require that a certain amount of the proceeds of property improvement loans must be used for correcting code violations, health and safety defects, accessibility improvements, or energy improvements. This rule would establish time limits for completing improvements.

(Furthers Strategic Objective 3)

Regulatory Action: Disclosure of Fees Paid to Mortgage Brokers

This proposed rule would provide consumers with increased disclosure concerning the mortgage broker's function and fees and would provide mortgage brokers with greater clarity regarding application of the Real Estate Settlement Procedures Act (RESPA) to mortgage broker fees. The mortgage brokers would be encouraged to enter into a contract with the consumer early in a mortgage financing transaction in order to provide the consumer with information about the mortgage broker's duties and compensation.

(Furthers Strategic Objective 6)

Regulatory Action: Fair Housing Planning Performance Standard

This rule will assist communities in complying with the legal requirement to certify that they are affirmatively furthering fair housing. It will provide a performance standard rather than

prescribing precisely what a community should do. Thus, communities will have a clear idea of what is expected of them and the standards HUD will use in reviewing their certifications.

(Furthers Strategic Objectives 1 and 7)

Regulatory Action: Lead-Based Paint Poisoning Prevention in Certain Residential Structures

This rule implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which sets forth significant new requirements concerning lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance.

(Furthers Strategic Objective 3)

HUD—Office of the Secretary (HUDSEC)

FINAL RULE STAGE

45. LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES (FR-3482)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

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 4822; 42 USC 3535(d)

CFR Citation:

24 CFR 35

Legal Deadline:

Final, Statutory, January 1, 1995.

Abstract:

The Office of Lead Hazard Control was established by Congress within the Office of the Secretary of HUD. The Office provides overall direction to HUD's lead-based paint activities.

Currently, 24 CFR part 35 addresses the Department's requirements on lead hazards in housing. Additional requirements are specified for each housing program in the CFR part pertaining to each program. Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is title X of the Housing and Community Development Act of 1992 (title X), require substantial revisions to HUD's current regulations for the evaluation and control of lead-based paint hazards in federally assisted and federally owned housing. The legislation evidences a concern with developing a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all pre-1978 housing that may be occupied by young children. Because of the scope of the problem, the strategy will be implemented on a priority basis and, in part, is to be based on guidelines issued by the Secretary on August 25, 1995, on the conduct of federally supported work involving risk assessments, inspections, interim controls and abatement of lead-based paint hazards (''Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing''). The revisions required by title X will affect HUD's housing programs and the housing programs of other Federal agencies.

HUD is consolidating in a revised part 35 of title 24 of the Code of Federal Regulations the multitude of lead-based paint regulations found throughout HUD programs and will make them consistent, creating a single point of reference for the Department's lead-based paint requirements. Proposed regulations were published for public comment on June 7, 1996.

Statement of Need:

The Centers for Disease Control and Prevention (CDC), the American Academy of Pediatrics, and the National Academy of Sciences have labeled lead poisoning as the leading environmental health hazard facing America's children. Childhood lead exposure has been shown to cause damage to the brain and nervous system, which causes behavior and learning problems; reduced IQ; slowed growth; hearing problems; hypertension and heart disease; reproductive problems for both men and women; kidney damage; and many other adverse health effects, in some cases even seizures, coma, and death. These effects result in increased medical care costs, increased special education costs, and decreased lifetime earnings. The reductions in IQ appear to be irreversible, and because lead is stored primarily in bone, internal exposures can occur for decades, even if environmental exposures are controlled.

The results of CDC's third National Health and Nutrition Examination Survey indicate that population blood lead levels have continued to decrease dramatically as a result of the de-leading of gasoline and the elimination of lead in solder in food canning, as well as the ban on lead in household paint (which was effective in 1978). Nevertheless, CDC found that, during the period 1991-1994, 4.4 percent of all American children aged 1-5, or 930,000 children, had blood lead levels greater than the CDC level of concern (10 ug/dl). CDC has concluded that the most serious remaining sources of lead exposure are lead in deteriorated paint in older housing and dust and soil contaminated by paint and residues from past emissions of leaded gasoline. These sources must be controlled to assure continued declines in childhood lead poisoning.

The prevalence of elevated blood lead levels is statistically associated with low family income, older housing, and African-American or Mexican-American race/ethnicity. For instance, approximately 8.6 percent of children aged 1-5 living in housing built before 1946 had elevated blood lead levels during the 1991-1994 period, compared to 4.4 percent for all children of that age. For children in low income families living in pre-1946 housing, the percentage was 16.4; and among non-Hispanic black children living in pre-1946 housing, the percentage was 21.9.

Summary of the Legal Basis:

Title X amends the Lead-Based Paint Poisoning Prevention Act (42 USC 4822) to focus attention and resources on identifying and controlling lead-based paint hazards in federally assisted and federally owned housing before children are poisoned.

Alternatives:

The statute is generally prescriptive in requiring regulatory action to be taken by HUD. For certain HUD programs the Department has some discretion in the level of hazard evaluation and control measures to be undertaken. Alternatives being considered are related primarily to: (1) the amount of on-site work that is required for hazard evaluation and control; (2) targeting by year of construction; and (3) likelihood of occupancy by families with children.

Anticipated Costs and Benefits:

The Department has estimated the present value of some of the major

benefits of protecting children from lead exposure that would flow from first-year activities required under the regulations proposed on June 7, 1996. These quantified benefits included increased lifetime earnings associated with higher IQs for children with lower blood lead levels, and avoided costs of special education and medical treatment. Estimated benefits also included market-value increases resulting from housing renovation associated with lead-based paint hazard controls. Using a three percent discount rate for lifetime earnings, total estimated benefits were approximately $1.5 billion; using a seven percent rate, the estimate was approximately $500 million. Costs of activities that would be newly required in the first year of the proposed regulations were estimated at approximately $460 million, for a net benefit of over $1 billion using a three percent discount rate and $40 million using seven percent.

Additional possible benefits not included in these estimates are: reduced infant mortality; reduced hypertension; improvements to children's stature, hearing and vitamin D metabolism; reductions in juvenile delinquency and the burden on the educational system; avoidance of the parental and family time, expense and emotional costs of caring for poisoned children; and reductions in personal injury claims and court cases

This analysis may be modified for the final rule.

Risks:

Without the regulatory changes required by title X, childhood lead exposures will continue at or near current levels.

Timetable:

Action	Date	FR Cite
NPRM	06/07/96	61 FR 29170
NPRM Comment Period End	09/05/96	
Final Action	01/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

Agency Contact:

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RIN: 2501–AB57

HUD—Office of Housing (OH)

PROPOSED RULE STAGE

46. RESPA: DISCLOSURE OF FEES PAID TO RETAIL LENDERS (BROKERS) (FR-3780)

Priority:

Other Significant

Legal Authority:

12 USC 2601; 42 USC 3535(d)

CFR Citation:

24 CFR 3500

Legal Deadline:

None

Abstract:

A proposed rule which would provide consumers with increased disclosure concerning the mortgage broker's function and fees and would provide mortgage brokers with greater clarity regarding application of the Real Estate Settlement Procedures Act (RESPA) to mortgage broker fees.

Statement of Need:

Confusion about how RESPA applies to mortgage broker fees has led to litigation and numerous requests for clarification. The proposed rule was developed after receiving comments on a prior proposed rule and after parties to a negotiated rulemaking process, including consumer and industry groups, could not reach a consensus.

In order to benefit from greater clarity about permissibility of fees, mortgage brokers would be encouraged to enter into a contract with the consumer early in a mortgage financing transaction. The agreement would provide the consumer with information about the mortgage broker's duties and compensation.

Summary of the Legal Basis:

The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., prohibits the payment of certain fees which are unearned or for the referral of business. Under this rule, we will clarify the circumstances when certain fees to mortgage brokers are permissible and when they are prohibited under RESPA.

Alternatives:

The Department attempted to reach consensus through the negotiated rulemaking process, however, a consensus was not achieved.

Anticipated Costs and Benefits:

There are some costs for mortgage brokers associated with the additional disclosure. However, these may be offset by the benefits of greater certainty about which fees are permitted and which are prohibited. Consumers will benefit because increased clarity about the mortgage broker's rule and fees associated with the transaction will allow them to more effectively shop for a competitive loan.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/13/95	60 FR 47650
Notice	10/25/95	60 FR 54794
NPRM Comment Period End	11/13/95	
Notice Comment Period End	11/24/95	
NPRM	10/00/97	
Final Action	12/00/97	
Final Action Effective	03/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Agency Contact:

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Office of Housing
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RIN: 2502–AG40

HUD—OH

FINAL RULE STAGE

47. ● STRENGTHENING THE TITLE I PROPERTY IMPROVEMENT LOAN INSURANCE PROGRAM (FR-4246)

Priority:

Other Significant

Legal Authority:

12 USC 1703; 42 USC 1436a; 42 USC 3535(d)

CFR Citation:

24 CFR 201

Legal Deadline:

None

Abstract:

This rule proposes to amend HUD's regulations for the Title I Property Improvement Loan Insurance Program. This rule would require that at least some of the loan proceeds must be used for correcting code violations, health and safety defects, accessibility improvements, or energy improvements. This rule would also require the lender to certify that no party that is debarred or subject to a limited denial of participation will be involved in connection with the loan; that the property has been inspected and the proposed work meets the eligibility requirements; and that a post-completion inspection and verification of completion of the work has occurred. This rule would also establish time limits for completing improvements and streamline requirements, where appropriate. This rule will be finalized in conjunction with FR-3718.

Statement of Need:

This rule will propose changes to the Title I Property Improvement Loan Program necessary to reflect the market and economic changes in home improvement lending in this country. With regard to the market, many new conventional no-equity or low-equity loan products have been introduced in the last few years. Economically, the Department wants to reduce fraud and abuse in the program to mitigate the financial impact on the FHA Insurance Fund. In addition, changes are needed to ensure that use of the program complies with the Congressional intent of the program.

Summary of the Legal Basis:

Title I of the National Housing Act, as amended.

Alternatives:

There has been too much abuse and fraud in the existing program to leave the current rules unchanged. Insufficient information is available to judge the merits and disadvantages of terminating the whole program.

Anticipated Costs and Benefits:

Lenders will incur some minor additional costs for additional documentation and review of borrower and contractor performance. However, the benefits of the reduced defaults that are projected should offset these additional costs. A program with less fraud and abuse should attract additional lenders to the program making the program more readily available to borrowers.

Risks:

Some existing lenders have already decided to reduce their participation in the current program by focusing on alternative loan products. These changes could accelerate this situation and reduce the availability of Title I loans in some markets.

Timetable:

Action	Date	FR Cite
Final Action	01/00/98	
Final Action Effective	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 2502–AG95

HUD—Office of Community Planning and Development (CPD)

PROPOSED RULE STAGE

48. HOMELESS ASSISTANCE FUND REGULATION (FR-4130)

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 3535(d)

CFR Citation:

24 CFR ch V

Legal Deadline:

None

Abstract:

The proposed Homeless Assistance Fund legislation will reorganize six separate Stewart B. McKinney Homeless Assistance Act grant programs into a single program that will be formula-based, flexible, and designed to help States and cities develop and implement community-devised continuum of care systems. The specific details and timing of the regulations required to support the new Homeless Assistance Fund will be determined after enactment.

Statement of Need:

The Homeless Assistance Fund will address several key problems that plague community efforts to address homelessness. The current separate grant programs require providers of housing and services to apply discrete programs for particular needs. Each categorical program has its own funding cycle, application process, and program and reporting requirements, thereby increasing paperwork and hampering project development and implementation.

Summary of the Legal Basis:

Legislation to create the Homeless Assistance Fund is currently pending before Congress.

Alternatives:

There is no alternative. If the legislation is passed, a rule must be issued in order to implement the program and continue to provide communities with funding for homeless assistance.

Anticipated Costs and Benefits:

Benefit: Combining six separate categorical programs into one formula-based grant program will result in a significant reduction in paperwork for both grantees and HUD. Costs: Specific estimates of the cost savings involved cannot be determined until the details of the legislation become clear.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/00/98	

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Agency Contact:

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RIN: 2506–AB88

HUD—CPD

FINAL RULE STAGE

49. ● CDBG SLUM/BLIGHT NATIONAL OBJECTIVE RULE (FR-4260)

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 3535; 42 USC 5300 to 5320

CFR Citation:

24 CFR 570.208; 24 CFR 570.483

Legal Deadline:

None

Abstract:

This rule will be a key step in the implementation of the Department's Brownfields Initiative. (The Brownfields Initiative will stimulate economic development through the redevelopment of contaminated industrial properties.) It will increase Community Development Block Grant (CDBG) recipients' flexibility to undertake activities which meet the national objective of preventing or eliminating slums or blighting conditions. The criteria for meeting the slum/blight national objective will be revised to specifically recognize economic obsolescence of buildings and the presence of environmental contaminants as blighting influences on an area or property.

Statement of Need:

Current CDBG regulations concerning the slum/blight national objective only recognize the presence of physically deteriorated buildings or public improvements as blighting influences on an area or property. Professional practice and thinking in the community development field is evolving toward a more encompassing view of the factors which influence urban decay. Failure to update and streamline CDBG program rules would hinder grantees' efforts to redevelop underutilized properties and improve physical conditions in neighborhoods.

Summary of the Legal Basis:

Section 104 of the Housing and Community Development Act of 1974 establishes certain national objectives for CDBG assisted activities. Among other goals, section 104 makes the prevention or elimination of slums or blight a national objective for the CDBG program.

Alternatives:

None considered.

Anticipated Costs and Benefits:

Costs: None. Benefits: Grantees will gain the flexibility to use CDBG funds to assist in redeveloping a larger universe of properties whose conditions negatively influence the condition of the surrounding area.

Risks:

This rule poses no threat to public safety, health or the environment. Any cleanup of contaminated sites will be governed by existing federal and state standards for environmental remediation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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RIN: 2506–AB94

HUD—CPD

50. ● CLARIFICATION OF THE NATURE OF REQUIRED CDBG EXPENDITURE DOCUMENTATION AND ACCOUNTING FOR APPLICABLE CREDITS (FR-4261)

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 3535 (d); 42 USC 5300 to 5320

CFR Citation:

24 CFR 570.200; 24 CFR 570.502; 24 CFR 570.506

Legal Deadline:

None

Abstract:

This rule will clarify the level of expenditure documentation that is needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of funds provided for assisted activities. This rule will further advise grantees and subrecipients regarding the need to net all applicable credits from costs to be paid with CDBG funds.

Statement of Need:

Office of Inspector General (OIG) audits have found various cases in which grantees and subrecipients were not maintaining sufficient documentation to clearly identify the actual use of CDBG funds provided to assisted projects. This issue has particularly arisen in regard to special economic development projects where the funds are ultimately expended by for-profit businesses. An audit has also found that applicable credits have not always been properly netted from costs before the costs were paid with CDBG funds.

Such findings increase the potential for misuse of CDBG funds.

Summary of the Legal Basis:

Section 104 of the Housing and Community Development Act of 1974 provides the statutory authority for this rule.

Alternatives:

None considered.

Anticipated Costs and Benefits:

Costs: None. Benefits: The public will be more assured that CDBG funds are used only for allowable purposes.

Risks:

This rule poses no threat to public safety, health or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/98	

Small Entities Affected:

None

Government Levels Affected:

Local

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RIN: 2506–AB95

HUD—CPD

51. ● PERFORMANCE GRANTS FOR URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES (FR-4262)

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:

26 USC 1391; 42 USC 3535(d)

CFR Citation:

24 CFR 597

Legal Deadline:

None

Abstract:

This rule would identify activities eligible for funding with performance grants proposed in the President's FY 1998 Budget. These grants would be used to carry out activities described in EZ/EC Strategic Plans. Grants would be provided to provide for funding that is not available, which will provide gap financing, or which will leverage other funds. A key criterion in awarding grants will be the performance of the EZ or EC in carrying out the activities contemplated in the Strategic Plan and reflected in the performance review process.

Support for welfare to work initiatives that promote self-sufficiency of poor persons and families residing in Empowerment Zones and Enterprise Communities would be encouraged. Applicants would identify specific regulatory or other impediments to the implementation of strategies that are designed to support self-sufficiency and make welfare reform work.

Statement of Need:

The goal of these grants is to revitalize city neighborhoods in a way that retains and attracts middle-class residents and provides employment opportunities that move people from welfare to work. This will enable Empowerment Zones and Enterprise Communities to continue to create economic opportunity in America's distressed communities, with a special emphasis on stimulating job creation linked to welfare reform. Flexible grant funds can be used to integrate human capital needs with economic development initiatives. This includes day care, transportation, job training and other social support designed to enable welfare recipients to achieve self sufficiency.

Summary of the Legal Basis:

Pending Legislation.

Alternatives:

None considered.

Anticipated Costs and Benefits:

This will enable Empowerment Zones and Enterprise Communities to continue to create economic opportunity in America's distressed communities, with a special emphasis on stimulating job creation linked to welfare reform.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/98	

Small Entities Affected:

None

Government Levels Affected:

Local

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RIN: 2506–AB96

HUD—Office of Fair Housing and Equal Opportunity (FHEO)

PROPOSED RULE STAGE

52. FAIR HOUSING PLANNING PERFORMANCE STANDARD (FR-4133)

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 3535(d); 42 USC 3600 to 3620

CFR Citation:

24 CFR 570

Legal Deadline:

None

Abstract:

This rule will assist communities in complying with the legal requirement to certify that they are affirmatively furthering fair housing. It will provide a performance standard (for accepting a certification) rather than prescribing precisely what a community should do. Thus, communities will have a clear idea of what is expected of them and the standards HUD will use in reviewing their certifications.

Statement of Need:

Currently, the CDBG regulation provides for HUD review and oversight.

However, the regulation does not contain a performance standard for grantee actions to affirmatively further fair housing. Without such a performance standard, HUD cannot determine the acceptability of the AFFH certification.

This revision to the existing CDBG regulation would provide a performance review for grantee actions to affirmatively further fair housing.

Summary of the Legal Basis:

Section 104 of the Housing and Community Development Act of 1974 and HUD's regulations at 24 CFR part 570, subpart O establish the legal basis for this rule.

Alternatives:

None considered.

Anticipated Costs and Benefits:

Costs: None.

Benefit: The benefit is that there will be more certainty for grantees about the standards that HUD will use to review their certifications.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 2529–AA81

HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

53. REPLACEMENT HOUSING FACTOR IN MODERNIZATION FUNDING (FR-4125)

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 1437l(k)(2)(B); 42 USC 3535(d)

CFR Citation:

24 CFR 968

Legal Deadline:

None

Abstract:

The replacement housing factor would offset for five years much of the loss of formula share funding due to the reduction of units as a result of demolition, disposition, or conversion from October 1, 1996, as long as the reduced units are not in developments receiving MROP or HOPE IV implementation funding and as long as the funds conserved by the offset are used for approved replacement housing.

Statement of Need:

Drafters of the 1990 statutory requirement of a three year phase-down of funding for units reduced as a result of demolition, disposition, or conversion did not envision the drastic reduction in non-viable units that HUD and Congress are now implementing or the drastic reduction in new development funding that could be used to strategically restructure the public housing inventory. By allowing a Housing Authority with reduced units to stabilize its funding if it uses the offset portion of funding for replacement housing, the proposed rule will make more acceptable the reduction of non-viable units in downsizing Housing Authorities and their communities.

Summary of the Legal Basis:

The enabling statute allows a proposed rule process for changes in the formula. The drafters of the statute realized that formulas have to adapt to changing conditions.

Alternatives:

Legislation to authorize preservation of funding for housing authorities with significant demolition of units, or decreased production of replacement units for those now being demolished.

Anticipated Costs and Benefits:

The proposed rule would have the benefit of speeding and making more rational the reduction and restructuring of the public housing inventory. Additional costs to the PHA or to HUD would be negligible.

Risks:

The rule poses no risk to public health, safety, or the environment. To the extent the new rule hastened the reduction of non-viable units, it would improve public health and safety.

Timetable:

Action	Date	FR Cite
NPRM	09/10/97	62 FR 47720
NPRM Comment Period End	12/09/97	
Final Action	03/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 2577–AB71

HUD—PIH

FINAL RULE STAGE

54. HOUSING OPPORTUNITY PROGRAM EXTENSION ACT OF 1996 IMPLEMENTATION PROVISIONS AND SECTION 8 CERTIFICATE, VOUCHER, & MODERATE REHABILITATION ADMISSION & OCCUPANCY POLICIES REVISIONS (FR-4159)

Priority:

Other Significant

Legal Authority:

42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation:

24 CFR 982

Legal Deadline:

None

Abstract:

This proposed rule would amend the admission and occupancy requirements for the section 8 Rental Certificate, Rental Voucher, and Moderate

Rehabilitation Programs as follows: Make certain applicants ineligible for admission if evicted from housing assisted under the United States Housing Act of 1937; terminate assistance to tenant-based certificate and voucher participants evicted for serious lease violations; screen out illegal drug users and alcohol abusers; and terminate assistance to illegal drug users and alcohol abusers.

Statement of Need:

This rule is needed to clarify relevant provisions in the Housing Opportunity Program Extension Act of 1996 (the Extension Act), specifically with regard to the sharing of information about drug-related criminal activity on the part of applicants for housing assistance.

Summary of the Legal Basis:

Section 10 of the Housing Opportunity Program Extension Act, signed into law on March 28, 1996, contains the statutory foundation for this rule.

Alternatives:

None considered.

Anticipated Costs and Benefits:

There is some administrative burden for housing authorities, because HAs must establish standards for prohibiting occupancy based on the guidelines provided in the rule. This cost is negligible. Significant benefits will result from implementation of this rule in the areas of tenant relations and facilities management.

Risks:

The rule poses no risk to public health, safety, or to the environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. To the extent the new rule facilitated housing authority efforts to promote good citizenship and adherence to laws among tenants, it would improve public health and safety.

Timetable:

Action	Date	FR Cite
NPRM	03/31/97	62 FR 15346
NPRM Comment Period End	05/30/97	
Final Action	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 2577–AB72

HUD—PIH

55. PUBLIC HOUSING ADMISSION AND OCCUPANCY REFORMS AND STREAMLINING (FR-4084)

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 1437a; 42 USC 1437c; 42 USC 1437d; 42 USC 1437n; 42 USC 3535(d)

CFR Citation:

24 CFR 960; 24 CFR 966

Legal Deadline:

None

Abstract:

This rule streamlines admission and occupancy regulations, and implements relevant parts of the Housing Opportunity Program Extension Act of 1996.

Additional administrative flexibility is provided to housing authorities through this rule: HAs can verify information about an applicant's disability to determine appropriate accommodations, to verify information relative to qualification for a preference, and to determine deductions for calculating adjusted income. It clarifies that the HA makes the final determination of whether an applicant's failure to meet the HA's tenant selection criteria is outweighed with respect to these issues. The rule also provides explicit authorization for HAs to adopt income limits for continued occupancy and removes language that required a tenant's approval for direct payment of a utility reimbursement to a utility provider.

In addition, the rule implements relevant portions of the Housing Opportunity Program Extension Act of 1996. The Extension Act of 1996 amended the U.S. Housing Act of 1937 to make drug-related criminal activity a criterion for denial of admission to housing assisted under the 1937 Act. The Extension Act also made drug use and/or alcohol abuse a criterion for eviction from housing assisted under the 1937 Act.

Statement of Need:

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD determined that the regulations under 24 CFR parts 960 and 966 could be improved and streamlined by eliminating unnecessary language and by simplifying remaining requirements. On March 28, 1996, the Housing Opportunity Program Extension Act of 1996 was passed.

Summary of the Legal Basis:

The Housing Opportunity Program Extension Act of 1996 and the U.S. Housing Act of 1937, as amended.

Alternatives:

None considered.

Anticipated Costs and Benefits:

This rule will have the benefit of increasing administrative flexibility for housing authorities. Additional costs will be negligible.

Risks:

This rule does not pose a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/09/97	62 FR 25728
Final Action	01/00/98	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 2577–AB67

HUD—PIH

56. ● ASSESSMENT OF THE REASONABLE REVITALIZATION POTENTIAL OF CERTAIN PUBLIC HOUSING REQUIRED BY LAW (FR-4120)

Priority:

Other Significant

Legal Authority:

PL 104-134 Sec. 202 of the OCRA of 1996

CFR Citation:

24 CFR 971

Legal Deadline:

None

Abstract:

Section 202 of the Omnibus Consolidated Rescissions Act (OCRA) of 1996 requires PHAs to identify certain distressed public housing developments which may be required to be converted to section 8 vouchers or certificates. The requirement covers developments that are on the same or contiguous sites, are more expensive than tenant-based assistance, and cannot be revitalized through reasonable programs. To be subject to these requirements, the developments must have more than 300 dwelling units and have a vacancy rate of at least ten percent for dwelling units not in funded on-schedule modernization programs.

Statement of Need:

The rule provides further information on statutory provisions that are already in effect through notice. Because of the technical nature of the requirements, the Department is issuing an interim rule in 1997 that solicits public comments on HUD's implementation of the statute.

Summary of the Legal Basis:

Section 202 of the Omnibus Consolidated Rescissions Act of 1996 requires PHAs to identify certain distressed public housing developments that will be required to be replaced with tenant-based assistance if they cannot be revitalized by any reasonable means.

Alternatives:

None considered.

Anticipated Costs and Benefits:

The rule will have the benefit of speeding and making more rational the reduction and restructuring of the public housing inventory. Additional costs to the PHA or to HUD would be negligible.

Risks:

The rule poses no risk to public health, safety, or to the environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. To the extent the new rule hastened the reduction of non-viable units, it would improve public health and safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/22/97	62 FR 49572
Interim Effective	10/22/97	
Interim Comment	11/21/97	
Final Action	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 2577–AB79

HUD—PIH

57. SECTION 8 RENTAL VOUCHER AND CERTIFICATE PROGRAMS—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) (FR-3986)

Priority:

Other Significant

Legal Authority:

42 USC 1437f; 42 USC 3535(d); 42 USC 1437a; 42 USC 1437c

CFR Citation:

24 CFR 985

Legal Deadline:

None

Abstract:

Under the section 8 Management Assessment Program established by the rule, HUD assesses whether the section 8 tenant-based assistance programs operate effectively to achieve the intended result of helping eligible families afford decent rental units at a reasonable subsidy cost. SEMAP establishes an objective system for HUD to measure HA performance in key section 8 program areas to enable the Department to ensure program integrity and accountability. SEMAP provides procedures for HUD to identify housing agency management capabilities and deficiencies in order to target monitoring and program assistance more effectively. Housing agencies can use the SEMAP performance analysis to assess and improve their own program operations.

Statement of Need:

At a time of diminishing HUD staffing resources, use of SEMAP will enable the Department to improve its risk assessment and to effectively target monitoring and program assistance to housing agency programs needing most improvement and posing the greatest risk.

Summary of the Legal Basis:

The Department of Housing and Urban Development Act charges HUD with achieving the best administration of the principal programs of the Federal Government which provide assistance for housing.

Alternatives:

None considered.

Anticipated Costs and Benefits:

Costs: The SEMAP rule implementation costs will be minimal, as the Department has sought to assess performance using readily available data, without imposing substantial new or undue recordkeeping burdens on housing agencies. The systematic assessment of housing agency performance under the rule is expected to substantially improve HUD oversight of the section 8 tenant-based programs and to help HUD target monitoring and assistance to programs that pose the greatest risk and to housing agencies needing most improvement.

Risks:

This rule poses no risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/02/96	61 FR 63930
NPRM Comment Period End	01/31/97	
Final Action	12/00/97	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

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BILLING CODE 4210-01-F

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

As the Nation's principal conservation agency, the Department of the Interior (DOI) has immense land management and resource protection responsibilities. DOI's mission is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to American Indians, Alaska Natives, and residents of island territories under the jurisdiction of the United States. We are responsible for more than 450 million acres of Federal lands, approximately 3 billion acres of the outer Continental Shelf, and more than 57,000 buildings.

Interior executes its mission through numerous programs, its eight bureaus and the following objectives:

- Conserve, protect, and enhance the Nation's national parks, wilderness, and fish and wildlife resources;
- Manage, develop, and protect the quality of water resources;
- Promote economic opportunity and improve the trust assets of American Indians, Indian tribes, Alaska Natives, and people of the U.S. territories;
- Improve the Federal Government's relationships with State, local, tribal, and territorial governments; and
- Enhance America's ability to meet its needs for domestic energy and mineral resources.

Major Regulatory Areas

Among the Department's bureaus and offices the Office of Surface Mining, Reclamation and Enforcement (OSM) has the highest concentration of regulatory responsibilities. OSM, in cooperation with the States and Indian tribes, has the responsibility for setting and enforcing environmental standards during coal mining and reclamation operations.

A Other DOI bureaus rely on regulations to implement legislatively mandated programs by focusing on the management of natural resources, and public or trust lands. Some of these regulatory activities include:

- Management of migratory birds and preservation of certain marine mammals and endangered species;
- Management of dedicated lands, such as national parks, wildlife refuges, and American Indian trust lands;
- Management of public lands open to multiple use;
- Leasing and oversight of development of Federal energy, minerals, and renewable resources;
- Management of revenues from American Indian and Federal minerals;
- Fulfillment of trust and other responsibilities pertaining to American Indian tribes;
- Natural resource damage assessments; and
- Management of financial and nonfinancial assistance programs.

Regulatory Policy

How DOI Regulatory Procedures Relate to the Administration's Regulatory Policies

Within the general requirements and guidance in Executive Orders 12866, 12612, and 12630, DOI's regulatory program seeks to: Fulfill all legal requirements as specified by statutes or court orders; perform essential functions that cannot be handled by non-Federal entities; minimize regulatory costs to society while maximizing societal benefits; and operate programs openly, efficiently, and in cooperation with Federal and non-Federal entities.

During the past year, we concentrated on eliminating and reinventing regulations, fostering partnerships with regulated entities, and maximizing the use of negotiated rulemaking. We acknowledge that regulatory reform is a continuing process.

To improve the overall efficiency of the department, DOI transferred the administrative functions for regulatory review from the Solicitor's Office, back to the Secretary's Office, within the Office of the Executive Secretariat (OES). This move enables OES and the Office of Regulatory Affairs (ORA) to:

- Increase assistance and the availability of resources to the bureaus;
- Facilitate better departmental review as mandated by new statutory reform guidelines such as the Small Business Regulatory Enforcement Fairness Act (SBREFA); and
- Upgrade the regulatory data base system to expedite regulatory review.

OES has initiated and facilitated a series of training workshops agencywide to educate the Departmental staff about the regulatory process.

DOI is committed to improving the regulatory process through the use of plain English. We have used plain English techniques to write several clear and concise regulations. This new approach will be the new standard for drafting regulations. To further ensure the success and effectiveness of plain English within DOI, we will adopt the Plain English Network handbook as a guide for writing and reviewing plain English regulations. In addition, the Regulatory Affairs staff and the Office of Policy Analysis (OPA) have proposed updated guidance on regulation procedures which you can view on DOI's web site.

Encouraging Responsible Management of the Nation's Resources

One of DOI's fundamental goals is to encourage the responsible management of the Nation's natural heritage. The regulatory program is designed to help achieve this by striking an appropriate balance between the use and preservation of natural resources. In this vein, we are seeking ways to provide incentives for users of public resources to adopt long-term strategies designed to meet current needs while preserving resources for future generations. We are also seeking to ensure that the Government receives fair prices for public resources.

Minimizing Regulatory Burdens

DOI has made a major effort to streamline its regulations and to reduce the burdens that they impose. We have changed the planning processes for land use and water development to reduce unnecessary delays and paperwork associated with agency decisionmaking. Moreover, we are currently reviewing regulations to determine whether their benefits continue to outweigh their costs to society.

The Department's review of potential rules focuses both on assuring consistency with broad regulatory policies and goals and on making certain that rules are technically feasible and understandable. We encourage the use of performance standards rather than traditional command-and-control regulations; this gives regulated entities greater flexibility to develop more efficient and less burdensome compliance procedures.

Encouraging Public Participation and Involvement in the Regulatory Procedure Process

One of the goals of Executive Order 12866 is to ensure that the public has full and adequate opportunities to participate in developing new regulations. Encouraging increased public participation in the regulatory process to make regulatory policies more responsive to our customers' needs is a priority under this Administration.

The Department is reaching out to communities and seeking their input on a variety of regulatory issues. For example, every year the Fish and Wildlife Service (FWS) establishes migratory bird hunting seasons in partnership with ''flyway councils,''

which are made up of State fish and wildlife agencies. As the process evolves each year FWS holds a series of public meetings to afford other interested parties, including hunters and other interested groups, adequate opportunity to participate in establishing the upcoming seasons' regulations.

Another part of our efforts to encourage public participation is our continuing effort to use negotiated rulemaking. Several bureaus have used negotiated rulemaking to enhance public participation in the regulatory process. For example, the Bureau of Indian Affairs (BIA) used negotiated rulemaking to develop new rules implementing the Indian Self-Determination and Education Assistance Act (ISDEA). BIA is also negotiating with tribal representatives the rules to implement the Self-Determination amendments to the ISDEA. The National Park Service has also used negotiated rulemaking to amend its rules governing off-road vehicle use at Cape Cod National Seashore. Several bureaus are currently employing negotiated rulemaking techniques or are exploring whether negotiated rulemaking is appropriate and feasible for particular rules.

Finally, departmental policies are designed to delegate decisionmaking. This means operating our regulatory programs at the lowest appropriate level. With decentralization, bureaus can develop procedures that are sensitive to the various local needs and interests affected by DOI programs.

The Future of DOI

In compliance with the Government Performance and Results Act of 1993 (GPRA), DOI has developed a comprehensive agencywide strategic plan to prepare DOI for the 21st century. The strategic plan covers the period from 1997 through the year 2002. It provides employees and managers with clear goals and strategies to help meet the mission and fulfill the Department's commitment to the Nation. The strategic plan is divided into two sections. The first section covers goals and initiatives for the individual bureaus, whereas the second encompasses the entire departmental overview. You can see a copy of DOI's strategic plan on the Internet at this address:

http://doi.gov/master2.html

Bureaus and Offices Within DOI

The following are brief descriptions of the regulatory functions of DOI's major regulatory bureaus and offices.

Office of the Secretary, Office of Environmental Policy and Compliance

The regulatory functions of the Office of Environmental Policy and Compliance (OPEC) stem from requirements under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c) requires the development of natural resource damage assessment rules and the biennial review and revision, as appropriate, of these rules. Rules have been promulgated for the optional use of natural resource trustees to assess compensation for damages to natural resources caused by hazardous substances. OPEC is overseeing the study and possible promulgation of additional rules pursuant to section 301(c)(2) and the review and possible revision of the existing rules in compliance with section 301(c)(3).

In undertaking DOI's responsibilities under section 301(c), OPEC is striving to meet three regulatory objectives: (a) That the minimum amount of regulation necessary be developed; (b) that the assessment process provide for tailoring to specific discharges or releases; and (c) that the process not be considered punitive, but rather a system system to achieve fair and just compensation for injuries sustained.

Bureau of Indian Affairs

The philosophy of the Bureau of Indian Affairs (BIA) is to encourage the development and management of human and other resources among American Indians and Alaska Natives, to encourage tribal assumption of BIA programs, and to fulfill trust and other responsibilities of the U.S. Government. BIA regulatory actions serve to balance its dual role as: (a) Advocate in assisting tribes and encouraging their participation in BIA programs and (b) trustee protecting and/or enhancing American Indian trust resources.

Important BIA programs are promulgated through regulations, rather than informal guidelines, so that American Indians are aware of and have an opportunity to participate in the development of standards and procedures affecting them. BIA regulatory policies seek to accomplish the following: (a) Ensure consistent policies throughout American Indian country; (b) promote American Indian involvement in the operation, management, planning, and evaluation of BIA programs and services; (c) provide guidance to applicants for BIA services; and (d) govern the development of American Indian lands and provide for the protection of American Indian treaty and statutory rights.

BIA's regulatory program is designed (a) to promote American Indian self-determination, (b) to provide American Indians and Alaska Natives with high-quality education and tribal development opportunities, (c) to meet BIA's trust responsibilities, and (d) to meet the needs of tribes and their members.

In furtherance of the goals mentioned above, the Bureau will publish, this year, a significant rule to implement the Tribal Self-Governance Act of 1994. The Act allows tribes to receive their share of the funds used to administer certain programs within the Bureau. Tribal governments then assume total responsibility for providing services under these programs to their citizens and exercise discretion over the use of the funds according to tribal priorities. Tribes also are eligible to negotiate to operate certain non-BIA programs or services at the discretion of the Secretary. In these instances, funding amounts are negotiated and incorporated in annual funding agreements between the tribe and the non-BIA bureau.

Bureau of Land Management

The Bureau of Land Management manages about 268 million acres of land surface and about 570 million acres of mineral estate in the 17 conterminous western States and Alaska and the 31 States east of or adjoining the Mississippi River. These lands consist of extensive grasslands, forests, mountains, artic tundra, and deserts. Resources on the lands include energy and minerals, timber, forage, wild horse and burro populations, habitat for fish and wildlife, wilderness areas, and archaeological and cultural sites. BLM must manage these lands and resources for multiple use and for the sustained yield of renewable resources. Primary statutes for which the agency is responsible include: the Federal Land Policy and Management Act of 1976; the General Mining Law of 1872; the Mineral Leasing Act of 1920, as amended; the Recreation and Public Purposes Act; the Taylor Grazing Act; and the Wild, Free-Roaming Horses and Burros Act.

The regulatory program mirrors statutory responsibilities and agency objectives. Agency objectives include:

- Providing for a wide variety of public uses without compromising the long-term health and diversity of the land and without sacrificing significant

natural, cultural, and historical resource values;
- Understanding the arid, semi-arid, artic, and other ecosystems we manage and committing to using the best scientific and technical information to make resource management decisions;
- Understanding the needs of the publics who use BLM-managed lands and providing them with quality service;
- Committing to recovering a fair return for using publicly owned resources and avoiding the creation of long-term liabilities for American taxpayers; and
- Resolving problems and implementing decisions in collaboration with other agencies, States, tribal governments, and the public.

The regulatory program contains its own objectives. These include preparing regulations that:
- Contain to the extent possible outcomes that can be measured and evaluated;
- Reflect the product of coordination and consultation with all affected members of the public;
- Are understandable to the general public, especially those to whom they are directly applicable; and
- Are reviewed periodically to determine whether or not BLM still needs them and whether or not they need to be updated to reflect statutory and policy changes.

Minerals Management Service

The Minerals Management Service (MMS) has two major responsibilities: (1) Timely and accurate collecting, distributing, accounting for, and auditing of revenues owed by holders of Federal onshore, offshore, and tribal land mineral leases in a manner that meets or exceeds Federal financial integrity requirements and recipient expectations and (2) management of the resources of the Outer Continental Shelf in a manner that provides for safety, protection of the environment, and conservation of natural resources. These responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Minerals Leasing Act, the Outer Continental Shelf Lands Act, the Indian Mineral Leasing Act, and other related statutes.

The regulatory philosophy of MMS is to develop clear, enforceable rules that support the missions of each program. For the Offshore Program, MMS will issue final regulations implementing the Deep Water Royalty Relief Act. MMS will also publish a final rule to address financial responsibility under the Oil Pollution Act of 1990. MMS will continue to review rules and issue amendments in response to new technology and new industry practices.

MMS also plans to continue its review of existing regulations and to issue rules to refine the Royalty Management regulations in chapter II of 30 CFR. Revisions to the royalty management regulations cover oil and gas valuation of Federal and Indian leases. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 will require numerous additional changes to the royalty management regulations, including the delegation of royalty collection and related activities to States.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to ''strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.''

The principal regulatory provisions contained in title V of SMCRA set minimum requirements for obtaining a permit for surface coal mining operations, set standards for surface coal mining operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, OSM serves as the primary enforcer of SMCRA until the States achieve ''primacy''; that is, until they demonstrate that their regulatory programs meet all the specifications in SMCRA and have regulations consistent with those issued by OSM.

A primacy State takes over the permitting, inspection, and enforcement activities of the Federal Government. OSM then changes its role from regulating mining activities directly to overseeing and evaluating State programs. Today, 24 of the 27 key coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and to grants for reclaiming abandoned mine lands. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on American Indian lands.

SMCRA charges OSM with the responsibility of publishing rules as necessary to carry out the purposes of the Act. The most fundamental mechanism for ensuring that the purposes of SMCRA are achieved is the basic policy and guidance established through OSM's permanent regulatory program and related rulemakings. Its regulatory framework is developed, reviewed, and applied according to policy directives and legal requirements.

Litigation by the coal industry and environmental groups is responsible for some of the rules now being considered by OSM. Others are the result of efforts by OSM to address areas of concern that have arisen during the course of implementing OSM's regulatory program, and one is the result of legislation.

OSM has sought to develop an economical, safe, and environmentally sound program for the surface mining of coal by providing a stable regulatory framework. To achieve stability, OSM has endeavored to create a regulatory program that provides a high degree of continuity in its requirements and creates minimal uncertainty concerning the nature and pace of changes to existing provisions.

OSM also has worked to create a consistent regulatory framework. At the same time, however, OSM has recognized the need (a) to respond to local conditions, (b) to provide flexibility to react to technological change, (c) to be sensitive to geographic diversity, and (d) to eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

Major regulatory objectives regarding the mining of surface coal include:
- Continuing outreach activities with interested groups during the rulemaking process to increase the quality of the rulemaking process, improve the substance of the rules, and, to the greatest extent possible, reflect consensus on regulatory issues;
- Minimizing the recordkeeping and regulatory compliance burden imposed on the public by means of a review and, where advisable, revision of unnecessary and burdensome regulatory requirements; and
- Publishing final rules to implement the Energy Policy Act of 1992, Public Law 102-486.

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service has three basic mission objectives:

- To assist in the development and application of an environmental stewardship ethic based on ecological principles and scientific knowledge of fish and wildlife;
- To guide the conservation, development, and management of the Nation's fish and wildlife resources; and
- To administer a national program to provide the public with opportunities to understand, appreciate, and wisely use fish and wildlife resources.

These objectives are met through the following regulatory programs:

- Management of Service lands, primarily national wildlife refuges;
- Management of migratory bird resources;
- Conservation of certain marine mammals and endangered species;
- Allowance of certain activities that would otherwise be prohibited by law; and
- Administration of grant and assistance programs.

The Service maintains a comprehensive set of regulations in the first category—those that govern public access, use, and recreation on national wildlife refuges and in national fish hatcheries. As required by law, the Service is authorized to allow such uses only if they are compatible with the purpose for which each area was established. These regulations will be as consistent with State and local laws as practicable and will afford the public as much economic and recreational opportunity as possible. Consistent with the purposes for which those areas are established, with very few exceptions, the Service provides these types of opportunities on each of the more than 500 refuges and hatcheries. These regulations are developed and continually reviewed for improvements, with a substantial amount of public input, and are typically of limited geographical interest.

Management of migratory bird resources, covered by the second category of regulations, entails fulfilling U.S. obligations contained in various international treaties. This regulatory program entails an annual issuance on migratory bird hunting seasons and bag limits, developed in partnership with the States, American Indian tribal governments, and the Canadian Wildlife Service. Although these rules are issued annually, this regulatory program has been in existence for more than 50 years and has not significantly changed over that period of time. The regulations are necessary to permit migratory bird hunting that would otherwise be prohibited. Although recent declines in waterfowl populations have reduced the numbers of such birds that may be harvested, the regulations generally do not change significantly from one year to another.

The third category includes regulations to fulfill the statutory obligation to identify and conserve species faced with extinction. The basis for determining endangered species is limited by law to biological considerations, although priorities for allocating Service resources are established consistent with the President's policies (by directing the Service's efforts to species most threatened and those whose protection is of the most benefit to the natural resource). Also included in this program are regulations to enhance the conservation of listed species and of marine mammals for which DOI has management responsibility. This program also contains regulations that provide guidance to other Federal agencies to assist them in complying with section 7 of the Endangered Species Act, which requires them not to conduct activities that would jeopardize the existence of endangered species or adversely modify critical habitat of listed species.

In designating critical habitat, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded from the designation where the benefits of exclusion outweigh the benefits of inclusion, provided that the exclusion will not result in the extinction of the species.

The fourth category—the Service's regulatory program that permits activities otherwise prohibited by law—entails regulating possession, sale or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. Generally, these regulations are supplemental to State protective regulations and cover activities that involve interstate or foreign commerce, which must comply with various laws and international obligations. The Service is continually working with foreign and State governments, the industry and individuals affected, and other interested parties to minimize the burdens associated with Service-related activities. The easing of such burdens through regulatory actions continues to balance the benefits that may be made available with the necessity to ensure adequate protection to the natural resource. Most of the regulatory activities are permissive in nature, and the concerns of the public generally center on technical issues.

The last category—the Service's assistance programs—includes a limited number of regulations necessary to ensure that assistance recipients comply with applicable laws and Office of Management and Budget (OMB) Circulars. Regulations in this program help the affected parties to obtain assistance and to comply with requirements imposed by Congress and OMB.

Bureau of Reclamation

The Bureau of Reclamation's mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation applies management, engineering, and scientific skills that result in effective and environmentally sensitive solutions.

Reclamation projects provide for some or all of the following concurrent purposes: Irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses.

The Bureau's regulatory program is designed to ensure that its mission is carried out expeditiously and efficiently.

DOI—Bureau of Indian Affairs (BIA)

PROPOSED RULE STAGE

58. TRIBAL SELF-GOVERNANCE

Priority:

Other Significant

Legal Authority:

PL 103-413

CFR Citation:

25 CFR 1000

Legal Deadline:

None

Abstract:

This rule will clarify how the Department and tribes will carry out

their respective responsibilities under the Tribal Self-Governance Act of 1994. At the request of a majority of Indian tribes with self-governance agreements, the Secretary has established a negotiated rulemaking committee to negotiate and promulgate such regulations as are necessary to carry out the Act.

Statement of Need:

The Department of the Interior (DOI) needs to clarify how it and the tribes will carry out their respective responsibilities under the Tribal Self-Governance Act of 1994. Provisions are needed to clarify or establish:

- Procedures for conducting negotiations, defining stable base budgets, time lines for the transfer of funds for tribes, and the amount of residual funds to be retained;

- The processes for accepting new tribes into the self-governance program planning and negotiation process, for awarding planning and negotiation grants, for approving waiver requests, and for determining and negotiating tribal shares of BIA and eligible non-BIA programs;

- Mechanisms for reviewing tribal trust functions;

- Retrocession procedures;

- Procedures for ensuring that proper health and safety standards exist in construction projects and are included in annual funding agreements;

- Reporting requirements of tribes and DOI; and

- A mechanism for negotiating the inclusion of specific provisions of Federal procurement regulations into annual funding agreements.

DOI expects that the rulemaking process will identify other components of the program that require clarification.

Summary of the Legal Basis:

The Tribal Self-Governance Act of 1994 requires DOI, upon request of a majority of self-governance tribes, to negotiate and promulgate regulations to carry out the tribal self-governance program. The Act calls for a negotiated rulemaking committee under 5 USC 565, composed of Federal and tribal representatives, with a majority of the tribal representatives from self-governance tribes. The Act also authorizes DOI to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and the Indian tribes. On November 1, 1994, a majority of self-governance tribes wrote the Secretary requesting the immediate initiation of negotiated rulemaking.

Alternatives:

There is a range of alternatives for each of the program components, from maintaining discretion and flexibility at the local level to standardizing requirements and procedures on the national level.

Anticipated Costs and Benefits:

The rule is expected to promote greater efficiency of Federal and tribal government operations. It is also expected to reduce opportunity costs resulting from untimely Federal actions. The rule will improve the ability of Federal and tribal governments to plan their self-governance activities. This should lead to greater stability of operations. Clarifying procedures for conducting operations will improve the ability of governments to plan for the time and cost of conducting negotiations. Clarifying time lines for transfer of base funding and other funds to tribes will improve planning and reduce the opportunity costs resulting from the untimely transfer of funds under the self-governance program. Budget and operation planning will be improved by specifying the process for accepting additional tribes into the self-governance program planning and negotiating process as well as the process for awarding planning and negotiation grants. Since retrocession procedures will be specified, governments will be better able to plan for retrocessions. Standardization of tribal shares will allow the self-governance program to comply with statutory requirements not to limit or, reduce the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive.

Risks:

By removing uncertainty and promoting a more stable framework for the program, the rule will greatly lower the risk of not achieving the stated goals of tribal self-governance. It will change the role of Federal agencies that serve tribes by shifting their responsibilities from day-to-day management of tribal affairs to those concerned with protecting and advocating tribal interests.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish a Negotiated Rulemaking Committee	02/15/95	60 FR 8806
NPRM	10/00/97	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Tribal, Federal

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RIN: 1076–AD20

DOI—Minerals Management Service (MMS)

PROPOSED RULE STAGE

59. VALUATION OF OIL FROM INDIAN LEASES

Priority:

Other Significant

Legal Authority:

25 USC 396 et seq; 25 USC 2101 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq

CFR Citation:

30 CFR 206

Legal Deadline:

None

Abstract:

This rule would modify the regulations that establish royalty value for oil produced from Indian leases and create a new form for collecting value and value differential data. These changes would decrease reliance on oil posted prices and make Indian oil royalty valuation more consistent with the terms of Indian leases.

Statement of Need:

Current oil valuation regulations rely primarily on posted prices and prices under arm's-length sales. Recently,

posted prices have become increasingly suspect as a fair measure of market value. This rulemaking would modify valuation regulations to place substantial reliance on the higher of crude oil futures prices, major portion prices, or gross proceeds, and eliminate any direct reliance on posted prices. This rulemaking would also add more certainty to valuation of oil produced from Indian leases.

Summary of the Legal Basis:

The primary legal basis for this rulemaking is the Federal Oil and Gas Royalty Management Act of 1982, as amended, which defines the Secretary of the Interior's (1) authority to implement and maintain a royalty management system for oil and gas leases on Indian lands, and (2) trust responsibility to administer Indian oil and gas resources.

Alternatives:

MMS considered a range of valuation alternatives such as making minor adjustments to the current gross proceeds valuation method, using spot prices, using index-based prices with fixed adjustments for production from specific geographic zones, relying on some type of field pricing other than posted prices, and taking oil in-kind. MMS chose New York Mercantile Exchange (NYMEX)-based prices as the primary method because (1) it represents the price for a widely-traded domestic crude oil, (2) there is little likelihood that any particular participant in NYMEX trading could impact the prices, and (3) NYMEX prices are regarded by many experts to be the best available measure of oil market value.

Anticipated Costs and Benefits:

MMS estimates compliance with this rulemaking would cost the oil and gas industry approximately $46,000 annually. Additional costs to industry and MMS would be up-front computer programming and other administrative costs associated with processing the new form. The benefits of this rulemaking would be an estimated $3.6 million increase in annual royalties collected on oil produced from Indian leases. Additional benefits would include simplification and increased certainty of oil pricing, reduced audit efforts, and reduced valuation determinations and associated litigation.

Risks:

The risk of not modifying current oil valuation regulations is that Indian recipients may not receive royalties based on the highest paid price or offered for the major portion of oil produced--a common requirement in most Indian leases. These modifications ensure that the Department fulfills its trust responsibilities for administering Indian oil and gas leases under governing mineral leasing laws, treaties, and lease terms.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/95	60 FR 65610
ANPRM Comment Period End	03/19/96	
NPRM	10/00/97	
NPRM Comment Period End	12/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Tribal

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DOI—MMS

FINAL RULE STAGE

60. VALUATION OF OIL FROM FEDERAL MINERAL LEASES

Priority:

Other Significant

Legal Authority:

30 USC 181 et seq; 30 USC 351 et seq; 30 USC 1701 et seq; 30 USC 1001 et seq; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation:

30 CFR 206

Legal Deadline:

None

Abstract:

This rule would modify the valuation procedures for both arm's-length and non-arm's length crude oil transactions, establish a new MMS form for collecting value differential data, and amend the valuation procedures for the sale of Federal royalty oil. These changes would decrease reliance on oil posted prices and assign a value to crude oil that better reflects. reflects market value.

Statement of Need:

Current oil valuation regulations rely primarily on posted prices and prices under arm's length sales. Recently, posted prices have become increasingly suspect as a fair measure of market value. This rulemaking would modify valuation regulations to eliminate any direct reliance on posted prices.

Summary of the Legal Basis:

The primary legal basis for this rulemaking is the Federal Oil and Gas Royalty Management Act of 1982, as amended, which defines the Secretary of the Interior's authority to implement and maintain a royalty management system for Federal oil and gas leases.

Alternatives:

MMS considered a range of valuation alternatives such as making minor adjustments to the current gross proceeds valuation method, using futures prices adjusted for location and quality, using spot prices tabulated by various publications, using the P-plus market, and taking oil in-kind. MMS chose to retain the concept that, for arm's-length sales, gross proceeds generally represent royalty value. For most non-arm's length sales of non-California and non-Alaska oil, MMS chose to use New York Mercantile Exchange (NYMEX)-based prices because (1) NYMEX represents the price for a widely-traded domestic crude oil, (2) there is little likelihood that any particular trading participant could impact the prices, and (3) many experts regard NYMEX as the best available measure of oil market value. MMS chose Alaska North Slope (ANS) spot prices for the geographically isolated California and Alaska markets because ANS spot prices represent large volumes of oil delivered into the California market and many experts regard ANS spot prices as the best indicator of value for California and Alaska production.

Anticipated Costs and Benefits:

MMS estimates compliance with this rulemaking would cost the oil and gas industry approximately $845,000 annually. Additional costs to industry and MMS would be up-front computer programming and other administrative

costs associated with processing the new form. The benefits of this rulemaking would be an estimated $54.2 million increase in annual royalties collected on oil produced from Federal leases. Additional benefits would include simplification and increased certainty of oil pricing, reduced audit efforts, and reduced valuation determinations and associated litigation

Risks:

The risk of not modifying current oil valuation regulations is that royalty recipients such as State and local governments and the U.S. Treasury would not receive royalties based on the true market value of oil produced from Federal leases.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/95	60 FR 65610
ANPRM Comment Period End	03/19/96	
NPRM	01/24/97	62 FR 3742
NPRM Comment Period End	03/25/97	
NPRM Comment Period Extended to	04/28/97	62 FR 7189
NPRM Comment Period Extended to	05/28/97	62 FR 19966
Supplemental NPRM	07/03/97	62 FR 36030
Supplemental NPRM Comment Period	08/04/97	62 FR 36030
Final Action	03/00/98	
Final Action Effective	04/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State

Agency Contact:

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RIN: 1010–AC09

DOI—Bureau of Land Management (BLM)

PROPOSED RULE STAGE

61. OIL AND GAS LEASING AND OPERATIONS

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:

30 USC 181 et seq

CFR Citation:

43 CFR 3100 to 3160

Legal Deadline:

None

Abstract:

This rule will revise BLM's current Federal oil and gas leasing and operations regulations, except those concerning drainage (section 3100.2-2), combined hydrocarbon leasing (part 3140), and oil and gas leasing in the National Petroleum Reserve--Alaska (part 3130), to: (1) use performance standards in certain places instead of prescriptive requirements. Performance standards allow more flexibility for operators and protect the environment and Federal royalty interests; (2) cite industry standards and incorporate them by reference rather than repeating those standards in the rule itself; (3) incorporate the requirements of the Onshore Oil and Gas Orders and national notices to lessees into the regulations to eliminate their overlap with the current regulations; (4) revise and replace BLM's current unitization regulations with a more flexible unit agreement process; and (5) eliminate redundancies, clarify procedures and regulatory requirements and streamline procedures.

Statement of Need:

This rulemaking complies with the requirements of the Government Performance and Results Act, the recommendations of the National Performance Review and other initiatives. It will be presented in a user-friendly format and presented by process, rather than than by subject matter.

Summary of the Legal Basis:

The Mineral Leasing Act gives BLM the authority to issue and administer the terms of oil and gas leases on Federal lands, to conduct inspections of drilling operations and to promulgate and enforce regulations pertaining to oil and gas leasing and operations. BLM is the only Federal agency with authority to issue leases for publicly owned oil and gas resources.

Alternatives:

The only alternative to the proposed regulations would be to continue to operate under the existing regulations. These regulations are not performance based and are at times ambiguous and hard to understand. Further, the important information found Onshore Operating Orders is published separately from the regulations and at irregular intervals. The proposed rule is preferable.

Anticipated Costs and Benefits:

BLM anticipates the following benefits: (1) more clearly written rules will be better understood by both oil and gas lessees and operators and members of the general public; (2) performance standards, rather than prescriptive requirements, will allow lessees and operators and BLM greater flexibility to deal with unique geological or engineering circumstances within the standards set by the rule; (3) and streaming and clarifying procedures will result in better customer service and decreased time and money for both BLM and the user public.

Risks:

The public may misunderstand one or more performance standards. BLM will publish user guides that explain in detail the standards and will provide examples of how operators might meet specific standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

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DOI—BLM

62. ● SURFACE MANAGEMENT (LOCATABLE MINERALS)

Priority:

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

Legal Authority:

18 USC 1001; 30 USC 22; 30 USC 42; 30 USC 612; 43 USC 1061 et seq; 18 USC 3571 et seq

CFR Citation:

43 CFR 3809

Legal Deadline:

None

Abstract:

The proposed rule would: (1) redefine ''unnecessary and undue degradation'' to require the use of the ''best available technology and practices'' or other technology-based standards during the mining of locatable minerals and during the reclamation of mined lands, (2) incorporate performance standards for locatable mineral exploration and development, and (3) treat mining operations involving disturbance to 5 acres or less in a more stringent fashion. fashion.

Statement of Need:

Current locatable mineral mining regulations provide insufficient environmental protection and insufficient enforcement authority for BLM to regulate mining activities which disturb 5 acres or less of public lands. The proposed regulations would strengthen environmental protection and would increase BLM's oversight of mining operations on 5 acres or less of public lands.

Summary of the Legal Basis:

Section 302(b) of the Federal Land Policy and Management Act gives the Secretary of the Interior or his delegated representative the authority to regulate the use, occupancy and development of public lands. Although the Secretary may not impair the rights of mining claimants by regulating these activities, he or she may take any action necessary to prevent the unnecessary and undue degradation of the public lands.

Alternatives:

The proposed rule could consider three alternatives for increasing oversight on mining activities which disturb 5 acres or less of public lands: (1) repeal the current notice provision and treat these small operations like large ones, (2) narrow the scope of the notice exception so that it does not apply in areas of environmental sensitivity, and (3) better protect the environment against abuse by measures such as: requiring more information from operators, giving BLM a longer time to review the notices, and imposing greater penalties for not meeting notice requirements.

Anticipated Costs and Benefits:

A cost-benefit analysis has not yet been prepared. On balance, the general public is expected to benefit by decreasing the public health and safety costs associated with the clean up of hazardous and toxic substances generated by the mining of various locatable minerals (acid, draining, etc.) There may or may not be increased costs to operators on mining claims from their exploration, development and reclamation activities, if the surface management regulations require using the best available technology in exploration, mining and reclamation activities.

Risks:

Claimants unable to comply with increased mining costs could cease operations and go out of business. Some portion of the mining industry could cease exploration and mining operations in the United States and begin or increase mining operations in other countries whose policies are less stringent.

Timetable:

Action	Date	FR Cite
NPRM	04/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local, Federal

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BILLING CODE 4310-RK-F

DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The Department of Justice is not a major regulatory agency, and it carries out its vital investigative, prosecutorial, and other law enforcement activities principally through means other than the regulatory process. Even so, the Department does have significant responsibilities for implementing the Americans with Disabilities Act (ADA), as well as the immigration laws, including the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. The Department's key regulatory goals and initiatives are set forth in detail below.

The Department has worked actively to implement the general regulatory principles of Executive Order 12866. Relatively few of the Department's rules are significant regulatory actions requiring review by the Office of Management and Budget (OMB) under the Executive order. Accordingly, the orientation of the OMB review process to focus on significant rules has required the Department to increase its own efforts to ensure that all of its regulations are carefully reviewed for consistency with the Administration's regulatory principles, including the large majority of rules that are not reviewed directly by OMB as significant regulatory actions.

Pursuant to section 4(c) of Executive Order 12866, the Department of Justice provides the following statement of regulatory priorities, focusing in particular on four regulatory initiatives in the areas of civil rights and immigration.

In addition to the specific initiatives set forth below, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this Regulatory Plan, those components carry out key roles in implementing the Department's law enforcement priorities. In particular, the Drug Enforcement Administration (DEA) is responsible for controlling abuse of narcotics and dangerous drugs by restricting the aggregate supply of those drugs. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances, and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA has various regulatory actions under development relating to the diversion control requirements and to the requirements of the Comprehensive Methamphetamine Control Act of 1996 which regulates certain drug products that are being diverted for the production of methamphetamine.

Also, on March 20, 1997, the Federal Bureau of Investigation promulgated final cost recovery regulations under the Communications Assistance to Law Enforcement Act of 1994 (CALEA). Congress enacted CALEA to address the recent and continuing advances in telecommunications technology, which have impaired and, in some instances precluded, law enforcement agencies from fully conducting various types of court-authorized electronic surveillance. The Attorney General is authorized to reimburse carriers for all of the reasonable costs directly associated with the modifications they perform on equipment, facilities, and services deployed on or before January 1, 1995. These regulations provide the cost accounting standards for reimbursements.

In response to public comments during the cost recovery rulemaking, the FBI is drafting a proposed rule defining the terms ''significant upgrade'' and ''major modification.'' Further, the FBI is drafting an interim rule with request for comment modeled on the CALEA cost recovery rule to allow newly eligible equipment manfacturers and support service providers to recover certain CALEA implementation costs. Finally, the FBI, on behalf of law enforcement, will also publish a Final Notice of Capacity, which follows two previously published proposed notices on the same subject, to inform carriers of the estimated actual and maximum number of simultaneous interceptions that law enforcement might conduct on or after specified dates.

Civil Rights

The Department and its Civil Rights Division are deeply committed to a rigorous and revitalized approach to the enforcement of this Nation's civil rights laws. In keeping with that commitment, the Division will be reviewing, updating, and improving its civil rights regulations; implementing the Americans with Disabilities Act of 1990 (ADA); and promulgating regulations implementing the prohibition against sex discrimination in federally assisted education programs and activities that is contained in title IX of the Education Amendments of 1972. The Department's regulatory plan has two civil rights initiatives.

The Department is planning to make revisions in its regulations implementing titles II and III of the ADA to amend the ADA Standards for Accessible Design to be consistent with the revised accessibility guidelines for State and local facilities and children's facilities that have been developed by the Architectural and Transportation Barriers Compliance Board (Access Board) and to make conforming changes in the Department's rules. Title II of the ADA prohibits discrimination on the basis of disability by public entities and title III prohibits such discrimination by places of public accommodation and requires accessible design and construction of places of public accommodation and commercial facilities. The Access Board's new accessibility guidelines for State and local facilities and children's facilities are the subject of related, pending rulemakings that are expected to be completed before December 1997. These rulemakings have been the subject of considerable scrutiny through the Board's regulatory process. The Department of Justice, which is required by statute to promulgate standards that are consistent with the guidelines developed by the Access Board, has proposed to incorporate them in the Department's regulations.

These amendments to the ADA regulations are an important step forward in fulfilling the promise of the ADA in ushering in a new era of opportunity and dignity for the many millions of Americans with disabilities. These regulations will open doors that have shut out people with disabilities in the past.

In addition, the Department will be promulgating regulations implementing the prohibition against sex discrimination in federally assisted education programs and activities that is contained in title IX of the Education Amendments of 1972. The Department will be issuing this regulation as part of a joint rulemaking by several Federal agencies in the coming year.

The Department's promulgation of a regulation implementing title IX will provide guidance to its recipients who administer education programs or activities. Since all departments and agencies should interpret title IX consistently, it is important that they all be governed by similar regulatory standards. The Department's regulation will closely follow that of the Department of Education, which funds most educational institutions covered

by title IX. A regulation is essential for adequate enforcement of title IX because a regulation contains administrative requirements (such as promulgation of grievance procedures, designation of a coordinator, and processing of complaints), as well as essential statutory interpretations.

Immigration

The Immigration and Naturalization Service (INS) is responsible for facilitating the entry of persons legally admissible as visitors or as immigrants to the United States, for preventing unlawful entry or receipt of immigration benefits by those who are not entitled to receive them, and for apprehending or removing those aliens who enter or remain illegally in the United States. Though many of the Administration's goals for more effective immigration process flow from either new statutory authority or increased resources, the regulatory process is a vital aspect of carrying out the goals of the immigration laws.

Certainly, one of the regulatory challenges facing the Department of Justice is to improve the effectiveness of those regulatory efforts. Commissioner Meissner established three fundamental goals at the time of her confirmation: To increase the professionalism of the Service, to provide immigration control with compassion, and to build the Service's role in immigration policy leadership and communication. The regulatory priorities for the Service follow those priorities, though other desired improvements may require legislative action. Two INS initiatives are included in this regulatory plan.

First, the Service will publish a proposed rule to implement the new grounds of inadmissibility and their waivers, especially those established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This regulation will clarify the interplay between the new grounds of inadmissibility and existing law and will set forth changes in procedures and policies. Second is the Service's ongoing effort to facilitate the U.S. business community's ability to comply with the employer sanctions provisions of the Immigration Control and Reform Act. The Service has published a supplemental proposed rule, which not only further reduced the number of acceptable documents for verifying employment eligibility, but also proposed the addition, based on public comments, of an employee attestation provision. Additionally, the Service will be promulgating regulations which will propose to eliminate references to several types of employment authorization documents (EADs) and to phase in replacement of these documents by a new, more secure, EAD.

DOJ—Civil Rights Division (CRT)

PROPOSED RULE STAGE

63. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Priority:

Other Significant

Legal Authority:

20 USC 1682 et seq

CFR Citation:

28 CFR 42 subpart J (New)

Legal Deadline:

None

Abstract:

On June 17, 1980, the Department published a proposed regulation to implement the requirements of title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of an individual's sex in federally assisted educational programs. That regulation was never issued in final form. As a result of subsequent statutory amendments, it is necessary to revise the prior proposed title IX regulation and begin a new rulemaking process. The Department's regulation will be published as a common rule with other agencies that need Title IX regulations.

Statement of Need:

Title IX directs each department and agency that provides Federal financial assistance to effectuate its provisions by issuing rules, regulations, or orders of general applicability, 20 U.S.C. 1682. The Department must issue a title IX regulation because it funds many educational programs. Since all departments and agencies should interpret title IX consistently, it is important that they all be governed by similar regulatory standards. The Department's regulation will closely follow that of the Department of Education, which funds most educational institutions covered by title IX. A regulation is essential for adequate enforcement of title IX because a regulation contains administrative requirements (such as promulgation of grievance procedures, designation of a coordinator, and processing of complaints) as well as essential statutory interpretations.

Summary of the Legal Basis:

Title IX specifically authorized the promulgation of regulations to effectuate the statute, 20 U.S.C. 1682.

Alternatives:

Because title IX requires an agency (such as the Department of Justice) that funds educational programs to issue implementing regulation, issuance of a title IX regulation is mandatory. With respect to the contents of a title IX regulation, the Department will consider all comments received during the public comment period before issuing a final regulation.

Anticipated Costs and Benefits:

In order to carry out this Administration's commitment to equal educational opportunity for women, it is essential that the Department of Justice issue its own regulation implementing Title IX. Currently, the Department has no regulation in place to provide guidance to recipients on compliance or identify formal procedures for addressing complaints of sex discrimination in funded programs. In providing Federal financial assistance to educational programs, the Department and its recipients have been subject to the requirements of title IX since it was enacted in 1972. Therefore, promulgating this regulation should not impose any new costs upon recipients of Federal financial assistance.

Risks:

Without a regulation, individuals who are granted protection from discrimination on the basis of sex will not have their rights protected in the Department's programs to the same extent as if they participated in programs funded by agencies with title IX regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	02/00/98	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

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RIN: 1190–AA28

DOJ—CRT

FINAL RULE STAGE

64. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS

Priority:

Other Significant

Legal Authority:

42 USC 12134; 42 USC 12186; 5 USC 301; 28 USC 509; 28 USC 510; PL 101-336

CFR Citation:

28 CFR 35; 28 CFR 36; 28 CFR 37; 28 CFR 38

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rules implementing titles II and III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by public entities (title II) and in places of public accommodation and commercial facilities (title III). Those regulations included accessibility guidelines required for facilities covered by title III -- The ADA Standards for Accessible Design (ADA Standards) -- but did not specifically include guidelines for facilities covered by title II, such as courthouses or prisons. Title II entities now have the option of using the ADA Standards (without certain exceptions applicable only to title III facilities) or another existing standard, the Uniform Federal Accessibility Standards.

The final rule will amend titles II and III to adopt a revised version of the ADA Standards, which incorporates new guidelines for facilities typically covered by title II. The new guidelines were issued as the interim final ADA Accessibility Guidelines (ADAAG) by the Access Board and were published on the same day as the Department's proposed rule.

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including titles II and III. Sections 204(c) and 306(c) of the ADA provide that the Attorney General shall promulgate regulations implementing titles II and III that are consistent with the Access Board's ADA guidelines. Because the Department of Justice is required by statute to promulgate regulations that do not go below the Access Board's minimum guidelines, and because this rule will adopt standards that are consistent with the guidelines issued by the Access Board, as also required by statute, this rule is required by statute.

Summary of the Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above in the Legal Authority and in Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. All comments (including those that suggest alternatives to the current proposed guidelines) received by the Department on the proposed rule and by the Access Board on its current interim rule and its guidelines published December 21, 1992, have been thoroughly analyzed and considered by the Department. The Department anticipates publishing a supplemental notice of proposed rulemaking to clarify certain issues prior to the publication of the final rule.

Anticipated Costs and Benefits:

The Clinton Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to the built environment to persons with disabilities will be better served.

The Access Board has analyzed the impact of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they are a significant regulatory action for purposes of Executive Order 12866. The Access Board has prepared a Regulatory Assessment, which includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered.

The Access Board has determined that this proposed rule will have a significant economic impact on a substantial number of small entities and, therefore, has included the flexibility analysis required by the Regulatory Flexibility Act in its regulatory assessment. The Access Board has made every effort to lessen the economic impacts of its proposed rule on small entities, but recognizes that such impacts are the necessary result of the mandate of the ADA itself. The Access Board's analysis also applies to the Department's proposed adoption of the revised ADAAG. The Department's proposed procedural amendments will not have a significant economic impact on small entities.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments, but recognizes that the guidelines will have some federalism impacts. These impacts are discussed in the Access Board's Regulatory Assessment, which also applies to the Department's proposed rule.

Risks:

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31808
NPRM Comment Period End	08/19/94	
Final Action	03/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local

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DOJ—Immigration and Naturalization Service (INS)

PROPOSED RULE STAGE

65. REVISED GROUNDS OF INADMISSIBILITY, WAIVERS FOR IMMIGRANTS AND NONIMMIGRANTS, AND EXCEPTIONS

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:

8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186A; 8 USC 1201; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252; 8 USC 1255; 8 USC 1304; 8 CFR 2

CFR Citation:

8 CFR 103; 8 CFR 204; 8 CFR 207; 8 CFR 208; 8 CFR 209; 8 CFR 210; 8 CFR 212; 8 CFR 213; 8 CFR 223a; 8 CFR 235; 8 CFR 236; 8 CFR 238; 8 CFR 239; 8 CFR 249; 8 CFR 299

Legal Deadline:

None

Abstract:

This regulation changes the grounds of inadmissibility applicable to those aliens seeking admission to the United States. On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) that substantially revised most grounds of inadmissibility under section 212 of the Act and the waivers available to both immigrants and nonimmigrants. The Immigration and Naturalization Service will publish regulations implementing these new grounds of inadmissibility and new/revised waiver provisions. In addition, this rule will incorporate the changes made to the grounds of inadmissibility and waivers provided for in IMMACT 90; Pub. L. 101-649; MTINA, Pub. L. 102-232; the National Institutes of Health Revitalization Act of 1993, Pub. L. 103-43; INTCA, Pub. L. 103-416; and AEDPA, Pub. L. 104-132.

Statement of Need:

This regulation is necessary to implement the IIRIRA and IMMACT 90, Pub. L. 101-649; the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232; the National Institutes of Health Revitalization Act of 1996, Pub. L. 103-43; and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) Pub. L. 104-132.

Summary of the Legal Basis:

See statement of Need item 9a.

Alternatives:

None

Anticipated Costs and Benefits:

The INS anticipates a relatively low cost for staff time and resources necessary to conduct training and disseminate new guidelines to the field on implementation of the revised grounds of inadmissibility and waivers available to both immigrants and nonimmigrants. With respect to certain waivers for the new vaccination requirements that fall under the health-related grounds of inadmissibility, the blanket waiver procedures (that entail a delegation of authority from INS to Department of State consular officers) minimize the administrative burdens not only on the agencies responsible for administering this requirement--Center for Disease Control, Department of State, and INS--but also the administrative burden on the alien applicant for such waiver. This, in turn, reduces the incentive for fraud, that enhances the public health initiative contemplated by the newly enacted vaccination requirements. Moreover, the new application for waiver, Form I-724, that will be implemented concurrently with the promulgation of the regulation will consolidate numerous forms currently used to determine eligibility for such classes of aliens.

Risks:

This regulatory initiative is critical for complete and clear implementation of the new grounds of inadmissibility and their waivers, especially those established under IIRIRA. The regulation will clarify the confusion that presently exists due to the interplay between the new grounds of inadmissibility and existing law. It will also clarify changes in procedures or policies.

Timetable:

Action	Date	FR Cite
NPRM (INS No. 1232) Comment Period End 2/5/90	01/05/90	55 FR 438
NPRM	11/00/97	
Final Action	03/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

INS No. 1413-92

Consolidated INS Rules 1304, RIN 1115-AC01; 1235, RIN 1115-AB39; 1232, RIN 1115-AB45; and 1648, RIN 1115-AD62.

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RIN: 1115–AB45

DOJ—INS

66. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS

Priority:

Other Significant. Major under 5 USC 801.

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:

8 USC 1324a; PL 104-208

CFR Citation:

8 CFR 274a

Legal Deadline:

Final, Statutory, October 1997.

The Administration is seeking a 1 year extension on this deadline

Abstract:

On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Section 412(d) clarifies the applicability of section 274A to the Federal Government. Section 610 of the Regulatory Flexibility Act requires agencies to review rules that have a significant economic impact on a substantial number of small entities every 10 years. The Service is conducting this review in conjunction with IIRIRA implementation. This proposed rulemaking will implement sections 412(a) and (d) of IIRIRA and propose other changes to the employment verification process identified through that review. A revised Form I-9 will be included with the rulemaking.

It should be noted that this action supersedes the previously published regulatory plan titled ''Reduction in the Number of Documents Accepted for Employment Verification.'' In order to avoid confusion, this regulatory action is being referenced under the current RIN, which captures all prior actions related to employment verification.

Statement of Need:

The Immigration Reform and Control Act of 1986 amended the I&NA to require employers to hire only persons who are eligible to work in the United States and to verify the work eligibility of all new hires. Form I-9 was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. In its third review of employer sanctions regulations, the GAO reported that employer confusion over the ''multiplicity'' of acceptable documents contributed to discrimination against authorized workers. See GAO/GGD report no. 90-62 dated March 29, 1990. Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Implementation of these provisions along with other simplifications and clarifications, will reduce potential employment discrimination based upon misapplication of the verification requirements.

Comments in response to 1993 and 1995 proposals asked that the Service delay publication of a final rule citing the potential for congressional action.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. Parts of this regulatory action are required by IIRIRA.

Alternatives:

The lists of documents for employment verification have been controversial throughout the 10 years that employer sanctions have been in effect. When the INS first published implementing regulations in 1987, the Supplementary information noted that the list of identity documents had been expanded in response to public comment. When the law was new, a consensus emerged that an inclusive list of documents would ensure that all persons who are eligible to work could easily meet the requirements. As early as 1990, there was evidence that some employers found the list confusing. As noted in the ''Statement of Need'', GAO linked employer confusion over the ''multiplicity'' of acceptable documents to discrimination against authorized workers. The INS has taken steps to address this criticism. In July 1988, INS committed to the establishment of a uniform employment authorization policy. First the INS limited the number and types of ''paper'' documents on which employment could be authorized. Second, a standardized Employment Authorization Document(EAD) I-688B in 1989. In February 1997, a more secure EAD Form (I-766) was produced with state of the art technology.

Anticipated Costs and Benefits:

Employment is often the magnet that attracts individuals to come to or stay in the United States illegally. The employer sanctions provisions help reduce the strength of this magnet by requiring employers to hire only those individuals who may legally work in the United States. This rule, by reducing the number of documents that are acceptable for employment eligibility verification purposes and clarifying other requirements, will reduce confusion on the part of employers. This in turn, will increase employer compliance, preserving jobs for persons who are eligible to work in the United States.

Risks:

An employment eligibility verification system that relies on a wide range of documents may result in employment discrimination based upon misapplication of the employment eligibility verification requirements. In addition, a complicated system may encourage fraud and result in individuals who are authorized to work in the United States being displaced by unauthorized individuals.

Timetable:

Action	Date	FR Cite
NPRM (INS 1399); Comment Period End 12/23/93	11/23/93	58 FR 61846
Supplemental NPRM (INS 1339S) Comment Period End 7/24/95	06/22/95	60 FR 32472
Applications Due 1/29/96 Public Notice Pilot Demonstration Program (INS 1713)	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96 Public Notice Pilot Demonstration Program (INS 1713)	02/06/96	61 FR 4378
Final Rule INS No. 1399E	09/04/96	61 FR 46534
Proposed Rule (INS No. 1819-96)	11/00/97	
Final Rule (1819-96)	02/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

The Administration has submitted a technical amendment to Congress that would extend the deadline for implementing Section 412(a) of IIRIRA for 1 year. The rulemaking has been delayed by the need to coordinate implementation with other provisions of IIRIRA, by several complex policy and regulatory issues that have taken time to resolve, and by the review

required by section 610 of the Regulatory Flexibility Act.

INS No. 1819-96; PL 104-208, title 4.

INS Nos. 1399 and 1399S-94, Control of Employment of Aliens, Supplemental Rule; Action for INS No. 1399 and 1399S is canceled as a result of IIRIRA requirements.

INS No. 1399E is an extracted portion of INS No. 1399, published separately to allow for the production of a new, more secure Employment Authorization Document.

INS No. 1713-95, Demonstration Project for Electronic I-9s, contact Anne Veysey, (202) 514-2998.

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BILLING CODE 4410-01-F

DEPARTMENT OF LABOR (DOL)

Statement of Regulatory Priorities

Executive Summary

The Secretary of Labor has set five goals for the Department: First, to equip every working American with the skills to find and hold good jobs with rising incomes throughout their lives; second, to help people move from welfare to work; third, to assure that health and pension benefits are secure while Americans are working and after they retire; fourth, to guarantee every American a safe, fair, and equal opportunity workplace; and fifth, to help working people balance work and family. The 180 labor laws and related regulations that the Department of Labor (DOL) administers advance these goals.

Regulations that implement newly enacted legislation help DOL and its stakeholders work together to achieve that statute's goal by providing clear, effective, flexible plans of action for the regulated community. Rules that revise existing regulations also facilitate the achievement of DOL's goals by updating old or ineffective standards or making them easier to understand and use. DOL has always recognized that changes in the workplace, such as new business practices, improved or safer technologies, or new hazards, may render existing rules ineffective or demand the creation of new ones.

The Department remains committed to issuing regulations that are easy to understand and effective and that minimize burdens on the regulated community. Regulations that are easy to understand help promote voluntary compliance and improve customer satisfaction. Most of the regulated community would comply with workplace regulations if given the information and knowledge they need. When writing or revising rules, DOL will explore new approaches to achieve our regulatory goals at lower costs and with greater flexibility for the regulated community. DOL will also ensure that those who are protected by the new rules or must abide by them have been given the opportunity to participate in the rulemaking process and that they have been provided timely, user-friendly compliance assistance materials. Finally, the rules will be consistent and easy-to-understand.

DOL's 1997 regulatory plan highlights the Department's 22 most important, significant regulations from five of our major regulatory agencies: Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Pension and Welfare Benefits Administration (PWBA), and Employment and Training Administration (ETA). The entries in the regulatory plan were carefully selected as the most important; that is, they are essential to the fulfillment of the Department's five goals.

The Secretary of Labor's Goals

Lifelong Learning and Skill Development: This first goal is to assure that American workers can obtain the tools they will need throughout their careers to enhance their productivity and raise their standard of living. In the new economy—and on the edge of a new century—education can no longer end with a high school diploma, or even with a college degree. Education must mean lifelong learning and constant development of new skills.

Promoting Welfare to Work: Under the welfare reform effort launched last year, millions of people must make their way from a welfare check to paycheck. This will not be an easy task. Together with Governors and Mayors, businesses and unions, churches and community organizations, the Department's goal is to create opportunities for welfare recipients to find real jobs at fair wages that reward work.

Enhancing Retirement Security: Like skills development, economic security is a lifelong concern. The Department will continue to do all it can to safeguard the health and pension benefits of American workers and retirees, urge workers to save on their own for retirement, and encourage employers to establish pension plans for their workers.

Safe, Fair, and Equal Opportunity Workplaces: In this intensely competitive global economy, smart employers must utilize all of the talent that is available to them. The Department is working with employers to prevent workplace discrimination and to help them recognize the benefits of ensuring equal opportunity for all workers. DOL is also committed to doing all it can to guarantee safety and health in the workplace and to obtain compliance with other important labor standards such as the minimum wage, overtime, and family and medical leave requirements. The Department's ultimate goal is full compliance with employment laws which will ensure workers a safe and fair workplace.

Helping Working Americans Balance Work and Family: The fifth goal is to help workers balance work and family—this is simply good business and good for family values.

Regulatory Priorities

The Employment Standards Administration's (ESA's) Wage and Hour Division is responsible for implementing and enforcing several statutes establishing minimum labor standards that protect the Nation's work force, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act, the Service Contract Act, the Davis-Bacon Act, the Employee Polygraph Protection Act, and certain provisions of the Immigration and Nationality Act. These labor standards include requirements for payment of minimum wages and overtime pay, protections for working youth under child labor standards, job protection for employees who take leave for certain family or medical reasons, and minimum working conditions for agricultural workers. The regulatory activities required to implement these statutory responsibilities represent an important aspect of the Division's work—affecting over 100 million employees in the work force. When developing regulatory proposals, the Division's focus is to assure fair, safe, and healthful workplaces for the Nation's workers, while at the same time providing clear compliance guidance and minimizing burdens on the regulated community.

Updating the child labor regulations issued under the Fair Labor Standards Act (FLSA) will help guarantee a safe, healthy, and fair workplace for the Nation's working youth to balance their education with job-related experiences. Many workers first gain job-related skills through their initial exposure to work as teenagers. Updated child labor regulations that better reflect today's workplace will ensure that young workers are employed in safe jobs that give them the opportunity to gain the skills necessary to find and hold good jobs with the potential to increase their earnings over time. Ensuring safe and reasonable work hours for working youth will also ensure that top priority is given to education while allowing young workers to contribute to their family's income. The updated child labor regulations will assist families as they strive to balance the demands of work and family.

Updating and clarifying the criteria that define the minimum wage and overtime exemptions for ''executive,'' ''administrative,'' ''professional,'' and ''outside sales'' employees under the

FLSA and clarifying when ''helpers'' may be used on federally funded and assisted construction contracts covered by the prevailing wage requirements of the Davis-Bacon and related acts, will also help guarantee workers a safe, healthy, and fair workplace. Revising and updating these regulations will help employers meet their obligations voluntarily and enhance employees' understanding of their rights and benefits.

ESA's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing the requirements of Executive Order 11246, selected provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), and Section 503 of the Rehabilitation Act of 1973. Regulations issued under the Executive order and the two Acts cover nondiscrimination and affirmative action obligations for Federal contractors and subcontractors. They help to ensure that workplace policies and practices are fair and provide equal opportunity to all workers. OFCCP's regulatory plan entry, the proposed amendments to regulations implementing Executive Order 11246, some of which became effective September 18, 1997, will streamline and clarify the existing regulatory language and reduce paperwork requirements of covered Federal contractors while ensuring that their obligations under the Executive Order and the two Acts are met.

The mission of the Mine Safety and Health Administration (MSHA) is to protect the safety and health of the Nation's miners—an essential part of the Secretary's goal to guarantee workers a safe and healthful workplace. The Federal Mine Safety and Health Act of 1977 (Mine Act) places primary responsibility for preventing unsafe and unhealthful working conditions in mines on the mine operators, with the assistance of the miners. It requires MSHA to determine compliance with Federal safety and health standards through inspections and investigations and to work cooperatively with States and the mining industry to improve training programs aimed at preventing accidents and occupationally caused diseases.

MSHA is committed to providing the Nation's miners a safer and healthier workplace. Despite MSHA's efforts, miners face safety and health hazards daily at levels unknown in most other occupations. Government intervention alone cannot eliminate occupational deaths, injuries, and illnesses in mining. The commitment of miners and mine operators is also needed. MSHA's 1997 regulatory plan reflects this commitment. It concentrates on improving existing health and safety standards and addressing emerging health and safety hazards in mining—especially occupational exposure to coal mine dust, noise, and diesel exhaust particulate. Also included in MSHA's plan is the update of metal and nonmetal electrical standards. Coal mine dust, noise, diesel exhaust particulate, and electrical hazards are pervasive in all types of mines; that is, surface and underground mines and large and small mines.

While there have been significant reductions in levels of respirable coal mine dust over the years, some miners exposed to respirable coal mine dust at certain mine operations continue to develop coal workers' pneumoconiosis (black lung) and silicosis. In February 1996, the Secretary of Labor convened a Federal advisory committee (Committee) to assess the adequacy of MSHA's current coal dust program and standards, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee submitted its report to the Secretary in November 1996. MSHA has published an internal administrative letter to implement some of the Committee's recommendations. MSHA intends to develop additional policy letters and one or more proposed rules to implement other recommendations of the Committee.

MSHA also has determined that its existing standards for exposure to noise are not adequate. Many miners are exposed to the maximum noise levels currently permitted by MSHA regulations and, as a result, may be suffering hearing impairments. MSHA's final noise rule will improve the level of protection provided by existing standards.

To complement the recently published diesel-powered equipment standard, MSHA intends to issue a separate proposed rule for diesel particulate to reduce the potential health hazards associated with the exhaust emitted by diesel-powered equipment in the confined mining environment. MSHA has been concerned about the link between serious lung diseases and exposure to exhaust from diesel equipment, particularly given the increasing use of diesel equipment and the difficulty in controlling air quality in underground mines.

In addition, MSHA believes its existing electrical standards for metal and nonmetal mines have proven inadequate to prevent injuries from improper grounding, despite substantial regulation and enforcement. MSHA's proposed rule will update these standards.

Several years ago, the Occupational Safety and Health Administration (OSHA) recognized the need to find a better way to carry out its mission—to save the lives and improve the safety and health of America's working men and women. As a result, it has changed its fundamental mode of operation from one of command and control to one that provides employers with a real choice between partnership with OSHA and a traditional enforcement relationship. In the regulatory arena, this meant that OSHA had to change its regulatory approach to establish clear and sensible priorities, emphasize consensus-based approaches to rulemaking, focus on developing a basic safety and health programs rule, and eliminate out-of-date, confusing, or duplicative rules from the books.

The eight regulations in OSHA's regulatory plan directly support OSHA's mission as well as the Secretary's goal of safe workplaces. Each regulation is designed to reduce occupational deaths, injuries, and illnesses among America's workers or to enhance compliance through ''plain English'' revision of detailed, outdated, and confusing regulations. OSHA's plan entries address the causes of the most dangerous occupational injuries; i.e., those with fatal or disabling consequences, those affecting large numbers of workers, those for which recognized solutions are available, or those identified as top priorities by the Agency's priority planning process. In addition, some entries, such as OSHA's revision to its reporting and recordkeeping system, are included because employers, employees, academics, and safety and health professionals have long recognized these efforts as essential to obtaining better data on workplace injuries, fatalities, and illnesses.

Some of OSHA's standards, particularly those adopted wholesale from national consensus standards in 1971, are written in highly detailed, specification-driven language that limits compliance flexibility. To address these problems, OSHA has launched a series of initiatives aimed at streamlining and rationalizing the Agency's regulations and ensuring that all future OSHA rules will pass plain English and common sense tests. In addition, the Agency is actively soliciting input from

stakeholders—business, labor, small employers, professional associations, and affected government entities—as it moves forward on these rulemaking initiatives. The OSHA rules in the 1997 regulatory plan reflect the rulemaking approach that is being followed by the ''New OSHA.'' For example, the Agency is actively working with stakeholders to lower the permissible exposure limits (PELs) for a group of hazardous air contaminants that both OSHA and the regulated community recognize are too high to provide adequate worker protection. The rulemaking requires the development of new risk assessment methods for linking exposure to these substances to such potentially life-threatening effects as neurological damage, occupational asthma, and heart disease. The first rulemaking stage will be reached in this important initiative when OSHA issues a proposal in the spring of 1998.

One of the most important regulatory initiatives ever undertaken by OSHA—development of a safety and health programs rule—is the centerpiece of the Agency's current regulatory plan. This standard will ensure that employers in all industries treat worker protection as a fundamental goal of their business and will help employers identify job-related hazards in the workplace, correct those so identified, and prevent others from occurring. Evidence of the effectiveness of safety and health programs in achieving OSHA's ultimate goal—the prevention of deaths, injuries, and illnesses on the job—is widespread and growing daily, as more and more companies report that their accident rates and their workers' compensation costs have fallen after the implementation of such programs. During the past 2 years, OSHA has held a series of stakeholder meetings designed to identify ways of meeting the business community's need for a strong but simple rule and of recognizing existing safety and health programs that are demonstrably effective. OSHA has recently completed a series of regional meetings with small businesses to gain input on the rule at the grassroots level. The Department believes that, by actively involving both employers and employees in the implementation of safety and health programs, this standard will help to produce the high-performance workplaces of tomorrow.

In summary, OSHA's regulatory strategy is designed to achieve a body of standards that will make sense to ordinary people and protect the safety and health of the U.S. work force.

The Pension and Welfare Benefits Administration's (PWBA) regulatory priorities for the 1997 regulatory plan will continue to build on legislative efforts to simplify and otherwise facilitate compliance with benefit laws, to improve pension and welfare plan coverage, and to protect the benefits of American workers. PWBA's top regulatory priorities will involve implementation of the three key legislative initiatives addressing improved health care protections for the American people: The Health Insurance Portability and Accountability Act of 1996, which guarantees increased portability of health care coverage through restrictions on preexisting condition limitations and protection from discrimination in health care coverage on the basis of health status; the Mental Health Parity Act of 1996, which provides for parity in the application of limitations on mental health benefits; and the Newborns' and Mothers' Protection Act of 1996, which provides protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child.

PWBA's other top regulatory priority is the publication, in conjunction with the Internal Revenue Service and the Pension Benefit Guaranty Corporation, of simplified annual return/report forms (the Form 5500 Series) for all employee benefit plans subject to the Employee Retirement Income Security Act's (ERISA) annual reporting requirements.

Section 5001 of the Balanced Budget Act of 1997 authorized the Department of Labor to provide Welfare-to-Work Grants to State and local communities to create additional job opportunities for the hardest-to-employ recipients of the Temporary Assistance for Needy Families (TANF)—the new system of block grants created by passage of the new welfare reform legislation. The Employment and Training Administration (ETA) will issue planning guidance under this recently enacted legislation. Moving people from welfare to work is not only a primary goal of Federal welfare to work opportunities but specifically responds to the Secretary of Labor's goal of promoting welfare to work opportunities. Guidance and regulations will reflect minimal amplification of the law and will be written only when further information or clarification is needed to make the program operational. Reporting requirements will assure program integrity and provide timely information for tracking performance against established standards. Performance standards will be consistent with long-term goals and will support potential evaluation criteria under a long-term evaluation. Wherever possible, existing regulations and systems will be used.

ETA has contacted its stakeholders for their ideas and concerns about this new initiative. ETA's plan is to convene National Forum meetings as necessary for amplification, expansion, discussion, and identification of additional issues.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

67. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS (ESA/OFCCP) (SECTION 610 REVIEW)

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:

EO 11246, as amended; 38 USC 4212; 29 USC 793

CFR Citation:

41 CFR 60-1; 41 CFR 60-2; 41 CFR 60-20; 41 CFR 60-30; 41 CFR 60-50; 41 CFR 60-60; 41 CFR 60-250; 41 CFR 60-741; 41 CFR 60-742; 41 CFR 60-4

Legal Deadline:

None

Abstract:

These regulations cover nondiscrimination and affirmative action obligations of Federal contractors under Executive Order 11246, as amended; 38 USC 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and section 503 of the Rehabilitation Act of 1973, as amended (section 503). The NPRM published 08/25/81 and supplemented on 04/23/82 extended the effective date of a final rule published 12/30/80 and proposed amendments to that rule. The NPRM published 5/21/96 proposed revisions to reduce burdens on the regulated community and to improve the administration of the Executive

Order. OFCCP's review of regulatory options continues with emphasis on streamlining and clarifying the regulatory language and reducing paperwork requirements associated with compliance.

Statement of Need:

Parts of the regulations implementing Executive Order 11246 need to be revised to reflect changes in the law that have occurred over time, streamlined, and clarified. Executive Order 11246 requires all Federal contractors and subcontractors and federally assisted construction contractors and subcontractors to apply a policy of nondiscrimination and affirmative action in employment with respect to race, color, religion, sex, and national origin. The regulatory revisions are necessary in order to allow the DOL to effectively and efficiently enforce the provisions of the Executive Order. As a first step in updating its Executive Order regulations, the Department proposed changes to the provisions that govern preaward review requirements; recordkeeping and record retention requirements; certification requirements; and related provisions. In addition, revisions will be made that will conform Executive Order 11246 regulations to the recent changes made in the Department's regulations implementing section 503 of the Rehabilitation Act.

A second phase of revision will contain proposals to change provisions that govern requirements for written affirmative action plans and the provisions concerning evaluation of contractor procedures.

Summary of the Legal Basis:

No aspect of this action is required by statute or court order.

Alternatives:

After careful review, it was decided that the most effective way to improve compliance with the Executive Order 11246 provisions, and reduce burdens on contractors, was to propose revisions to these regulations. Administrative actions alone could not produce the desired results. A determination was also made to publish revisions to the remaining regulatory provisions of the Executive Order at a later date so that careful consideration can be given to what changes are needed in each of the parts of the regulations.

Anticipated Costs and Benefits:

It is anticipated that the net effect of the proposed changes will increase compliance with the nondiscrimination and affirmative action requirements of the Executive Order and reduce compliance costs to Federal contractors. The Department will also be able to utilize its resources more efficiently and more effectively.

Risks:

An assessment of the magnitude of the risk addressed by this action and how it relates to other risks within the jurisdiction of DOL will be prepared once decisions are reached on specific proposed changes in Executive Order 11246.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/81	46 FR 36213
NPRM Compliance Reviews (60-1)	05/21/96	61 FR 25516
NPRM Compliance Reviews (60-60)	05/21/96	61 FR 25516
Final Compliance Reviews (60-1)	08/19/97	62 FR 44174
Final Compliance Reviews (60-60)	08/19/97	62 FR 44174
NPRM Affirmative Action Plans (60-2)	02/00/98	
Final Affirmative Action Plans (60-2)	04/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

Additional Information:

Under the reinventing government initiative, OFCCP's emphasis is on regulatory reform, e.g., to revise the Executive Order 11246 regulations to reduce paperwork burdens, eliminate unnecessary regulations, and simplify and clarify the regulations while improving the efficiency and effectiveness of the contract compliance program.

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DOL—ESA

68. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W-H)

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:

29 USC 203(e)

CFR Citation:

29 CFR 570

Legal Deadline:

None

Abstract:

Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that may be particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and review of some of the applicable hazardous occupation orders and the method of their promulgation. Comment has also been solicited on whether revisions should be considered in the permissible hours and time of day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12, regarding power-driven paper balers and compactors, to allow 16- and 17-year olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI)

safety standards and certain other conditions.

Statement of Need:

Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that may be particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When developing regulatory proposals (after receipt of public comment on the advance notice of proposed rulemaking), the Department's focus will be on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

Alternatives:

Regulatory alternatives will be developed based on the public comments responding to the advance notice of proposed rulemaking. Alternatives likely to be considered include specific additions or modifications to the hazardous occupation orders and changes to the hours 14- and 15-year-olds may work.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of this regulatory action will be developed once decisions are reached on particular proposed changes in the child labor regulations. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks:

An assessment of the magnitude of the risk addressed by this action will be prepared once decisions are reached on particular proposed changes in the child labor regulations.

Timetable:

Action	Date	FR Cite
Final Action on HOs 2, 10, 12	11/20/91	56 FR 58626
Final Action Effective Date	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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DOL—ESA

69. DEFINING AND DELIMITING THE TERM ''ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY'' (ESA/W-H)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

29 USC 213(a)(1)

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements for ''executive,'' ''administrative,'' ''professional'' and ''outside sales employees.'' To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of recent case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts,

computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6-1/2 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which provided, in part, that an otherwise exempt public sector employee would not be disqualified from the exemption's requirement for payment on a ''salary basis'' solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, requires the employee's pay to be reduced for absences of less than one workday. In addition, a number of court rulings have caused confusion on the factors to consider in meeting the regulation's ''salary basis'' criteria, in both the public and private sectors.

Statement of Need:

These regulations set forth the criteria used in the determination of the application of the FLSA exemption for ''executive,'' ''administrative,'' ''professional,'' and ''outside sales employees.'' The existing salary test levels used in determining which employees qualify as exempt from the minimum wage and overtime rules were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in the application of the exemption. In addition, numerous comments and petitions have been received in recent years from industry groups regarding the duties and responsibilities tests in the regulations. These factors, as well as recent case law developments, have led the Department to conclude that a review of these regulations is needed.

These regulations have been revised in recent years to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of ''salary basis'' for public-sector employees. This interim final rule provided, in part, that an otherwise exempt public-sector employee would not be disqualified from the exemption's requirement for payment on a ''salary basis'' solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, requires the employee's pay to be reduced for absences of less than one workday. In 1992, the Department issued its final rule on this matter.

Because of the limited nature of these revisions, the regulations are still in need of updating and clarification. In addition, recent court rulings have caused confusion as to what constitutes compliance with the regulation's ''salary basis'' criteria in both the public and private sectors.

Alternatives:

The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

Although legislative proposals have been introduced in the Congress to address certain aspects of these regulations, the Department will continue to pursue revisions to the regulations as the appropriate response to the concerns raised. Alternatives likely to be considered include particular changes to address ''salary basis'' and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Costs and Benefits:

Some 23 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are causing progressive loss of control of the guiding interpretations under this exemption and are creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. These court rulings are creating apprehension in both the private and public sectors. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate this apprehension. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s, and that they do not readily adapt to contemporary government functions. The Federal government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule Indefinitely	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period From 01/21/86 to 03/22/86	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	51 FR 2525
NPRM	09/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

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DOL—ESA

70. PROCEDURES FOR PREDETERMINATION OF WAGE RATES (29 CFR PART 1) AND LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (29 CFR PART 5)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

40 USC 276a to 276a(7)

CFR Citation:

29 CFR 1; 29 CFR 5

Legal Deadline:

None

Abstract:

The Department attempted to implement revised rules governing the circumstances in which ''helpers'' may be used on federally funded and assisted construction contracts subject to the Davis-Bacon Act in May 1982 (see 47 FR 23644, 23658 (May 28, 1982); 47 FR 32090 (July 20, 1982)). After protracted litigation, a final rule was published in January 1989 (see 54 FR 4234) which became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations--through the Dire Emergency Supplemental Appropriations Act of 1991, PL 102-27, 105 Stat. 130,151 (1991), and then through section 104 of the DOL Appropriations Act of 1994, PL 103-112. There is no such prohibition in the DOL's Appropriations Act for fiscal year 1997, Public Law 104-208 (September 30, 1996). Given the uncertainty of continuation of such moratoriums, the Department has determined that the helper issue needs to be addressed through further rulemaking. A notice inviting public comment on a proposal to continue the suspension of the former helper regulations while the Department conducts additional rulemaking proceedings was published August 2, 1996 (61 FR 40366). A final rule continuing the suspension while further rulemaking is considered was published December 30, 1996 (61 FR 68641).

Statement of Need:

The current helper rules are difficult to administer and enforce, and--as evidenced by the prolonged litigation history and subsequent Congressional actions--are highly controversial. In May 1982, the Department attempted to implement revised rules governing the circumstances in which ''helpers'' may be used on federally funded and assisted construction contracts subject to the Davis-Bacon Act. After protracted litigation, a final rule was published in January 1989 and became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations through appropriations riders. Given the uncertainty of continuation of such moratoriums, the Department has determined that the helper issue needs to be addressed through further rulemaking. No such prohibition applies under DOL's Appropriations Act for fiscal year 1997, PL 104-208 (September 30, 1996).

Alternatives:

The Administration has determined that there are only limited alternatives to addressing this issue through rulemaking, in addition to possible legislative changes.

Anticipated Costs and Benefits:

A new rulemaking regarding the helper criteria will seek to make administration of the Davis-Bacon Act more efficient by establishing reasonable ''helper'' criteria and methodology--thus resolving the controversy and uncertainty currently experienced by interested parties. Changes in the helper regulations may affect prior estimates of potential construction procurement cost savings anticipated from the earlier rulemaking. Estimates of the financial impacts of revised ''helper'' regulations will be prepared for inclusion in the NPRM.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM Continue Suspension	08/02/96	61 FR 40367
Final Continue Suspension	12/30/96	61 FR 68641
NPRM	01/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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DOL—Employment and Training Administration (ETA)

FINAL RULE STAGE

71. ● WELFARE TO WORK GRANTS

Priority:

Other Significant

Legal Authority:

42 USC 603(a)(5)(C)(viii)

CFR Citation:

Not yet determined

Legal Deadline:

Final, Statutory, November 3, 1997.

90 days from enactment

Abstract:

The Employment and Training Administration is proposing to publish regulations covering the implementation of the Welfare-to-Work Grants Program. The Personal Responsibility and Work Opportunity Reconciliation Act reformed the Nation's welfare laws, when enacted in August 1996, by creating a new system of block grants to the States for Temporary Assistance for Needy families (TANF). Moving people from welfare to work is one of the primary goals of Federal welfare policy as well as one of five goals the Secretary of Labor has identified for the Department of Labor. Section 5001 of the Balanced Budget Act of 1997 authorized the Department of Labor to provide Welfare-to-Work Grants to States and local communities to create additional job opportunities for the hardest-to-employ recipients of TANF. The Welfare-to-Work Grants will be provided to the States through the use of a formula, and in a competitive process to local communities. A small amount of total grant funds will be set aside for special purposes: One percent for Indian tribes, 0.8 percent for

evaluation; and $100 million for performance bonuses to successful States.

The proposed regulations and other guidance will focus on providing maximum local flexibility. Guidance and regulations will reflect minimal amplification of the law and will be written only when further information or clarification is needed to make the program operational. Existing regulations and systems will be used wherever possible. Reporting requirements will assure program integrity and provide timely information for tracking performance against established standards. Performance standards established will be consistent with long-term goals and support potential evaluation criteria under a long-term evaluation. Products provided will seek to link welfare agencies and workforce development system agencies at the operational level of service provision to welfare recipients in order to maximize resources available and avoid duplication and overlap. Leveraging of non-Federal resources at the State and local level will be encouraged.

These funds will allow States and local communities to help move eligible individuals into jobs by: job creation through public or private sector wage subsidies; on-the-job training; contracts with public or private providers of job readiness, job placement, and post-employment services; job vouchers for similar services; community service or work experience; or job retention and supportive services (if such services are not otherwise available).

Statement of Need:

Since the passage of the Personal Responsibility and Work Opportunity Reconciliation Act, the President and the Congress recognized the need for a measure to complement the Temporary Assistance for Needy Families (TANF) block grant created as a result of the Act. On August 5, 1997, President Clinton signed into law the Balanced Budget Act of 1997, which authorized the Department of Labor to provide Welfare-to-Work Grants to States and local communities to create additional job opportunities for the hardest-to-employ recipients of TANF. The basic goal of the program is to move welfare recipients into unsubsidized jobs with good career potential for economic self-sufficiency. Welfare-to-Work formula and competitive grants provide States and local communities with an array of tools to help them accomplish this goal in ways that make sense and are most effective for their particular population needs. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards which will drive State and local efforts towards the program's goal while still allowing maximum local flexibility.

Successful implementation of the Welfare Reform's efforts launched last year is a top Presidential priority. The Department of Labor and its partners must move quickly to mount this important new program. The law requires that regulations or other published guidance must be issued within 90 days.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date. It is anticipated, however, that the successful implementation of this program will result in significant benefits to the nation. Welfare recipients will receive job placement and temporary, transitional employment opportunities leading to lasting employment and self-sufficiency. Employers will have ready access to a large pool of motivated, hard-working entry-level workers who will be eligible for job retention and support services to maintain employment. Businesses will be eligible to receive wage and on-the-job training subsidies when they hire the hard-to-employ welfare recipients.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal

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DOL—Pension and Welfare Benefits Administration (PWBA)

PROPOSED RULE STAGE

72. REVISION OF THE FORM 5500 SERIES AND IMPLEMENTING AND RELATED REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Priority:

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

Unfunded Mandates:

Undetermined

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:

29 USC 1021; 29 USC 1022; 29 USC 1023; 29 USC 1024; 29 USC 1025; 29 USC 1026; 29 USC 1027; 29 USC 1029; 29 USC 1030; 29 USC 1059; 29 USC 1135; 29 USC 1166; 29 USC 1168

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Under title I of ERISA, title IV of ERISA, and the Internal Revenue Service code, as amended, pension and other employee benefit plans are generally required to file return/reports annually concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements are satisfied generally by filing the form 5500 series in accordance with its instructions and related regulations. The Department of Labor, IRS, and PBGC are undertaking a comprehensive review of the annual

return/report forms in an effort to streamline the information required to be reported and the methods by which such information is filed and processed. The proposed revised form 5500 series and regulations are being developed as a result of that review.

Statement of Need:

This project was included in PWBA's Fall 1996 Regulatory Plan and will be included in the Fall 1997 Plan. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans, and is both an important compliance and research tool for the Department, and a disclosure document for plan participants and beneficiaries and a source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Department, the IRS and the PBGC are conducting a comprehensive review of the annual return/report forms in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. The proposed revised Form 5500 Series and regulations are being developed as a result of this review.

Summary of the Legal Basis:

Title I of ERISA, sections 101 through 105, 107, 209, and 606, impose specific reporting and disclosure obligations on administrators of employee benefit plans. Section 104(a)(3) and 110 of ERISA provide the Secretary with the authority to prescribe exemptions and alternative methods of compliance for employee welfare benefit plans and employee pension benefit plans. Section 505 provides the Secretary with general authority to prescribe regulations necessary or appropriate to carry out the provisions of title I of ERISA.

Alternatives:

Amendments to implementing and related regulations will be developed once determinations have been made, in conjunction with other concerned agencies, with regard to the scope and nature of the revisions to the Form 5500 Series.

Anticipated Costs and Benefits:

By simplifying the Form 5500 Series and creating an automated processing system for the filed reports, it is anticipated that filer costs of preparing forms, and Government processing costs, will be reduced. It is the goal of the Department to eliminate reporting requirements for information that is not needed to discharge its statutory responsibilities, while ensuring that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA.

Risks:

Failure to revise the Form 5500 Series Annual Reports for Employee Benefit Plans could deprive plans, sponsors and participants and beneficiaries, as well as the Government, of the cost savings and related benefits associated with streamlining the forms and their processing.

Timetable:

Action	Date	FR Cite
Proposed Forms Revisions	09/03/97	62 FR 46156
Proposed Forms Comment Period End	11/03/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DOL—PWBA

FINAL RULE STAGE

73. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 104-91 section 101; 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1177

CFR Citation:

Not yet determined

Legal Deadline:

NPRM, Statutory, April 1, 1997.

Per Section 707 of ERISA, as added by Section 101 of HIPAA

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

Statement of Need:

HIPAA added a new part 7 to title I of ERISA, containing provisions designed to improve the availability and portability of health insurance coverage. Part 7 includes provisions limiting exclusions for preexisting conditions and providing credit for prior coverage, guaranteeing availability of health coverage for small employers, prohibiting discrimination against employees and dependents based on health status, and guaranteeing renewability of health coverage to employers and individuals. Section 702(g)(4), also added by HIPAA, provides that the Secretary shall, consistent with section 104 of HIPAA, first issue by not later than April 1, 1997, such regulations as may be necessary to carry out these provisions.

Alternatives:

Regulatory alternatives will be developed once determinations have been made, in conjunction with other concerned agencies, with regard to the scope and nature of the regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Costs and Benefits:

Preliminary Estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to implement the new provision will be developed once decisions are reached on which specific actions are necessary.

Risks:

Failure to provide regulatory guidance necessary to carry out these important health care reforms would adversely impact the availability and portability

of health insurance coverage for American families.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Final Action	12/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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DOL—PWBA

74. AMENDMENT OF SUMMARY PLAN DESCRIPTION AND RELATED ERISA REGULATIONS TO IMPLEMENT STATUTORY CHANGES IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 104-191 section 101; PL 104-204 section 603

CFR Citation:

29 CFR 2520.102-3; 29 CFR 2520.104b-1; 29 CFR 2520.104b-3

Legal Deadline:

NPRM, Statutory, April 1, 1997.

Per Section 707 of ERISA, as added by Section 101 of HIPAA.

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended ERISA's summary plan description (SPD) and related reporting and disclosure provisions to require that participants and beneficiaries receive from their group health plans: (i) more timely notice if there is a material reduction in services or benefits under the plan; (ii) more information regarding the financing and administration of the plan; and (iii) specific identification of Department of Labor offices through which they can seek assistance or information about HIPAA. This rulemaking will amend the Department's SPD and related regulations to implement those statutory changes.

Statement of Need:

The existing SPD and related reporting and disclosure provisions need to be revised to reflect the changes made by HIPAA. HIPAA's statutory changes modify the requirements concerning the manner and timing of how certain important plan information is communicated to participants and beneficiaries by plan administrators. Without revised regulatory guidance, administrators may not be able to improve the timely disclosure of plan information on both a quantitative and qualitative basis. HIPAA also requires the Secretary to issue regulations within 180 days after its enactment providing alternative mechanisms to delivery by mail through which group health plans may notify participants and beneficiaries of material reductions in covered services or benefits.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Costs and Benefits:

Estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to implement the new provision will be developed once decisions are reached on which specific actions are necessary.

Risks:

The SPD is a critical plan document for participants and beneficiaries. Without access to accurate and timely information, participants and beneficiaries will not be able to protect their rights under ERISA. Improved disclosure requirements also should serve to facilitate compliance by plan administrators, thereby reducing litigation and penalty risks to plan administrators. The failure to issue revised disclosure regulations also may result in a failure to achieve HIPAA's objective of improving the disclosure of plan information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16979
Interim Final Rule Comment Period End	05/31/97	
Interim Final Rule Effective	06/01/97	
Final Action	06/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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DOL—PWBA

75. ● INTERIM RULES RELATING TO MENTAL HEALTH BENEFITS PARITY

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1135; 29 USC 1182 (PL 104-204; 110 Stat 2944); 29 USC 1194

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (P.L. 104-204). MHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provided for parity in the application of limits on certain mental health benefits with limits on medical and surgical benefits. MHPA provisions are set forth in title XXVII of the PHSA and part 7 of Subtitle B of title I of ERISA. The interim rules will provide guidance with regard to the provisions of the MHPA.

Statement of Need:

These regulations are needed to provide guidance to the public concerning the application of the provisions of section 712 of ERISA, which provides for parity in the application of limits on certain mental health benefits with limits on medical and surgical benefits.

Summary of the Legal Basis:

Promulgation of these regulations is authorized by section 505 and 734 of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which will be necessary to implement section 712 of ERISA.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to implement the new provision will be developed once decisions are reached on which specific action are necessary.

Risks:

Failure to issue these regulations would be likely to impair compliance by group health plans with the requirements established by section 712 of ERISA for mental health benefits parity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

LEGAL AUTHORITIES CONT: Secs. 107, 209, 505, 701-703, 711, 712, 731-734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171-1173, 1181, 1182, 1191-1194), as amended by HIPAA (Pub. L. 104-191, 101 Stat. 1936) and NMHPA (Pub. L. 104-204) and Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

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DOL—PWBA

76. ● INTERIM RULES RELATING TO HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1181 (PL 104-204; 110 Stat 2935); 29 USC 1135; 29 USC 1194

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104-204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of Subtitle B of title I of ERISA. The interim rules will provide guidance with regard to the provisions of the NMHPA.

Statement of Need:

These regulations are needed to provide guidance to the public concerning the application of the provisions of section 711 of ERISA, which establishes requirements for group health plan standards for minimum hospital stays following birth.

Summary of the Legal Basis:

Promulgation of these regulations is authorized by sections 505 and 734 of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which will be necessary to implement Section 711 of ERISA.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to implement the new provision will be developed once decisions are reached on which specific actions are necessary.

Risks:

Failure to issue these regulations would be likely to impair compliance by group health plans with the new standards established by section 711 of ERISA for mothers' and newborns' health care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

LEGAL AUTHORITY CONT: Secs. 107, 209, 505, 701-703, 711, 712, 731-734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171-1173, 1181, 1182, 1191-1194), and amended by HIPAA (Pub. L. 104-191, 101 Stat. 1936) and NMHPA (Pub. L. 104-204) and Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

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DOL—Mine Safety and Health Administration (MSHA)

PRERULE STAGE

77. COAL MINE DUST

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 812

CFR Citation:

30 CFR 70; 30 CFR 71; 30 CFR 90

Legal Deadline:

None

Abstract:

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis (''black lung'') and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). In February 1996, the Secretary convened a Federal Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners (Advisory Committee) to assess the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee submitted its report to the Secretary in November 1996, with the majority of the recommendations unanimously supported by the Committee members.

MSHA has completed a preliminary review of the Advisory Committee's recommendations. There are 20 principal recommendations set out in the Advisory Committee report, which are further subdivided into a total of approximately 100 distinct action items. The recommendations are both extensive and significant, and warrant thorough consideration by the Agency. MSHA, therefore, is proceeding with an in-depth evaluation of the recommendations and will respond to them in an orderly fashion.

MSHA has issued five Procedure Instruction Letters implementing some of the recommendations of the Advisory Committee. The Agency will notify the mining community as it determines how to implement other Advisory Committee recommendations.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were 25 years ago. Despite this progress, there continues to be concern about the respirable coal-mine-dust sampling program and its effectiveness in presenting an accurate picture of exposure levels in mines. Such exposure levels are linked directly to the development of pneumoconiosis. In response to this concern, MSHA undertook an extensive review of the Agency's respirable coal-mine-dust program. The MSHA Coal Mine Respirable Dust Task Group Report, issued June 1992, found that vulnerabilities exist which could impact miner health protection and made recommendations for improving the monitoring program. The Advisory Committee also addressed this issue and made recommendations.

Alternatives:

MSHA will consider all of the Advisory Committee's recommendations carefully. Some recommendations could be adopted quickly through administrative changes. Other recommendations will demand longer-term consideration, research, or rulemaking.

The Agency also is evaluating the recommendations set forth in the NIOSH Criteria Document on Respirable Coal Mine Dust and the Agency's Dust Task Group Report to determine which proposed rules are warranted.

Anticipated Costs and Benefits:

MSHA is in the early stages of developing proposed rules and does not have cost estimates. As we proceed, however, we will develop estimates and make them available for public review. Benefits sought are reduced dust levels over a miner's working lifetime--the key to eliminating black lung and silicosis as a risk to coal miners. Enhanced protection to miners from these diseases will also reduce the cost of future black lung benefits and lead to lower operator insurance premiums.

Risks:

Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Long-term exposure to excessive levels of respirable coal mine dust can cause black lung and silicosis, which are both potentially disabling and can cause death. MSHA is pursuing both regulatory and nonregulatory actions to eliminate pneumoconiosis through the control of coal mine respirable dust levels and the reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
Availability of Recommendations	11/26/96	61 FR 60120
Agency Response to Advisory Committee Recommendations	01/24/97	62 FR 3717
Policy Document - Phase 1 Press Release - Effective 6/15/97	05/05/97	
Policy Document - Phase 2	10/00/97	
Policy Document - Phase 3	12/00/97	
NPRM - Phase 4	04/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—MSHA

PROPOSED RULE STAGE

78. DIESEL PARTICULATE

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Several epidemiological studies have found that diesel exhaust presents potential health risks to workers. These possible health effects range from headaches and nausea to respiratory disease and cancer. In 1988, the National Institute for Occupational Safety and Health recommended that ''whole diesel exhaust be regarded as

a potential occupational carcinogen.'' In addition, in 1989 the International Agency for Research on Cancer concluded that ''diesel engine exhaust is probably carcinogenic to humans.''

In 1988, a Secretarial advisory committee made recommendations to the Secretary of Labor concerning safety and health standards for the use of diesel-powered equipment in underground coal mines. One of the recommendations was that the Secretary of Labor set in motion a mechanism whereby a diesel particulate standard could be set. Based on that recommendation, the Mine Safety and Health Administration (MSHA) published an advance notice of proposed rulemaking, in January 1992, seeking information relative to exposure limits, risk assessment, sampling and monitoring methods, and control feasibility. Because of the potential health risk, MSHA is investigating a variety of approaches that would control the exposure of miners to diesel particulate.

Statement of Need:

The use of diesel-powered equipment in both surface and underground mines has increased significantly and rapidly during the past decade. MSHA estimates that approximately 30,000 miners are occupationally exposed to diesel exhaust emissions in underground mines and another 200,000 are potentially exposed at surface operations.

Several epidemiological studies have shown a positive carcinogenic risk associated with exposure to diesel exhaust. Other reported health effects associated with exposure to diesel exhaust include dizziness, drowsiness, headaches, nausea, decreased visual acuity, and forced expiratory volume. In addition, studies by MSHA and the former Bureau of Mines show that miners working in underground mining operations that use diesel equipment are probably the most heavily exposed workers of any occupational group. Based on the levels of diesel particulate measured in underground mining operations and the evidence of adverse health effects associated with exposure to diesel exhaust, MSHA is concerned about the potential health risk to miners. MSHA currently has no health regulations that specifically address the exposure of miners to diesel particulate.

Alternatives:

In the Fall of 1995 MSHA held a series of public workshops to gather suggestions for possible approaches to limit miners' exposure to diesel particulate. In addition, over the past 10 years, MSHA and the former Bureau of Mines have conducted research on methodologies for the measurement and control of diesel particulate in the mining environment. This research has demonstrated that the use of low sulfur fuel, good engine maintenance, exhaust after-treatment, new engine technology, and optimized application of ventilating air all play a role in reducing miners' exposure to diesel exhaust particulate matter. MSHA therefore, is considering whether or not to require any of these methods or other approaches such as establishing a permissible exposure limit (PEL) to reduce miners' exposure to diesel exhaust particulate.

Anticipated Costs and Benefits:

MSHA is in the early stages of developing potential cost figures related to the various possible approaches in a proposed diesel particulate standard for surface and underground coal and metal and nonmetal mines. Costs will depend on the ultimate approach chosen, but will relate to engine control technology, fuel requirements, ventilation changes, sampling practices, and requirements for exhaust control devices on diesel-powered equipment.

The projected costs of technology development are expected to be somewhat minimized by research and development conducted by the former Bureau of Mines and others which resulted in a number of exhaust control devices that have proven effective and safe when properly maintained. In addition, low sulfur fuel is readily available because of current Environmental Protection Agency (EPA) regulations.

Benefits to health and safety would result from reducing miners' exposure to diesel particulate in workplaces where diesel-powered equipment is used. One such benefit would be a reduction in the incidence of potential illnesses associated with exposure to diesel exhaust particulate.

Risks:

Laboratory tests have shown diesel exhaust to be carcinogenic in rats, as well as toxic and mutagenic. In addition, several epidemiological studies have found that exposure to diesel exhaust presents potential health risks to workers. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mine environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. The Agency believes that the health evidence forms a reasonable basis for exploring possible methods to reduce miners' exposure to diesel particulate.

Timetable:

Action	Date	FR Cite
ANPRM	01/06/92	57 FR 500
ANPRM Comment Period End	07/10/92	57 FR 7906
NPRM	02/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—MSHA

79. ELECTRICAL STANDARDS FOR METAL AND NONMETAL MINES

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 56; 30 CFR 57

Legal Deadline:

None

Abstract:

Electric power is widely used in the mining and processing of minerals. Large, highly productive mining equipment, such as continuous miners, loaders, shuttle cars, draglines, shovels and drills, are electrically powered. In addition, electricity is used for the transportation of material on conveyors, for electric railroads, and for processing plants. MSHA's accident records related to inadequate equipment

grounding support the need for improved safety standards. The number of electrical accidents could be reduced by proper equipment grounding. The proposed rule would revise MSHA's existing safety standards addressing hazards associated with the grounding of circuits, equipment, and metal enclosures at surface and underground metal and nonmetal mines. The proposed standard would specify requirements for grounding conductors to ensure that safe methods of grounding are used.

Statement of Need:

There are two major types of electrical accidents. One type occurs when a miner inadvertently contacts energized parts. To protect against this hazard, MSHA standards require that electrically powered equipment be deenergized, and power switches be locked out to prevent equipment from being energized, before mechanical work is done; warning signs be posted at the power switch; principal power switches be labeled to show which units they control; danger signs be posted at major electrical installations; and nonconductive material be kept in place at all switchboards and power-control switches where shock hazards exist.

The other type of electrical accident occurs when a miner contacts energized metallic frames or enclosures that are normally not energized. Ground faults occur on the metallic frames or enclosures of electrical mine equipment causing shock hazards to miners.

Dust, vibration, corrosion, moisture, and heat, coupled with the additional wear and tear associated with the mining process, cause the premature degradation of circuit insulation which leads to ground faults on the equipment. When a ground fault occurs on circuits without an equipment grounding conductor, the frames or enclosures become energized and create a dangerous shock hazard. An effective equipment grounding conductor reduces the shock voltage on the frames or enclosures to safe levels. An equipment grounding conductor is the most critical part of the grounding system.

MSHA existing standards 56/57.12025 require that all metal enclosing or encasing electrical circuits be grounded or provided with equivalent protection. The intent of this existing rule is to prevent electrical shock hazards to persons working on or coming into contact with these metal enclosures or metal encased electrical circuits.

MSHA's enforcement of existing sections 56/57.12025 has been guided by the Agency's reliance on its own technical experience in electrical grounding as well as using the National Fire Protection Association publication, NFPA No. 70, National Electrical Code (NEC). The NEC is a nationally recognized consensus standard containing electrical safety criteria and procedures accepted throughout the United States. MSHA's reliance on the NEC in the enforcement of sections 56/57.12025 has been questioned by several Federal Mine Safety and Health Review Commission (FMSHRC) judges' decisions. Contractors Sand and Gravel Supply, Inc., 18 FMSHRC 384 (March 1996), Mulzer Crushed Stone Company, 3 FMSHRC 1238 (May 1981), and McCormick Sand Corporation, 2 FMSHRC 21 (Jan. 1980). These decisions have held that section 56.12025 is deficient in several respects.

In response to these decisions, MSHA decided to develop a more effective standard by clarifying compliance requirements for electrical grounding of equipment and enclosures consistent with the NEC which covers all aspects of adequate equipment grounding.

Alternatives:

Adopting applicable articles of the 1996 edition of NEC in the proposed rule is an outgrowth of MSHA's longstanding position that compliance with the NEC would provide the most effective protection for miners from electrical shock hazards. Moreover, because the grounding specifications in the NEC are well established and have had few changes in the last twenty years, MSHA believes the applicable articles of the 1996 edition of the NEC would remain in effect for the foreseeable future.

Anticipated Costs and Benefits:

MSHA expects costs could be incurred from the purchase of equipment grounding conductors which limit the voltage on non-current carrying metallic parts of equipment. MSHA believes that adoption of the proposed requirements are necessary to prevent shock hazards and would improve miner protection as compared to the existing standard.

Risks:

Electrical hazards are a cause of fatal and nonfatal injuries in metal and nonmetal mines. MSHA's accident records related to inadequate equipment grounding supports the need for improved safety standards. An analysis of fatal accidents from 1986 to 1996 reveals that 13 fatalities or 25% of all electrical fatalities in metal and nonmetal mines can be directly attributed to faulty grounding.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—MSHA

FINAL RULE STAGE

80. NOISE STANDARD

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:

30 USC 811

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 62; 30 CFR 70; 30 CFR 71

Legal Deadline:

None

Abstract:

Notwithstanding MSHA's firm enforcement of its current noise regulations, miners are continuing to incur hearing impairment. Data indicate that hearing impairment can be reduced significantly, however, if effective protective action is used both to reduce or eliminate the noise and to minimize

exposure to the noise. MSHA has published a proposed rule applicable to all types of mining which would require that protective measures be taken where exposure to noise is at a level lower than that which is currently permitted. The proposed rule would require, for example, that the mine operator make audiometric testing available and provide hearing protection under particular circumstances when a miner's exposure exceeds the ''action level.''

Statement of Need:

MSHA's existing standards, in spite of enforcement efforts, do not provide adequate protection against exposure to hazardous occupational noise levels. Several factors have shown that there is a need to replace the existing standards so that miners are adequately protected. One factor is that miners are continuing to incur occupational, noise-induced hearing loss. Another factor is that existing MSHA standards no longer reflect the opinions of experts or the current scientific evidence. In addition, MSHA's current noise standards for coal mines differ from those for metal and nonmetal mines. MSHA's final rule will provide consistent requirements for all mines.

Summary of the Legal Basis:

Section 101(a) of the Mine Act requires that MSHA's promulgation of health standards adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity over the miner's working lifetime. In addition to the attainment of the highest degree of health and safety protection for the miner, the Mine Act requires that factors, such as the latest scientific data in the field, the feasibility of the standard, and the experience gained under the Mine Act and other health and safety laws, be considered when promulgating mandatory standards pertaining to toxic materials or harmful physical agents.

Alternatives:

MSHA published a proposed rule which requested comments and data on a number of regulatory alternatives. In addition, MSHA held six public hearings providing the public an opportunity to comment on the noise proposal and submit data. Based upon its own research and experience, and data and information submitted to the record, MSHA is considering the respective roles of engineering controls and administrative controls and the use of personal hearing protection in controlling noise exposure; lowering the permissible exposure level and implementing a new action level; the lowering of the exchange rate; and the parameters and criteria for audiometric testing, exposure monitoring, and miner training. The proposed rule reflected the Agency's tentative decisions on these alternatives, mindful of their economic impact on small mines. The final rule will derive from MSHA's deliberations and decisions on the issues and alternatives.

Anticipated Costs and Benefits:

MSHA prepared an analysis of benefits which compared the numbers of miners projected to incur a material impairment of hearing under the existing standards and under the proposal. The proposed rule would reduce the risk of impairment by 67 percent, protecting about 500 miners per year from developing an occupationally related material impairment of hearing. The incremental annual cost of the proposed rule would be about $8.3 million. The scope and nature of the final rule is currently under development and, thus, estimates of costs and benefits are preliminary.

Risks:

Noise is a serious occupational hazard in the mining industry. Occupational exposure to loud noises results in hearing loss and hearing impairment, which affect both quality of life and functional capacity. In addition, cases of hearing loss reported to MSHA indicate that a significant number of these miners received all of their noise exposure under existing standards. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to MSHA's existing noise standards.

Timetable:

Action	Date	FR Cite
ANPRM	12/04/89	54 FR 50209
ANPRM Comment Period End	06/22/90	55 FR 6011
NPRM	12/17/96	61 FR 66348
Extension of Comment Period to 4/21/97; Notice of Public Hearings	02/06/97	62 FR 5554
NPRM Comment Period End	02/18/97	
Final Action	03/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

81. STANDARDS ADVISORY COMMITTEE ON METALWORKING FLUIDS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655(b)(1); 29 USC 656(b)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

In December 1993, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA to take emergency regulatory action to protect workers from the risks of occupational cancers and respiratory illnesses due to exposure to metalworking fluids. OSHA sent an interim response to the UAW stating that the decision to proceed with rulemaking would depend on the results of the OSHA Priority Planning Process. Following the Priority Planning Process report, which identified metalworking fluids as an issue worthy of Agency action, the Assistant Secretary asked the National Advisory Committee on Occupational Safety and Health (NACOSH) for a recommendation about how to proceed with a rulemaking for metalworking fluids. NACOSH unanimously recommended that OSHA form a Standards Advisory Committee (SAC)

to address the health risks caused by occupational exposure to metalworking fluids. The Assistant Secretary accepted the recommendation of NACOSH; OSHA has established a 15-member SAC to make recommendations regarding a standard, a guideline, or other appropriate response to the dangers of occupational exposures to metalworking fluids. The Committee has a balanced membership, including individuals appointed to represent the following affected interests: industry; labor; federal and state safety and health organizations; professional organizations; and national standards-setting groups.

Statement of Need:

Under Table Z-1 of the 1971 air contaminants rule, OSHA enforces a permissible exposure limit of 5 mg/m3 for mineral oil mists, but evidence suggests this level is outdated and that exposure to metalworking fluids can lead to cancer, non-malignant lung disease and dermatitis. Giving a SAC the opportunity to examine and comment upon current studies and data concerning the risks associated with all metalworking fluid mixtures (straight oils, synthetic, and semisynthetic) will provide valuable information the Agency can use to develop a proposed rule for metalworking fluids or other appropriate response to hazards posed by occupational exposure to metalworking fluids. The SAC will also report on related issues such as fluid management, engineering controls, medical surveillance, and economic and technological feasibility.

Alternatives:

The Agency recognizes the complex and difficult nature of the issues surrounding the regulation of metalworking fluids and believes a SAC can best alleviate some areas of confusion. The Committee has a unique opportunity to provide needed data and academic and professional expertise, as well as large and small industry and labor perspectives. Through OSHA's exhaustive Priority Planning Process and NACOSH recommendation, metalworking fluids were identified as a regulatory candidate that could be handled most successfully through a SAC. The option of going directly to 6(b) rulemaking has been bypassed in favor of a SAC which will give beneficial input to the agency as to how best to deal with the problems, and the opportunity to build some consensus before a proposal is issued.

Anticipated Costs and Benefits:

Because the SAC has only recently begun to meet, the form of the Committee's recommendations is unknown at the present time. However, once the SAC report is written, the scope of the proposed rule will be determined. Quantitative estimates of costs and benefits will be made only after the proposed rule has been drafted.

Timetable:

Action	Date	FR Cite
Appointed Names	07/11/97	
Charter Approved	08/15/97	
First Meeting of Committee	09/02/97	
Recommendations	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

The Agency is particularly concerned with the potential impact a metalworking fluids rule would have on small businesses. OSHA has been working closely with the Small Business Administration to reach small employers to involve them in the process at the earliest possible time. At least 30 small business interests have been identified to date. The Agency is required to have balanced committee representation, and small business will be represented on the SAC.

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DOL—OSHA

PROPOSED RULE STAGE

82. STEEL ERECTION (PART 1926) (SAFETY PROTECTION FOR IRONWORKERS)

Priority:

Economically Significant. Major under 5 USC 801.

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:

29 USC 655; 40 USC 333

CFR Citation:

29 CFR 1926.750 (Revision); 29 CFR 1926.751 (Revision); 29 CFR 1926.752 (Revision)

Legal Deadline:

None

Abstract:

On December 29, 1992, the Occupational Safety and Health Administration (OSHA) announced its intention to form a negotiated rulemaking advisory committee to negotiate issues associated with a revision of the existing steel erection standard. The Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC), a 20-member committee, was established, and the SENRAC charter was signed by Secretary Reich on May 26, 1994, and was recently re-chartered for a 2-year period. Four of the primary issues the committee negotiated include the need to expand the scope and application of the existing standard, construction specifications and work practices, written construction safety erection plans, and fall protection. The Committee met 11 times over an 18-month period and completed work on the draft regulatory text for the proposed steel erection standard on December 1, 1995.

The negotiated rulemaking process has been successful in bringing together the interested parties that will be affected by the proposed revision to the steel erection rule to work out contrasting positions, find common ground on the major issues, and develop language for a proposed rule. The use of this process and a neutral facilitator allowed the stakeholders to develop an ownership stake in the proposal that they would not have had without the use of this process.

The process has led to a proposed revision to subpart R of 29 CFR 1926 that contains innovative provisions that will help to minimize the major causes of steel erection injuries and fatalities. Many of these provisions could not have been developed without this process, which has brought together industry experts, via face-to-face

negotiations, to discuss different approaches to resolving the issues. This process has proved mutually beneficial to all the parties involved (including OSHA), with each Committee member participating in resolving the issues and developing practical and effective rules to make the steel erection industry safer.

Statement of Need:

In 1989, OSHA was petitioned by the Iron Workers Union and National Erectors Association to revise its construction safety standard for steel erection through the negotiated rulemaking process. OSHA asked an independent consultant to review the issues involved in a steel erection revision, render an independent opinion, and recommend a course of action to revise the standard. The consultant recommended that OSHA address the issues by using the negotiated rulemaking process. Based on the consultant's findings and the continued requests for negotiated rulemaking, OSHA decided to use the negotiated rulemaking process to develop a proposed revision of subpart R. The use of negotiated rulemaking was thought to be the best approach to resolving steel erection safety issues, some of which have proven intractable in the past.

Alternatives:

An alternative to using the negotiated rulemaking process is to publish a notice of proposed rulemaking developed by Agency staff and consider the concerns of the affected interests through the public comment and public hearing process. It is anticipated that using this alternative would result in an extremely long and contentious rulemaking proceeding, with subsequent challenge in the Court of Appeals. This alternative was therefore rejected. Another alternative would be not to revise the Agency's current steel erection rules for construction. This alternative was rejected because it would permit steel erection-related injuries and fatalities to continue.

Anticipated Costs and Benefits:

The estimated compliance costs of the proposal are approximately $50 million per year, and the Agency believes that the benefits of the standard would include the prevention of an estimated 14 fatalities and 824 lost workday injuries per year.

Risks:

The magnitude of the risk associated with steel erection activities is great. It is estimated that 28 workers are killed every year during steel erection activities. Falls are currently the number one killer of construction workers, and since the erection of buildings necessarily involves high exposure to fall hazards, the central focus of this rule will be to eliminate or reduce the risks associated with falls.

Timetable:

Action	Date	FR Cite
Notice of Committee Establishment	05/11/94	59 FR 24389
NPRM	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—OSHA

83. PREVENTION OF WORK-RELATED MUSCULOSKELETAL DISORDERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

29 USC 651; 29 USC 652; 29 USC 655; 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926; 29 CFR 1928

Legal Deadline:

None

Abstract:

Work-related musculoskeletal disorders (MSDs) are a leading cause of pain, suffering, and disability in American workplaces. Since the 1980's, the Occupational Safety and Health Administration (OSHA) has had a number of initiatives related to addressing these problems, including enforcement under the general duty clause, issuance of guidelines for the meatpacking industry, and development of other compliance-assistance materials.

Ultimately, the Agency decided that, given the increasing magnitude of the problem, a regulatory approach should be explored to ensure that the largest possible number of employers and employees become aware of the problems and ways of preventing work-related musculoskeletal disorders. An open process to develop and consider regulatory alternatives was initiated with the publication of an advance notice of proposed rulemaking on August 3, 1992 (57 FR 34192). About 300 comments were received in response to that request. In addition to the public comments, OSHA has examined and analyzed the extensive scientific literature documenting the problem of work-related musculoskeletal disorders, the causes of the problem, and effective solutions; conducted a telephone survey of over 3,000 establishments regarding their current practices to prevent work-related musculoskeletal disorders; and completed a number of site visits to facilities with existing programs. The Agency has also held numerous stakeholder meetings to solicit input from individuals regarding the possible contents of a standard to prevent work-related musculoskeletal disorders, and on a draft proposed regulatory text and supporting documents. Agency representatives have delivered numerous outreach presentations to people who are interested in this subject; consulted professionals in the field to obtain expert opinions on various aspects of the options considered by the Agency; and field-tested certain requirements under consideration for the standard. Information obtained from these activities is undergoing Agency review. Options for regulatory action are being considered.

The Agency believes that the scientific evidence supports the need for a standard and that the availability of effective and reasonable means to control these hazards has been demonstrated. The criteria that have been developed for setting OSHA priorities support the Agency's determination that action is needed now to stop the occurrence of work-related musculoskeletal disorders. The Agency is currently considering options to develop a proposed rule for ergonomics. The National Institute for

Occupational Safety and Health (NIOSH) has recently issued a report evaluating the scientific basis for the relationship of workplace stressors to MSDs. The report concludes that such a relationship exists for many stressors.

Statement of Need:

OSHA estimates that the occurrence of work-related musculoskeletal disorders in the United States ranges from more than 700,000 lost workday injuries and illnesses (30% of all lost workdays reported to the Bureau of Labor Statistics (BLS)) to more than 2.7 million annually awarded workers' compensation claims. These disorders now account for one out of every three dollars spent on workers' compensation. It is estimated that employers spend $20 billion a year on direct costs for workers' compensation, and up to five times that much for indirect costs, such as those associated with hiring and training replacement workers. In addition to these monetary effects, these disorders often impose a substantial personal toll on workers who experience their effects, and as a result are no longer able to work or to perform simple personal tasks like buttoning their clothes or brushing their hair.

Scientific evidence associates these disorders with stresses to various body parts caused by the way certain tasks are performed. The positioning of the body and the type of physical work that must be done to complete the tasks of a job may cause persistent pain and lead over time to deterioration of the affected joints, tissues, and muscles. The longer the time the worker must maintain a fixed or awkward posture, exert force, repeat the same movements, experience vibration, or handle heavy items, the greater the chance that such a disorder will occur. These job-related stresses are referred to as ''workplace risk factors,'' and the scientific literature demonstrates that exposure to these risk factors, particularly in combination with each other, significantly increases an employee's risk of developing a work-related musculoskeletal disorder. Jobs involving exposure to workplace risk factors appear in all types of industries and in all sizes of facilities.

Musculoskeletal disorders occur in all parts of the body-- the upper extremity, the lower extremity, and the back. An example of the increasing magnitude of the problem involves repeated trauma to the upper extremity, or that portion of the body above the waist, in forms such as carpal tunnel syndrome and shoulder tendinitis. In 1995, employers reported 302,000 upper extremity repeated trauma cases to the BLS. As a point of comparison, the number of reported cases in this category was only 22,700 in 1981. Adjusting the data to reflect changes in the size of the employee population indicates that there has been a greater than 7-fold increase in such cases in the last ten years. In industries such as meatpacking, more than 10 out of every 100 workers report a work related musculoskeletal disorder from repeated trauma each year. In automotive assembly, approximately 10 out 100 workers are affected. The number of work-related back injuries occurring each year is even larger than the number of upper extremity disorders. Industries reporting a large number of cases of back injuries include hospitals and personal care facilities.

The evidence OSHA has assembled and analyzed indicates that there are technologically and economically feasible measures available that can significantly reduce exposures to workplace risk factors and the risk of developing work-related musculoskeletal disorders. Many companies that have voluntarily implemented ergonomics programs have demonstrated that effective ergonomic interventions are available and implementation of them is beneficial to the employer and the employee. Many of these interventions are simple and inexpensive, but nevertheless have a significant effect on the occurrence of work-related musculoskeletal disorders. Substantial savings in workers' compensation costs, increased productivity, and decreased turnover are among the benefits found.

Alternatives:

OSHA has considered many different regulatory alternatives since initiating the rulemaking process. These include variations in the scope of coverage, particularly with regard to industrial sectors, work processes, and degree of hazard. Various phasing options related to the size of facility have also been considered. The agency is still in the process of developing and refining a number of regulatory alternatives.

Anticipated Costs and Benefits:

Implementation costs associated with a regulatory approach would include those related to identifying and correcting problem jobs using engineering and administrative controls. Benefits expected include reduced pain and suffering, both from prevented disorders as well as reduced severity in those disorders that do occur, fewer workers' compensation claims and lower associated costs, and reduced lost work time. Secondary benefits may accrue from improved quality and productivity due to better designed work systems.

Risks:

The data OSHA has obtained and analyzed indicate that employees are at a significant risk of developing or aggravating musculoskeletal disorders due to exposure to risk factors in the workplace. In addition, information OSHA has obtained from site visits, scientific literature, compliance experience, and other sources indicates that there are economically and technologically feasible means of addressing and reducing these risks to prevent the development or aggravation of such disorders, or to reduce their severity. These data and analyses will be presented in the preamble to any proposed standard published in the Federal Register.

Timetable:

Action	Date	FR Cite
ANPRM	08/03/92	57 FR 34192
ANPRM Comment Period End	02/01/93	
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DOL—OSHA

84. SAFETY AND HEALTH PROGRAMS (FOR GENERAL INDUSTRY)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

29 USC 655; 29 USC 652; 29 USC 654; 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1918; 29 CFR 1926

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA), many of the States, members of the safety and health community, insurance companies, professional organizations, companies participating in the Agency's Voluntary Protection Program, and many proactive employers in all industries have recognized the value of worksite-specific safety and health programs in preventing job-related injuries, illnesses, and fatalities. The effectiveness of these programs is seen most dramatically in the reductions in job-related injuries and illnesses, workers' compensation costs, and absenteeism that occur after employers implement such programs. To assist employers in establishing safety and health programs, OSHA in 1989 (54 FR 3904) published nonmandatory guidelines that were based on a distillation of the best safety and health management practices observed by OSHA in the years since the Agency was established. OSHA's decision to expand on these guidelines by developing a safety and health programs rule is based on the Agency's recognition that occupational injuries, illnesses, and fatalities are continuing to occur at an unacceptably high rate; for example, an average of 17 workers were killed each day in 1995 in occupational fatalities.

Although the precise scope of the standard (e.g., what industries will be covered, what sizes of firms will be covered) has not yet been determined, the safety and health programs contained in the proposed rule will include at least the following elements: management leadership of the program; active employee participation in the program; analysis of the worksite to identify serious safety and health hazards of all types; and requirements that employers eliminate or control those hazards in an effective and timely way. In addition, in response to extensive stakeholder involvement, OSHA has, among other things, focused the rule on serious hazards, deleted required medical surveillance, and reduced burdens on small business.

Statement of Need:

Worksite-specific safety and health programs are increasingly being recognized as the most effective way of reducing job-related accidents, injuries, and illnesses. Many States have to date passed legislation and/or regulations mandating such programs for some or all employers, and insurance companies have also been encouraging their client companies to implement these programs, because the results they have achieved have been so dramatic. In addition, all of the companies in OSHA's Voluntary Protection Program have established such programs and are reporting injury and illness rates that are sometimes only 20 percent of the average for other establishments in their industry. Safety and health programs apparently achieve these results by actively engaging front-line employees, who are closest to operations in the workplace and have the highest stake in preventing job-related accidents, in the process of identifying and correcting occupational hazards. Finding and fixing workplace hazards is a cost-effective process, both in terms of the avoidance of pain and suffering and the prevention of the expenditure of large sums of money to pay for the direct and indirect costs of these injuries and illnesses. For example, many employers report that these programs return between $5 and $9 for every dollar invested in the program, and almost all employers with such programs experience substantial reductions in their workers' compensation premiums. OSHA believes that having employers evaluate the job-related safety and health hazards in their workplace and address any hazards identified before they cause occupational injuries, illnesses, or deaths is an excellent example of ''regulating smarter,'' because all parties will benefit: workers will avoid the injuries and illnesses they are currently experiencing; employers will save substantial sums of money and increase their productivity and competitiveness; and OSHA's scarce resources will be leveraged as employers and employees join together to identify, correct, and prevent job-related safety and health hazards.

Alternatives:

In the last few years, OSHA has considered both nonregulatory and regulatory alternatives in the area of safety and health program management. First, OSHA published, in 1989, a set of voluntary management guidelines designed to assist employers to establish and maintain programs such as the one envisioned by the proposed safety and health programs rule. Although these guidelines have received widespread praise from many employers and professional safety and health associations, they have not been effective in reducing job-related deaths, injuries, and illnesses, which have continued to occur at unacceptably high levels. Many of the States have also recognized the value of these programs and have mandated that some or all covered employers establish them; however, this has led to inconsistent coverage from State to State, with many States having no coverage and others imposing stringent program requirements.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time.

Risks:

Workers in all major industry sectors in the United States continue to experience an unacceptably high rate of occupational fatalities, injuries, and illnesses. In 1994 the Bureau of Labor Statistics reports that 6.8 million injuries and illnesses occurred within private industry, and in 1995, 6,210 workers lost their lives on the job. There is increasing evidence that addressing hazards in a piecemeal fashion, as employers tend to do in the absence of a comprehensive safety and health program, is considerably less effective in reducing accidents than a systematic approach. Dramatic evidence of the seriousness of this problem can be found in the staggering workers' compensation bill paid by America's employers and employees: $54 billion annually. These risks can be reduced by the implementation of safety and health programs, as evidenced by the experience of OSHA's Voluntary Protection Program participants, who regularly achieve injury and illness rates averaging one-fifth to one-third those of competing firms in their industries. Other benefits of reducing accidents include enhanced productivity, improved employee morale, and reduced absenteeism. Because these programs address all serious job-related hazards--including those that are covered by OSHA standards as well as those not currently addressed by these standards--the proposed rule will be effective in ensuring a systematic approach to the control of long-recognized hazards, such as lead, and emerging hazards, such as lasers and heat stress.

Timetable:

Action	Date	FR Cite
NPRM	06/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State

Additional Information:

Separate standards are being developed for the construction (29 CFR 1926) and the maritime (29 CFR 1915, 1917 and 1918) industries, which are being coordinated with this standard.

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DOL—OSHA

85. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910.1035

Legal Deadline:

None

Abstract:

On August 25, 1993, the Occupational Safety and Health Administration (OSHA) was petitioned by the Labor Coalition to Fight TB in the Workplace to initiate rulemaking for a permanent standard to protect workers against occupational transmission of tuberculosis (TB). Although the Centers for Disease Control and Prevention (CDC) have developed recommendations for controlling the spread of TB in several work settings (e.g., correctional institutions, health-care facilities, and homeless shelters), the petitioners stated that in every recent TB outbreak investigated by the CDC, noncompliance with CDC's TB control guidelines was evident. After reviewing the available information, OSHA has preliminarily concluded that significant risk of occupational transmission of TB does exist for some workers and has initiated a 6(b) standard rulemaking. The Agency is currently developing a proposed rule that would require certain employers to take steps to eliminate or minimize employee exposure to TB. OSHA already regulates the biological hazard of bloodborne pathogens (e.g., HIV, hepatitis B) under 29 CFR 1910.1030 and believes that development of a TB standard is consistent with the Agency's mission and previous activity.

OSHA has consulted with parties outside of the Agency with regard to the developing proposal. The draft preliminary Risk Assessment has been peer-reviewed by four individuals with specific knowledge in the areas of tuberculosis and risk assessment. One reviewer is from the CDC and three are from academia. In addition, OSHA has conducted stakeholder meetings with representatives of relevant professional organizations, trade associations, labor unions, and other groups. These meetings provided the opportunity for both general and frontline stakeholder representatives to present OSHA with their individual comments, observations, and concerns about the contents of the draft proposal. The draft proposal has also been reviewed and commented on by affected small business entities under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition, the draft proposed standard and preamble have been reviewed by the office of Management and Budget. In response to the consultations and reviews, OSHA has made changes to improve the proposed standard.

Statement of Need:

For centuries, TB has been responsible for the deaths of millions of people throughout the world. TB is a contagious disease caused by the bacterium *Mycobacterium tuberculosis*. Infection is generally acquired by the inhalation of airborne particles carrying the bacterium. These airborne particles, called droplet nuclei, can be generated when persons with pulmonary or laryngeal tuberculosis in the infectious state of the disease cough, sneeze, speak, or sing. In some individuals exposed to droplet nuclei, TB bacilli enter the alveoli and establish an infection. In most cases, the bacilli are contained by the individual's immune response. However, in some cases, the bacilli are not contained by the immune system and continue to grow and invade the tissue, leading to the progressive destruction of the organ involved. While in most cases this organ is the lung (i.e., pulmonary tuberculosis), other organs outside of the lung may also be infected and become diseased (i.e., extrapulmonary tuberculosis).

From 1953, when active cases began to be reported in the United States, until 1984, the number of annual reported cases declined 74 percent, from 84,304 to 22,255. However, this steady decline in TB cases has not continued. Instead, from 1985 through 1992, the number of reported TB cases increased 20.1 percent. In 1992, more than 26,000 new cases of active TB were reported in the United States. In New York City alone, 3,700 cases of active TB were reported in 1991. While a decrease in active cases has been observed recently, there were still 22,813 reported cases in 1995. A large portion of the decrease occurred in high incidence areas where intervention efforts have been focused. However, over twenty states showed an increase or no change in the number of reported cases. In addition, the factors that led to the recent resurgence of TB (e.g., increases in homelessness, HIV infection, immigration from countries with high rates of infection) still exist and the job duties of certain workers require them to be exposed to patients and clients with suspected or confirmed infectious TB. In addition, strains of tuberculosis have emerged that are resistant to several of the first-line anti-TB drugs. This multidrug-resistant TB (MDR-TB) is often fatal due to the difficulty of halting the progression of the disease. Individuals with MDR-TB often remain infectious for longer periods of time due to delays in diagnosing resistance patterns and initiating proper treatment. This lengthened period of infectiousness increases the risk that the organism will be transmitted to other persons coming in contact with such individuals.

Providing health care for individuals with the disease increases the risk of occupational exposure to TB among health care workers. In fact, several outbreaks of tuberculosis, including MDR-TB, have recently occurred in health care facilities, resulting in transmission to both patients and health care workers. CDC found that factors contributing to these outbreaks included delayed diagnosis of TB, delayed recognition of drug resistance,

delayed initiation of effective therapy, delayed initiation and inadequate duration of TB isolation, inadequate ventilation in TB isolation rooms, lapses in TB isolation practices, inadequate precautions for cough-inducing procedures, and lack of adequate respiratory protection. CDC's analysis of data collected from three of the health care facilities involved in the outbreaks indicated that transmission of TB decreased significantly or ceased entirely in areas where recommended TB control measures were implemented. In addition, workers outside of health care may provide services to patient or client populations that have an increased rate of TB. For example, occupational transmission of TB has been documented in correctional facilities.

Summary of the Legal Basis:

The legal basis for the proposed TB standard is a preliminary finding by the Secretary of Labor that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures.

Alternatives:

Prior to a decision to publish a proposal, OSHA considered a number of options, including whether or not to develop an emergency temporary standard, publish an advance notice of proposed rulemaking, or to enforce existing regulations.

Anticipated Costs and Benefits:

Costs will be incurred by employers for engineering controls, respiratory protection, medical surveillance, training, exposure control, recordkeeping, and work practice controls. Benefits will include the prevention of occupationally-related TB transmissions and infections, and a corresponding reduced risk of exposure among the general population. The scope and nature of the proposed rule are currently under development and thus estimates of costs and benefits have not been determined at this time.

Risks:

From 1985 to 1992, the number of reported cases of TB in the U.S. increased, reversing a previous 30-year downward trend. While there has been a recent decrease in the reported number of cases of TB in the general population, a large part of this decrease can be attributed to focused intervention efforts in areas of high incidence of TB. Over 20 states showed an increase or no change in the number of reported TB cases and the factors that contributed to the resurgence continue to exist, along with exposure of certain workers to patient and client populations with an increased rate of TB. In addition, strains of multidrug-resistant TB have emerged which are more often fatal. Therefore, employees in work settings such as health care or correctional facilities, who have contact with infectious individuals, retain a risk of occupational transmission. TB is a contagious disease spread by airborne particles known as droplet nuclei. Active disease can cause signs and symptoms such as fatigue, weight loss, fever, night sweats, loss of appetite, persistent cough, and shortness of breath, and may possibly result in serious respiratory illness or death.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

During the rulemaking, OSHA will meet with small business stakeholders to discuss their concerns, and will conduct an initial Regulatory Flexibility Analysis to identify any significant impacts on a substantial number of small entities. In addition, OSHA will conduct a special study of homeless shelters and will designate certain hearing dates for persons who wish to testify on homeless shelter issues.

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DOL—OSHA

86. PERMISSIBLE EXPOSURE LIMITS (PELS) FOR AIR CONTAMINANTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

29 USC 655 (b)

CFR Citation:

29 CFR 1910.1000

Legal Deadline:

None

Abstract:

OSHA enforces hundreds of permissible exposure limits (PELs) for toxic air contaminants found in U.S. workplaces. These PELs set OSHA-enforceable limits on the magnitude and duration of employee exposure to each contaminant. The amount of exposure permitted by a given PEL depends on the toxicity and other characteristics of the particular substance. OSHA's PELs for air contaminants are codified in 29 CFR 1910.1000, Tables Z-1, Z-2, and Z-3. The air contaminant limits were adopted by OSHA in 1971 from existing national consensus standards issued by the American Conference of Governmental Industrial Hygienists and the American National Standards Institute. These PELs, which have not been updated since 1971, thus reflect the results of research conducted in the 1950s and 1960s. Since then, much new information has become available that indicates that, in most cases, these early limits are outdated and insufficiently protective of worker health. To correct this situation, OSHA published a proposal in 1988 updating the air contaminant limits in general industry. That proposal became a final rule in 1989 (54 FR 2332); it lowered the existing PEL for 212 toxic air contaminants and established PELs for 164 previously unregulated air contaminants. On June 12, 1992 (57 FR 26001), OSHA proposed a rule that would have extended these limits to workplaces in the construction, maritime, and agriculture industries. However, on July 10, 1992, the Eleventh Circuit Court of Appeals vacated the 1989 final rule on the grounds that ''(1) OSHA failed to establish that existing exposure limits in the workplace presented significant

risk of material health impairment or that new standards eliminated or substantially lessened the risk; (2) OSHA did not meet its burden of establishing that its 428 new permissible exposure limits (PELs) were either economically or technologically feasible.'' The Court's decision to vacate the rule forced the Agency to return to the earlier, insufficiently protective limits.

OSHA continues to believe that establishing a rulemaking approach that will permit the Agency to update existing air contaminant limits and establish new ones as toxicological evidence of the need to do so becomes available is a high priority. The rulemaking described in this Regulatory Plan entry reflects OSHA's intention to move forward with this process. In determining how to proceed, OSHA is being guided by the OSH Act and the Eleventh District Court decision regarding the extent of the risk and feasibility analyses required to support revised and new air contaminant limits. The Agency will rely on a risk-based prioritization system to identify those air contaminants that present significant risks to exposed employees and for which technologically and economically feasible controls exist. State-of-the-art risk assessment methodologies will be utilized for both carcinogens and noncarcinogens, and the determinations of feasibility contained in the economic analysis accompanying the proposal will be extensive. OSHA published (61 FR 1947) the substances selected for proposed new PELs for the first update of the air contaminants rule: carbon disulfide, carbon monoxide, chloroform, dimethyl sulfate, epichlorohydrin, ethylene dichloride, glutaraldehyde, n-hexane, 2-hexanone, hydrazine, hydrogen sulfide, manganese and compounds, mercury and compounds, nitrogen dioxide, perchloroethylene, sulfur dioxide, toluene, toluene diisocyanate, trimellitic anhydride, and vinyl bromide. The specific hazards associated with the air contaminants preliminarily selected for regulation include cancer, neurotoxicity, respiratory sensitivity, etc. Using the same criteria as those used in the Priority Planning Process, OSHA evaluated each substance: severity of the health effect, the number of exposed workers, toxicity of the substance, uses and prevailing exposure levels of the substance, the potential risk reduction, availability and quality of information useful in quantitative risk assessment to ensure that significant risks are addressed and that workers will experience substantial benefits in the form of enhanced health and safety. Publication of the proposal will allow OSHA to institutionalize a mechanism for updating and extending its air contaminant limits, which will, at the same time, provide added protection to many workers who are currently being overexposed to toxic substances in the workplace. OSHA is also considering supplemental mechanisms proposed by stakeholders to increase the effectiveness of the process.

Statement of Need:

OSHA's current Tables Z-1, Z-2, and Z-3 contain approximately 470 PELs for various forms (e.g., dust, fumes, vapors) of the regulated contaminants, many of which are widely used in industrial settings. These PELs, which were adopted wholesale by OSHA in 1971 and have not been revised since then, often lead to adverse effects when workers are exposed to them. In addition, new chemicals are constantly being introduced into the working environment, and exposure to these substances can result in both acute and chronic health effects. Acute effects include respiratory and sensory irritation, chemical burns, and ocular damage; chronic effects include cardiovascular disease, respiratory, liver and kidney disease, reproductive effects, neurological damage, and cancer. For these reasons, it is a high OSHA priority to establish an ongoing regular process that will allow OSHA routinely to update existing PELs and establish limits for previously unregulated substances. The first step in achieving this goal is to publish an air contaminants proposal for approximately 12 substances that will establish streamlined but scientifically sound and defensible procedures for conducting risk assessments and performing feasibility analyses that will permit regular updating and review of permissible exposure limits for air contaminants. The ability to lower existing limits and establish limits for new contaminants is an essential component of OSHA's mandate to protect the health and functional well-being of America's workers.

Summary of the Legal Basis:

Section 6(b) of the OSH Act.

Alternatives:

OSHA has considered a variety of nonregulatory approaches to address the problem of the Agency's outdated exposure limits for air contaminants. These include the issuance of nonmandatory guidelines, enforcing lower limits through the ''general duty'' clause of the OSH Act in cases where substantial evidence exists that exposure presents a recognized hazard of serious physical harm, and the issuance of hazard alerts. OSHA believes, however, that the problem of overexposure to hazardous air contaminants is so widespread, and the Agency's current limits are so out of date, that only a regulatory approach will achieve the necessary level of protection. The regulatory approach also has advantages for employers, because it gives them the information they need to establish appropriate control strategies to protect their workers and reduce the costs of job-related illnesses. This first phase of an ongoing air contaminants updating and revision process will begin to resolve a problem of long-standing and major occupational health import.

Anticipated Costs and Benefits:

The scope of the proposed rule is currently under development, and thus quantitative estimates of costs and benefits have not been determined at this time. Implementation costs associated with the proposed standard include primarily those related to identifying and correcting over-exposures using engineering controls and work practices. Additional costs may be incurred for the implementation of administrative controls and the purchase and use of personal protective equipment. Estimates of the magnitude of the problem of occupational illnesses, both acute and chronic, vary considerably. In 1989, OSHA concluded that its Air Contaminants rule in general industry, which lowered 212 exposure limits and added 164 where none had previously existed, would result in a reduction of approximately 700 deaths, 55,000 illnesses and over 23,300 lost-workday illnesses annually. Chronic effects include cardiovascular disease, respiratory, liver and kidney disease, reproductive effects, neurological damage, and cancer. Acute effects include respiratory and sensory irritation, chemical burns, and ocular effects.

Timetable:

Action	Date	FR Cite
NPRM	03/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

During the rulemaking,OSHA will meet with small business stakeholders to discuss their concerns, and will conduct an initial Regulatory Flexibility Screening Analysis to identify any significant impacts on a substantial number of small entities.

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DOL—OSHA

87. PLAIN ENGLISH REVISION OF EXISTING STANDARDS

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:

29 USC 655(b); 5 USC 553

CFR Citation:

29 CFR 1910.107; 29 CFR 1910.108; 29 CFR 1910.94(c); 29 CFR 1910.94(d); 29 CFR 1910.35; 29 CFR 1910.36; 29 CFR 1910.37; 29 CFR 1910.38

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA) adopted its initial package of workplace safety and health standards in the 1970's from various nationally recognized consensus standards and from standards that had already been promulgated by other Federal agencies. Section 6(a) of the Act permitted OSHA to adopt nationally recognized consensus standards, developed by groups such as the National Fire Protection Association (NFPA) and the American National Standards Institute (ANSI), and existing Federal standards for use as OSHA standards without public participation or public comment. Many of these 6(a) standards have been identified by the regulated community as being overly complex, difficult to read and follow, and out of date with current technology.

This project is part of a Presidential initiative to respond to the general criticism concerning the complexity and obsolescence of certain Federal regulations. OSHA believes that some of the Agency's section 6(a) standards in subpart E and subpart H of part 1910 meet the criteria for critical review set forth in the Presidential initiative. OSHA is initiating three separate rulemakings that will revise three of OSHA's most complex and out-of-date section 6(a) standards. These specific standards address means of egress (exit routes), spray finishing using flammable and combustible liquids; and dip tanks containing flammable and combustible liquids. 29 CFR 1910.107 and 1910.108, (spray finishing using flammable and combustible liquids and dip tanks, respectively) also contain substantive ventilation requirements that are duplicative with ventilation requirements contained in 29 CFR 1910.94, paragraphs (c) and (d). The purpose of these rulemakings is to simplify and clarify these standards and to write them in ''plain English,'' as directed by the President's report.

Statement of Need:

These three OSHA safety standards are being revised as part of the President's initiative on Federal regulations discussed in the U.S. Department of Labor report of June 15, 1995. The Department of Labor report was issued in response to the President's Regulatory Reform Initiative dated April 24, 1995.

Fire hazards in the workplace associated with exposure to flammable and combustible liquids create a variety of safety and health problems, including thermal burns, chemical burns, smoke inhalation, respiratory inflammations, nausea, dizziness, other serious physical injuries and death. Overexposure to vapors, fumes, and mists created during spray applications or dipping processes involving flammable or combustible liquids create a variety of health problems, including respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

In case of an emergency, proper exit routes are needed to protect employees from being trapped in hazardous work areas and lead them to safety.

Alternatives:

OSHA has considered several alternative approaches to controlling these hazards, including issuing guidelines, using the ''general duty clause'' of the OSHA Act to cite serious and unsafe work practices not regulated by the existing standards, issuing hazard alerts, issuing program directives, and revising and updating the current OSHA standards to reflect the updated national consensus standards. OSHA believes that, in this case, revising and updating these standards is the most appropriate way to proceed. It is the only approach that will assure public participation in the revision of outdated, complex, and obsolete rules.

Anticipated Costs and Benefits:

Because these plain English revisions are not substantively changing these rules, no cost impacts will be associated with these revisions.

Risks:

Because these revisions are designed to simplify and clarify these standards, no assessment of risks is required.

Timetable:

Action	Date	FR Cite
NPRM Exit Routes (Means of Egress)	09/10/96	61 FR 47712
Hearing on Exit Routes	04/29/97	62 FR 9402
NPRM Dip Tanks	10/00/97	
NPRM Spray Finishing	12/00/97	
Final Action Exit Routes	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

Undetermined

Additional Information:

Means of Egress, 29 CFR 1910 subpart E, Spray Finishing Using Flammable and Combustible Materials, 29 CFR 1910.107, Dip Tanks Containing Flammable and Combustible Liquids, 29 CFR 1910.108 are three standards selected for revision under a Presidential Initiative to revise outdated, duplicative, or obsolete Federal regulations. They will also be formatted to make them easier to read. 29 CFR 1910.94(c) will be combined with 29 CFR 1910.107 to eliminate

duplicative standards, as will 29 CFR 1910.94(d) and 29 CFR 1910.108. Flammable and Combustible Liquids, 1910.106, has been moved to RIN 1218-AB61.

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DOL—OSHA

FINAL RULE STAGE

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88. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES (SIMPLIFIED INJURY/ILLNESS RECORDKEEPING REQUIREMENTS)

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:

29 USC 657; 29 USC 673

CFR Citation:

29 CFR 1904; 29 CFR 1952.4

Legal Deadline:

None

Abstract:

Over the years, concerns about the reliability and utility of injury and illness data derived from the employer-maintained OSHA records have been raised by Congress, the National Institute for Occupational Safety and Health (NIOSH), the Bureau of Labor Statistics (BLS), the National Academy of Sciences, the Office of Management and Budget (OMB), the General Accounting Office, business, and labor, as well as OSHA. In the late 1980s, to facilitate national policy dialogues, OSHA contracted with Keystone Center to bring together representatives of industry, labor, government, and academia in a year-long effort to discuss problems with OSHA's injury and illness recordkeeping system. Keystone issued a report with specific recommendations on how to improve the system. Early in 1996, OSHA held several meetings with stakeholders from business, labor, and government in order to obtain feedback on a draft OSHA recordkeeping proposal and to gather related information. As a result of these efforts, OSHA published a Notice of Proposed Rulemaking (NPRM) in the February 2, 1996 Federal Register that contained revised recordkeeping requirements, new recordkeeping forms, and new interpretive material. The stated goals of the NPRM were to improve the Nation's injury and illness statistics, simplify the injury and illness recordkeeping system, and reduce the burden of the new rule on employers. Benefits will include: (1) a system that is more compatible with modern computer technology and is easier for employers, employees and government to use; (2) more reliable and useful records; (3) for the first time, comprehensive injury and illness records for construction sites; and (4) greater employee involvement in and awareness of safety and health matters. The original 90-day public comment period was extended another 60 days and ended July 1, 1996. In addition, two public meetings were held in Washington, DC (March 26-29 and April 30-May 1). Over 450 sets of comments were entered into Docket R-02, along with 1200 pages of input derived from nearly 60 presentations given at the public meetings.

OSHA is now planning to issue a final rule that incorporates changes based upon an analysis of the comments and testimony received during the public comment period discussed above.

Statement of Need:

A revision to OSHA's outdated recordkeeping system has been contemplated for some time. The process of revision originated in BLS in 1987 and moved in 1990 to OSHA, when the recordkeeping function was transferred to the Agency.

The proposed rule reflects the input of many stakeholders, including OSHA field and national office staff, the participants in the 1987 Keystone policy dialogue, staff from other government agencies (BLS, the Mine Safety and Health Administration (MSHA), the Federal Railroad Administration (FRA), NIOSH and the States), and members of OSHA's advisory committees. OSHA has discussed the proposed revision with thousands of employers and representatives of the safety/health community in over 100 presentations for employer groups, trade associations, safety councils, and union groups.

The occupational injury and illness records maintained by employers are an important component of OSHA's program. The records are used by employers and employees to discover and evaluate workplace safety and health hazards, and they provide OSHA personnel with necessary information during workplace inspections. The records also provide the source data for the Annual Survey of Occupational Injuries and Illnesses conducted by the BLS.

The records have their greatest value when they are used by employers and employees to manage and develop workplace safety and health programs. These records are an effective way to quantify a firm's injury and illness experience. When problems are quantified and presented to employers and employees, they are much more likely to be solved. Hazardous conditions, departments and jobs also can be identified by reviewing injury and illness records. Once hazards are discovered and corrective actions are taken, the records can be used to monitor the effectiveness of control approaches taken. Employers and employees can also use injury and illness records to develop and operate safety and health programs. When information on workplace injuries and illnesses is not available or is incorrect, the ability to identify problems and take corrective action is diminished.

The Government also has several uses for injury and illness records. These records are used by OSHA safety and health inspectors during worksite visits to highlight potential problems that require additional scrutiny. The records are the source documents for the Bureau of Labor Statistics Annual Survey of Occupational Injuries and Illnesses, the nation's primary source of information on workplace injury and illness. The resulting statistics on the frequency, rate, and factors contributing to job-related injury and illness are used to measure the performance of the Nation's safety and health policies, determine regulatory actions, and provide a point of comparison for an individual company's safety and health performance. The statistics are also used by NIOSH, academia, and other safety and health researchers to determine trends, discover emerging

occupational conditions, and evaluate occupational safety and health policies.

The records are also the source documents for OSHA's data collection initiative. This program will allow OSHA to use limited resources to focus intervention efforts (e.g., consultation, training, outreach, and enforcement) on worksites with the highest injury and illness rates. The data collection initiative also provides OSHA with a means for measuring its performance in terms of outcomes--changes in workplace injuries and illnesses--rather than activities.

Alternatives:

One alternative to publication of a final rule is to take no action and continue to administer the injury and illness recordkeeping system using the current regulation, forms and guidelines. Another alternative is to revise the current rule without changing the coverage and scope of the rule (i.e., continue the current rule's small employer and Standard Industrial Classification exemptions).

The first alternative is unacceptable because it does not address the recognized problems of the current system. The second alternative is also unacceptable. Evaluation of the most current injury and illness data available shows that modification of the existing coverage (of small employers and employers in certain Standard Industrial Classification Codes) will lead to the collection of more injury and illness information and reduce the paperwork burden on employers with smaller-sized establishments and those operating in less hazardous private industry sectors.

Anticipated Costs and Benefits:

The average establishment affected by the proposed changes to the recordkeeping requirements would incur a net reduction in recordkeeping costs. Thus the proposed rule would not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all nonconstruction establishments with fewer than 20 employees would mean that small entities are likely to experience the greatest cost savings.

Risks:

Benefits of the proposal would include: (a) a system that is more compatible with and easier for government to use; (b) more reliable and useful records; (c) information for entire construction sites; and (d) greater employee involvement.

Timetable:

Action	Date	FR Cite
NPRM	02/02/96	61 FR 4030
NPRM Comment Period End	07/02/96	
Final Action	06/00/98	
Final Action Effective	01/01/99	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Sectors Affected:

All

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BILLING CODE 4510-23-F

DEPARTMENT OF TRANSPORTATION (DOT)

Statement of Regulatory Priorities

The Department of Transportation (DOT) consists of nine operating administrations, the Office of the Secretary, and the Bureau of Transportation Statistics (BTS), each of which has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, maritime, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor vehicle safety. It writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. It regulates the construction and operation of bridges over navigable waters, the prevention of oil pollution, and the security of commercial aviation and passenger vessels. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern internal programs such as acquisition and grants, access for the disabled, environmental protection, energy conservation, information technology, property asset management, seismic safety, security, and the use of aircraft and vehicles.

Although it carries this heavy regulatory workload, the Department has long been recognized as a leader in Federal efforts to improve and streamline the regulatory process and ensure that regulations do not impose unnecessary burdens. The Department was the first major Federal agency to establish a comprehensive internal management and review process for new and existing regulations. This process is codified in the Department's regulatory policies and procedures, which ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules.

For virtually all DOT rules, the initiating office must prepare an analysis that includes a discussion of the problem intended to be addressed, the major alternatives, the reasons for choosing one alternative over another, and the economic and other consequences of the action. The Department has a management process that permits key officials to follow closely the development of significant regulatory projects. The process is intended to ensure that these rulemakings are completed in a timely manner, and it facilitates top management's involvement in these actions.

The Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: DOT regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. It will assess the risks addressed by the rules and their costs and benefits, including the cumulative effect. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that legislation does not impose unreasonable mandates.

Consistent with this process and the Department's regulatory philosophy, DOT continually seeks ways of improving the way it conducts its regulatory work. The creation of an electronic, internet-accessible docket for the Department; the use of direct final rulemaking; and the increased use of regulatory negotiation are three examples of this.

This Department's regulatory process and philosophy also facilitated the Department's successful participation in President Clinton's Regulatory Reinvention Initiative. The cumulative impact of this effort was significant. The Department removed 1382 pages (14 percent) and proposed to remove an additional 124 pages (.9 percent) of its Code of Federal Regulations (CFR) pages. In addition, it reinvented 3318 pages (30 percent) and proposed to reinvent 245 pages (2 percent) of its CFR pages. These actions included a number of specific, substantial regulatory steps.

In responding to other Presidential initiatives, the Department is ensuring that compliance efforts reward results and deemphasize red tape. It is stressing results, and education and training programs, to assist regulators and customers to work together to achieve compliance.

The Department has engaged in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. These have included summits with front-line regulators and representatives of regulated industries. In addition, the Department's agencies have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

The Department of Transportation was a pioneer in creating the regulatory negotiation concept, and it conducted the Federal Government's first negotiated rulemaking. Since that time, DOT has conducted regulatory negotiations on a variety of subjects, such as the Air Carrier Access Act and aspects of the Oil Pollution Act. The Department has also used advisory committees to obtain customer input on regulatory projects, such as the Americans with Disabilities Act rule. Regulatory negotiation projects currently planned, underway, or completed concern such subjects as roadway worker safety (FRA), oxygen use by airline passengers (OST), certification requirement for multistage vehicles (the National Highway Traffic Safety Administration, NHTSA), incorporating physical fitness determinations in the commercial drivers' license program (FHWA), and qualifications for pipeline personnel (RSPA).

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking, including a number of new statutes and Executive orders. Although OST's principal role concerns the review of the Department's significant rulemakings, this office also plays an important role in the substance of projects concerning aviation economic rules and those having cross-modal significance. In connection with its oversight and coordination role, the Office of the Secretary also led the Department's work to carry out President Clinton's Regulatory Reinvention Initiative.

OST provides guidance for use by regulatory personnel throughout the Department on compliance with requirements concerning the regulatory process. For example, OST provided

guidance concerning implementation of the regulatory portions of the Unfunded Mandates Act, the Paperwork Reduction Act of 1995, and the Small Business Regulatory Enforcement Act of 1996 (including congressional review of rules). It also provides updated information on such matters as compliance with Executive orders, economic analyses, the regulatory agenda and plan, and other regulatory policy matters. OST provides guidance and training concerning cost-benefit analyses and risk assessments, as well as offering DOT personnel periodic training on regulatory development and process.

OST also leads and coordinates the Department's response to Administration and congressional proposals that concern the regulatory process. The General Counsel's office works closely with representatives of other agencies, the Office of Management and Budget, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

OST is incorporating new technology into its rulemaking process. OST initiated the effort to consolidate nine Department rulemaking (and adjudicatory) docket facilities into one centrally managed facility. OST worked with the other DOT agencies to accomplish the consolidation and the phased transition from a paper-based docket system to storage of electronic images in unalterable form. This includes all rulemaking and support documents, public comments, and other documents included in the public docket. Currently OST, BTS, NHTSA, FHWA, SLSDC, RSPA, and FTA are on this system with the remaining agencies expected to be added in the future. Recently, this electronic docket became accessible via the internet.

OST is redesigning its internet home page and will include hyperlinks to other useful DOT websites, including the public rulemaking dockets, and contacts for many issues of special interests to the public.

OST is planning for electronic rulemaking for individual rules where the public will be able to reveiw rulemaking documents and submit their comments electronically. Finally, some OST offices provide commonly-requested regulations, informational documents, guidance, and updates through fax on-demand systems.

United States Coast Guard (USCG)

The United States Coast Guard has many peacetime missions, which include protecting the marine environment, enforcing laws and treaties, performing search and rescue, maintaining aids to navigation, and ensuring marine safety and security. The Coast Guard traditionally provides for pollution prevention and safety of passengers, crew, cargo, and ports through a framework of regulations that apply to U.S. flag vessels and foreign vessels calling at U.S. ports. The Coast Guard's Marine Safety Council, a group of senior Coast Guard officers, establishes regulatory policy, reviews each rulemaking project, and advises the Commandant on regulatory matters.

The Coast Guard, in an effort to improve the safety and performance of the regulated community and to expand and obtain early involvement from the regulated community, has formed four Quality Partnerships and has nine standing advisory committees.

The Coast Guard, responding to an industry call to reduce the cost disadvantage attributed to inspection and certification of U.S. merchant vessels and to improve the competitiveness of the U.S. merchant fleet, has implemented an alternative compliance program. Under this program, vessels receive Coast Guard certification based on compliance with classification society rules, international conventions, and a U.S. supplement to class society rules. The Coast Guard also is undertaking an evaluation to limit supplements to those items which it determines are necessary and are not embodied in current international standards. The Coast Guard will continue to promote initiatives at the International Maritime Organization to ensure international standards are comparable with U.S. domestic requirements.

The Coast Guard is also establishing a Streamlined Inspection Program, which will afford vessel owners, through the development of written procedures, the ability to perform many of the tests and requirements currently performed by Coast Guard marine inspectors. Required vessel inspection would still be done by Coast Guard marine inspectors. The Coast Guard expects the inspection program to increase the participation of a vessel's crew in vessel safety system maintenance, resulting in trained and qualified shipboard personnel performing specific inspection tasks on a more frequent basis than is done for periodic Coast Guard inspections.

In responding to a petition for rulemaking from the National Oilseed Processors Association, the Coast Guard is reviewing its vessel and facility response planning requirements for non-petroleum oils. Under the Oil Pollution Act of 1990, the Coast Guard requires plans for responding to an oil spill, including a non-petroleum oil spill. The Coast Guard currently differentiates between petroleum oil and non-petroleum oils in response planning as required by the Edible Oil Regulatory Reform Act.

Under the Regulatory Flexibility Act, each agency is required to publish a plan for the periodic review of all agency rules that have a significant economic impact on a substantial number of small entities. The Coast Guard carefully analyzes and drafts each rulemaking to avoid significant economic impacts and to minimize other impacts on small entities. Consistent with the Coast Guard's obligations to continually assess the impacts of its regulations, the Coast Guard recently requested public comments for a Coast Guard-sponsored comprehensive review of its current boating safety regulations.

Federal Aviation Administration (FAA)

Title 49, United States Code, subtitle VII—Aviation Programs, charges the Administrator of the FAA with promoting safety of flight of civil aircraft in air commerce. The stated FAA mission is to provide a safe, secure, and efficient global aviation system, which contributes to national security and the encouragement of U.S. aviation. The agency relies on its regulatory plan to provide that system.

The FAA currently has underway a major initiative to improve the regulatory process in the spirit of Executive Order 12866, which charges agencies to promulgate regulations that are effective, consistent, sensible, and understandable. As a matter of policy, the FAA will promulgate no regulation if a nonregulatory solution exists. Other actions include:

- Continuing to involve the aviation community early in the regulatory process to obtain input, both on the rule and the economics, from affected parties prior to publishing a proposed regulation. The Aviation Rulemaking Advisory Committee represents members from all aviation interests and is presently working on the resolution of more than 77 issues. To date, the ARAC has accomplished the issuance of more than 30 rulemaking documents.

- Continuing to harmonize the U.S. aviation regulations with those of other countries. The harmonization of the U.S. regulations with the European Joint Aviation Regulations (JAR) is the FAA's most comprehensive long-term rulemaking effort. The differences worldwide in certification standards, practices and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators. Harmonization and standardization should help the U.S. aerospace industry, which contributed approximately $23 billion in trade surplus for 1990, to remain internationally competitive. While the overall effort to achieve this is global, it will be accomplished by many small, individual, nonsignificant rulemaking projects.
- Implementing the recommendations of the White House Commission on Aviation Safety and Security. That commission had numerous initiatives. FAA rulemaking actions will be undertaken in these areas: 1) Standards for cargo and baggage compartments in transport category aircraft which address detection and suppression of fire and smoke in all cargo holds; 2) an employment history rule which will require an employment background investigation, with trigger mechanisms to initiate a criminal background check for all airport and airline employees and screeners with access to secure areas; and 3) a rule that will provide for certification of screening companies and improve screener performance.
- Recognizing the needs of small businesses by complying with the Small Business Regulatory Enforcement Act by designating a Small Entity Contact and by establishing a web site on the FAA's home page, a toll free number, and an e-mail address for receipts of inquiries.
- Continuing to implement Challenge 2000. In the final report, the FAA noted that it faces a rapidly changing aviation environment, which is becoming global in nature with increased growth and technology. This in turn could accelerate a pace of change that would also have to meet increasing public expectations. In terms of the regulatory process, it found that the regulatory process is lengthy, that additional regulations alone will not answer the future challenges, and that Government and industry must build effective partnerships to achieve the challenge of the years ahead. The FAA is committed to identifying industry best practices, to developing centers of excellence, to using empowered rulemaking teams, and to promulgating performance-based rules, and writing regulations in plain English.
- Improving the rulemaking process internally. Vice President Gore's National Performance Review directed the FAA to streamline regulatory processes and make rulemaking more responsive to public needs. In response to this review, the FAA conducted a 6-month long Rulemaking Business Process Reengineering project. The goals of the project were to develop a rulemaking process that is efficient and effective; produces high quality rule documents; reduces average processing time; resolves policy issues in a timely manner; improves public participation in the process; increases control and accountability through standards and guidelines; is flexible to manage crises; and is proactive in recognizing and resolving issues early in the rulemaking process. The FAA has begun to implement the recommendations of the project through Steering and Coordination Committees.
- Establishing mechanisms to ensure that the congressional mandates for rulemaking deadlines established by the FAA Reauthorization Act of 1996, such as the issuance of a final rule 16 months after the close of comment on the proposed rule, are in place. In addition, other allowances of the Act, such as the use of experts and consultants in the rulemaking process, are being explored.

Top regulatory priorities for 1997-1998 include the regulations governing the upgrade to the fire safety standards of part 25 for cargo or baggage compartments in certain transport category airplances by eliminating Class D compartments altogether, regulations to initiate employment background investigations, to include a criminal history check if warranted, a duty limitations and rest requirements rule to ensure that pilots are sufficiently rested for duty, and a national overflight of the national parks to reduce or prevent the negative effects of aircraft noise in the national parks.

Federal Highway Administration (FHWA)

The FHWA anticipates that its priority for fiscal year 1998 will be implementation of the legislation that reauthorizes the surface transportation programs administered by the FHWA. The FHWA will seek to implement this legislation in the least burdensome and restrictive way possible consistent with the FHWA's mission. The FHWA will also pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

Another major area in which the FHWA will initiate or continue significant rulemaking actions is in the ongoing zero-base review of the Federal Motor Carrier Safety Regulations. The goals and objectives of the zero-base review project are to (a) focus on those areas of enforcement and compliance which are most effective in reducing motor carrier accidents, (b) reduce compliance costs, (c) encourage innovation, (d) clearly and succinctly describe what is required, and (e) facilitate enforcement. Through the zero-base review, the FHWA intends to develop a unified, performance-based regulatory system that will enhance safety on our Nation's highways while minimizing the burdens placed on the motor carrier industry. In addition, the FHWA is currently redrafting the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. It plans to simplify the current process to facilitate responses by the accused motor carriers and drivers and to offer alternative means of adjudicating the claims. It also intends to promulgate comprehensive rules covering the entire enforcement process from initial contact with the motor carrier to the final disposition of the claim.

National Highway Traffic Safety Administration (NHTSA)

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) include reducing and mitigating motor vehicle crashes and related fatalities and injuries, providing motor vehicle information to consumers, and improving automotive fuel efficiency. The Agency pursues policies that encourage the development of nonregulatory approaches when feasible in meeting its statutory mandate; issues new standards and regulations or

amendments to existing standards and regulations when appropriate; ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action; and considers alternatives consistent with the Administration's regulatory principles.

In addition to numerous programs that focus on the safety and performance of the motor vehicle, the Agency is engaged in a variety of programs to improve driver behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. This goal is accomplished by a number of means, including encouraging initiatives in such areas as safety belt usage, motorcycle helmet usage, child safety-seat usage, activities aimed at combating drunk driving and driving under the influence of other drugs, and consumer information activities.

Furthering initiatives begun under the National Performance Review, NHTSA is conducting several program evaluations that are designed to review and evaluate the actual benefits, costs, and overall effectiveness of existing standards and regulations. For example, the Agency will continue evaluating Standard 208's automatic crash protection requirement and Standard 214's new dynamic side-impact protection requirement and begin evaluating Standard 108's requirement for reflective marking (either retroreflective tape or reflex reflectors) on heavy truck trailers to enhance their detectability at night or under other conditions of reduced visibility. NHTSA will also begin evaluating the implementation of the American Automobile Labeling Act, which requires new passenger cars, light trucks, and multipurpose passenger vehicles to carry labels providing information on their domestic and foreign parts content.

NHTSA's regulatory program includes additional proposals that will be undertaken in order to allow design flexibility, promote new technology, and encourage market competition and consumer choice. Also, pursuant to the President's 1995 Regulatory Reinvention Initiative, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the Agency identified regulations that are potential candidates for rescission or amendment. NHTSA completed action on many of the candidate regulations and will complete action on the few remaining ones in the coming year. The Agency will also be continuing other ongoing safety rulemakings.

Federal Railroad Administration (FRA)

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety. The Federal Railroad Safety Act of 1970 is the primary source of this authority.

FRA promotes safe, environmentally sound, and successful railroad transportation to meet the current and future needs of all its customers. It encourages policies and investment in infrastructure and technology to enable rail to reach its full potential.

FRA seeks to develop a regulatory program that is based on the regulatory principles enunciated in Executive Order 12866 and that satisfies the Order's basic criteria for such programs. FRA's vision is of a regulatory program that protects the health and safety of all persons affected by railroading in America and enhances the environment without imposing unreasonable costs on society. FRA seeks to create regulations that are as ''effective, consistent, sensible, and understandable'' as those envisioned by the President in his Order.

While railroad safety has improved substantially over the past decade due to the implementation of easy and obvious risk reduction measures, significant risk remains due to the nature of rail transportation. Fashioning solutions that have favorable benefit-to-cost ratios, and that, where feasible, incorporate flexible performance standards, requires cooperative action by all affected parties. Interested parties have traditionally approached rail safety rulemakings in an adversarial manner, however, which greatly inhibited the development of the best regulatory approaches to resolve difficult safety issues.

FRA began addressing these concerns when it decided to use negotiated rulemaking to create a rule addressing the safety of roadway workers. Begun early in 1995, the negotiated rulemaking advisory committee reached a consensus agreement about how best to ensure the safety of roadway workers and issued a final rule in December of 1996. This negotiated rulemaking represented an historic departure from FRA's traditional rulemaking program.

Building on its success with this collaborative rulemaking experience, FRA established the Railroad Advisory Committee (RSAC) in late March 1996. Making collaborative rulemaking a new way of doing business at FRA is essential to future improvements in public and railroad employee safety. RSAC provides the foundation for accomplishing this objective because it represents a rare commitment on the part of labor unions, railroads, and private associations to work together, and with FRA, on the establishment of regulatory priorities, the gathering and analysis of safety data, and the development of standards which are necessary to ensure that maximum safety levels are both obtained and maintained. As such, it is important to the creation of trust, both between the Agency and the industry, as well as among industry members.

The purpose of RSAC is to develop consensus recommendations for regulatory action on issues referred to it by FRA. Where consensus is achieved, and FRA believes it serves the public interest, the resulting rule is very likely to be better understood, more widely accepted, more cost-beneficial, and more correctly applied. Where consensus cannot be achieved, however, FRA will fulfill its regulatory role without the benefit of RSAC's recommendations.

The RSAC has met on a quarterly basis so far and currently has established working groups to address the following tasks: (1) The revision of the regulations governing track safety standards; (2) the revision of the regulations governing radio standards and procedures; (3) the revision of the regulations governing locomotive inspection standards for steam-powered locomotives; (4) the review of FRA regulations for their applicability to historic railroads; (5) the development of locomotive crew safety standards (crashworthiness and working conditions); and (6) the development of locomotive event recorder accident survivabilty standards. To date, the RSAC's recommendations have led to two NPRMs, one on Railroad Communications and the other on Track Safety Standards.

In addition to RSAC, FRA has successfully used collaborative rulemaking to address passenger safety issues. In February of 1997, FRA published an NPRM on Passenger Train Emergency Preparedness based on the recommendations of a working group and expects to issue the rule in final in the fall of 1997. Additionally, FRA established a working group to develop Passenger Equipment Safety Standards and published an Advanced Notice of

Proposed Rulemaking on June 17, 1996. FRA plans to publish an NPRM in the fall of 1997.

Federal Transit Administration (FTA)

The Federal Transit Administration (FTA) provides financial assistance to State and local governments for mass transportation purposes. The regulatory activity of FTA focuses on establishing the terms and conditions of Federal financial assistance available under the Federal transit laws.

FTA's policy regarding regulations is to:

- Implement statutory authorities in ways which provide the maximum net benefits to society;
- Keep paperwork requirements to a minimum;
- Allow for as much local flexibility and discretion as is possible within the law;
- Ensure the most productive use of limited Federal resources;
- Protect the Federal interest in local investments; and
- Incorporate good management principles into the grant management process.

As mass transportation needs have changed over the years, so have the requirements for Federal financial assistance under the Federal transit laws and related statutes. FTA's regulatory priority for 1997 is to assist FTA recipients comply with the drug and alcohol testing regulations and the State safety oversight rule. FTA will be conducting workshops on charter bus regulations.

Maritime Administration (MARAD)

MARAD administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation's shipping needs for both national security and domestic and foreign commerce.

MARAD's regulatory objectives and priorities are prescribed by statute and reflect the Agency's responsibility for ensuring the availability of adequate and efficient water transportation services for American shippers and consumers. To advance these objectives, MARAD issues regulations, which are principally administrative and interpretive in nature, when appropriate, in order to provide a net benefit to the U.S. maritime industry. In developing its regulations MARAD routinely consults with other interested agencies, for example, the Departments of Defense and Agriculture, to ensure that its cargo preference regulations can be implemented by those agencies in a cost-effective manner.

In 1997, priority will be given to updating existing regulations to reduce unnecessary burden on the public.

Research and Special Programs Administration (RSPA)

The Research and Special Programs Administration (RSPA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, RSPA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Through the Associate Administrator for Pipeline Safety, RSPA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

In the area of hazardous materials transportation, the regulatory priority is to update and consolidate requirements in the hazardous materials regulations for the manufacture, maintenance, requalification, repair, and use of compressed gas cylinders. In this rulemaking, RSPA intends to recognize advances in cylinder manufacturing technology and to clarify and simplify regulatory requirements. Another priority is to clarify, through rulemaking action, the applicability of the regulations to the loading, unloading, and storage of hazardous materials incidental to their movement in commerce. Clarifying the applicability of the regulations will facilitate compliance with them and also clarify when other requirements of Federal, State, local, and Indian tribe governmental bodies apply.

The regulatory priorities in the pipeline area are to manage the risks inherent in pipeline transportation through strategies directed at prevention, detection, and mitigation activities. Specific regulatory actions to implement these activities include the use of emergency flow-restricting devices and other mechanisms to detect and locate pipeline ruptures and minimize releases, excavation damage prevention programs, mandating participation in one-call notification systems, increased inspection requirements using instrumented internal inspection devices, and prescribing risk-based approaches to pipeline safety regulations.

Bureau of Transportation Statistics (BTS)

The Intermodal Surface Transportation Efficiency Act of 1991 created the Bureau of Transportation Statistics (BTS). BTS is responsible for compiling, analyzing, and making accessible information on the Nation's transportation systems; collecting information on intermodal transportation and other areas as needed; and enhancing the quality and effectiveness of the statistical program of DOT through research, the development of guidelines, and the promotion of improvements in data acquisition and use.

One of BTS's regulatory priorities is to completely review its motor carriers of property financial data collection program. The data are collected under recently revised statutory authority, which requires BTS to give consideration to: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. Further, the statute calls for BTS to ''streamline and simplify'' reporting requirements to the ''maximum extent practicable.'' Among the issues BTS plans to address are: Which motor carriers should report, what data items should be collected, and how often should data be collected. BTS has proposed using negotiated rulemaking to help it design a collection program that meets legitimate public and private sector data needs while minimizing the burden on the industry.

BTS's Office of Airline Information (OAI), collects airline passenger, cargo, traffic, and financial data. This information gives the Government consistent and comprehensive economic and market data on individual airline operations and is used, for instance, in supporting policy initiatives, negotiating international bilateral aviation agreements, awarding international route authorities, and meeting international treaty obligations. The aviation, travel, and tourism communities value this information for a variety of purposes, such as conducting analyses of on-time performance, denied boardings, and market trends.

BTS's long range regulatory priority in the aviation area is to conduct a complete review and modernization of the passenger origin and destination survey. BTS can make significant improvements by providing data for the needs of DOT and other users in a way

that takes advantage of the information revolution and matches the dramatically changing airline industry.

Saint Lawrence Seaway Development Corporation (SLSDC)

The Saint Lawrence Seaway Development Corporation (SLSDC) is a wholly owned Government corporation created by Congress in 1954. The primary operating service of the SLSDC is the safe transit of commercial and noncommercial vessels through the two U.S. locks and the navigation channels of the St. Lawrence Seaway System. The SLSDC works jointly with the St. Lawrence Seaway Authority (SLSA) of Canada to operate and maintain this deep draft waterway between the Great Lakes and the Atlantic Ocean.

The SLSDC also works jointly with SLSA on all matters related to rules and regulations, overall operations, vessel inspection, traffic control, navigation aids, safety, operating dates, and trade development programs.

The regulatorty priority of the SLSDC is to provide its customers with the safest, most reliable, and most efficient Seaway System possible.

DOT—Office of the Secretary (OST)

FINAL RULE STAGE

89. +PASSENGER MANIFEST INFORMATION

Priority:

Other Significant

Legal Authority:

49 USC 44909

CFR Citation:

14 CFR 243

Legal Deadline:

Final, Statutory, March 16, 1991.

Abstract:

This rule would require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States. U.S. carriers would collect the information for all passengers and foreign air carriers would collect the information for U.S. citizens. The information would include the passenger's full name and passport number and issuing country code, if a passport is required for travel. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of emergency. Airlines would be required to make a record of passengers who decline to provide an emergency contact. The information would be provided to the Departments of Transportation and State in case of an aviation disaster. This rulemaking is considered significant because of substantial public interest and the congressional mandate.

Statement of Need:

During the immediate aftermath of the tragic bombing of Pan American Flight over Lockerbie, Scotland in 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of victims. The Department of State did not receive the information for ''more than seven hours after the tragedy'' and then, in accordance with current airline practice, it included only the passengers' surnames and first initials which was insufficient information to permit notification of the victims' families in a timely manner. There were continuing problems after subsequent crashes on international flights from the U.S. that took place near Cali, Columbia, in December 1995, and off Long Island, New York, in July 1996.

Summary of the Legal Basis:

This proposal is being issued in order to implement the requirements of 49 USC 44909. In 1990, Congress mandated that the Secretary of Transportation require all U.S. air carriers to provide a passenger manifest for any flight to an appropriate representative of the U.S. Department of State (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but no later than 3 hours after such notification.

In addition, the statute states that the passenger manifest information should include the full name of each passenger, the passport number of each passenger, if a passport is required for travel, and the name and telephone number of an emergency contact for each passenger. The statute further notes that the Secretary of Transportation shall consider the necessity and feasibility of requiring U.S. carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to the passenger manifest requirements. Finally, the statute provides that the Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed on U.S. air carriers.

Alternatives:

The Department proposed to waive compliance with certain requirements if an air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad.

The Department proposed to allow air carriers to develop their own passenger manifest data collection systems. Air carriers would be free to adopt any system that minimizes the burden on them, so long as the system is capable of meeting the requirements set out in the statute. In an attempt to not disproportionately burden smaller air carriers, DOT is considering, in addition, a longer phase-in period for these air carriers.

Anticipated Costs and Benefits:

The Department estimated that the rule would cost between $27.6 and $44.8 million per year plus a one-time start-up cost of $30.5 million. The direct benefits would include prompt and accurate notification to families of victims of aviation disasters that occur on flights to and from the United States and a general increase in the response capability of the Department of State regarding its duties to U.S. citizens and to foreign governments following an aviation disaster.

Risks:

This action addresses the need for prompt and accurate notification of families of victims of aviation disasters on international flights to or from the U.S. We expect the action to significantly reduce, if not eliminate, many of the notification problems that the air carriers and the Department of State have encountered in previous aviation disasters.

Timetable:

Action	Date	FR Cite
ANPRM	01/31/91	56 FR 3810
ANPRM Correction	02/12/91	56 FR 5665
ANPRM Comment Period End	02/19/91	
Notice: Public Meeting 3/29/96	03/15/96	61 FR 10706
NPRM	09/10/96	61 FR 47692
NPRM Comment Period End	11/12/96	
Final Action	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Analysis:

Regulatory Evaluation 09/10/96 (61 FR 47692)

Additional Information:

This entry was formerly titled Aviation Security: Passenger Manifest Information. The Department's rulemaking on Domestic Passenger Manifest Information is RIN 2105-AC62 and an ANPRM was published 3/13/97, 62 FR 11789.

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RIN: 2105–AB78

DOT—U.S. Coast Guard (USCG)

PROPOSED RULE STAGE

90. +FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (CGD 94-048)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1321(j); PL 101-380

CFR Citation:

33 CFR 154

Legal Deadline:

None

Abstract:

This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. A separate rulemaking under RIN 2115-AE88 would address hazardous response plan requirements for tank vessels. This action is considered significant because of substantial public interest.

Statement of Need:

This rulemaking is intended to reduce the impact from hazardous substance spills from vessels and marine transportation-related facilities.

Summary of the Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 USC 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate final rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under section 1321, ''hazardous substances'' are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. The Coast Guard has identified 84 hazardous substances currently carried in bulk by vessels.

Alternatives:

The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some spilled substances may not be recoverable from the water and other actions may be necessary. Plans would be required, by statute, to address responses to a ''worst case discharge.'' For facilities, a ''worst case discharge'' is ''the largest foreseeable discharge in adverse weather conditions.''

Anticipated Costs and Benefits:

The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts for response resources, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include, reduced risk of human exposure, enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances and a reduction in the severity of the impact of accidental hazardous substance discharges. Specific estimates of potential monetary costs and benefits will depend upon the approach selected. Although an analysis has not yet been conducted, some approaches have potential costs that could exceed $100 million; therefore, this is considered an economically significant action. A key element in developing effective regulations for hazardous substance response plans will be the development of an approach for addressing different types of hazardous substances.

Risks:

Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of facilities involved in transferring hazardous substances in bulk or have a significant impact on the volume of hazardous substances shipped by marine transportation-related facilities. Most facilities involved in transferring hazardous substances in bulk have developed plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Agency Contact:

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RIN: 2115–AE87

DOT—USCG

91. +TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (CGD 94-032)

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1231; 33 USC 1321(j); PL 101-380

CFR Citation:

33 CFR 155

Legal Deadline:

None

Abstract:

This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a tank vessel carrying bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to vessels operating on the navigable waters or within the Exclusive Economic Zone (EEZ) of the U.S. that carry bulk hazardous substances. A separate rulemaking under RIN 2115-AE87 would address hazardous substances response plan requirements for marine transportation-related facilities. This action is considered significant because of substantial public interest.

Statement of Need:

This rulemaking is intended to reduce the impact from hazardous substance spills from vessels.

Summary of the Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 USC 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate final rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under section 1321, ''hazardous substances'' are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. The Coast Guard has identified 84 hazardous substances currently carried in bulk.

Alternatives:

The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some spilled substances may not be recoverable from the water and other actions may be necessary. Plans would be required, by statute, to address responses to a ''worst case discharge.'' For vessels, a ''worst case discharge'' is ''a discharge in adverse weather conditions of its entire cargo.''

Anticipated Costs and Benefits:

The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts for spill-response resources, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include, reduced risk to human health, enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances and a reduction in the severity of the impact of accidental hazardous substance discharges. The Coast Guard does not yet have sufficient information to estimate the potential monetary costs and benefits of this rule. A key element in developing effective regulations for hazardous substance response plans will be the development of an approach for addressing different types of hazardous substances.

Risks:

Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of vessels involved in transferring hazardous substances in bulk, or have a significant impact on the volume of hazardous substances shipped by vessel. Most vessels carrying hazardous substances in bulk have developed plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	01/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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RIN: 2115–AE88

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

92. +OVERFLIGHTS OF UNITS OF THE NATIONAL PARK SYSTEM

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709; 49 USC 44711 to 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306

CFR Citation:

14 CFR 91; 14 CFR 93; 14 CFR 121; 15 CFR 135

Legal Deadline:

None

Abstract:

The FAA and National Park Service have established a joint working group which is tasked with developing a notice of proposed rulemaking to reduce or prevent adverse effects of aircraft noise over our national park system. At the same time, the working group is charged with affording those persons who wish to visit our national parks from the air the opportunity to do so. The working group, which met

the first time on May 20 -21, 1997, was asked to complete its task in 100 days. This rulemaking is significant because of substantial public interest.

Statement of Need:

The need to reduce or prevent the adverse effects of aircraft noise over the national parks is apparent for the preservation of a valuable national resource. In its Report to Congress, the National Park Service identified 98 parks that potentially have an overflight problem. The FAA recognizes its role both to provide for the safe and efficient use of airspace and to enhance the environment by minimizing the adverse effects of aviation in the national park.

Summary of the Legal Basis:

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. 49 U.S.C. 40101, et. seq. The FAA also has responsibility to protect persons and property on the ground. The President's Memorandum of April 22, 1996, directed the FAA, working with the National Park Service, to issue a notice of proposed rulemaking for the management of sightseeing aircraft in those National Parks where it is deemed necessary to reduce or prevent the adverse effects of noise from such aircraft.

Alternatives:

The FAA and National Park Service anticipate that the working group will consider any alternatives, such as voluntary programs, that would provide an opportunity for interested parties - the air tour operator, the NPS, the FAA and the public - to come together and seek a reasonable agreement.

Anticipated Costs and Benefits:

Undetermined.

Risks:

This rulemaking addresses the risk of destruction of valuable national resources: the right to enjoy the natural quiet in our national parks. At the same time, taking this risk has to be balanced against any potential safety problems that restrictions on overflights might create. Both the National Park Service and FAA are confident that a solution can be reached whereby all visitors to the park may be accommodated through an agreed upon park airspace management plan.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/94	59 FR 12740
ANPRM Correction	04/01/94	59 FR 15350
ANPRM Comment Period End	06/15/94	
Extended Comment Period End 07/15/94	06/20/94	59 FR 31883
Notice: Formation of Working Group	05/22/97	62 FR 28100
Notice of Public Meeting	06/06/97	62 FR 31187
NPRM	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 12/00/97

Additional Information:

Refer to 1996 Regulatory Plan entry RIN 2120-AF93, Airspace Management: Special Flight Rules in the Vicinity of the Grand Canyon and also RIN 2120-AG11, Special Flight Rules in the Vicinity of the Rocky Mountain National Park.

Project Number: ARM-97-318A

Agency Contact:

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RIN: 2120–AF46

DOT—FAA

FINAL RULE STAGE

93. +FLIGHT CREWMEMBER DUTY PERIOD LIMITATIONS, FLIGHT TIME LIMITATIONS, AND REST REQUIREMENTS

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation:

14 CFR 121; 14 CFR 135

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulations to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The FAA has determined that rulemaking is required as a result of public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data contained in recent National Aeronautics and Space Administration reports. The proposal would replace certain outdated regulations with a simplified regulatory approach based on scientific studies of fatigue. The objective of the proposal is to ensure that flight crewmembers are provided with the opportunity to obtain sufficient rest to perform their routine and emergency safety duties. The FAA issued a notice of proposed rulemaking in December 1995. As a result of comments received on that proposal, the FAA has determined that additional rulemaking is needed in the form of a supplemental notice. In that additional proposal, the FAA will seek to accommodate the needs of the aviation community while ensuring that pilots are allowed sufficient time to be rested for duty. This action is considered significant because of substantial public interest.

Statement of Need:

The aviation community requires 24-hour activities to meet operational demands. Growth in long-haul, regional, overnight cargo, and short-haul domestic operations are increasing. Therefore, shift work, night work, irregular work schedules, and time zone changes will continue to be commonplace.

With this growth, the scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. Some of the scientific knowledge has indicated that aviators experience performance-impairing fatigue from sleep loss resulting from current flight and duty practices. A primary purpose of this rulemaking is to incorporate as much as possible of the scientific knowledge into the applicable regulations.

In addition, industry and individuals have told the FAA that the current regulations are confusing and difficult to enforce. Therefore, a second purpose of the rulemaking is to establish consistent and clear duty period limitations and rest requirements for all types of operations.

Summary of the Legal Basis:

Section 44701, Title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives:

One obvious alternative would be to continue with the current rules, which would be very expensive for the industry. In reviewing the comments, the FAA is also considering other reserve alternatives that would not penalize certain segments of the industry, such as the air ambulance operators. There is no overall alternative to rest and duty regulations; however, there may be some alternatives that would lend flexibility for operators.

Anticipated Costs and Benefits:

The FAA estimates in the NPRM that total discounted costs over a 10-year period would range between $536 and $800.17 million. Benefits accruing from preventing a fatal accident and the opportunity for using pilots more intensively, are estimated to be approximately $780 million over 10 years.

Risks:

Although there has been only one identifiable accident due to pilot fatigue, fatigue is increasingly becoming the focus of possible causes following all accidents. Pilot reports of being fatigued to the point of incapacity are not uncommon, and intuitively, it is reasonable, given the sheer volume of air traffic, to expect fatigue to be a factor in future accidents if the regulations are not corrected.

Timetable:

Action	Date	FR Cite
NPRM	12/20/95	60 FR 65951
NPRM Comment Period End	03/19/96	
Extended Comment Period End 6/19/96	03/20/96	61 FR 11492
Final Action	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 12/20/95 (60 FR 65951)

Additional Information:

Project Number AFS-94-443R

Agency Contact:

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RIN: 2120–AF63

DOT—FAA

94. +EMPLOYMENT HISTORY, VERIFICATION, AND CRIMINAL HISTORY RECORDS CHECKS

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44912; 49 USC 44912; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation:

14 CFR 107; 14 CFR 108

Legal Deadline:

None

Abstract:

This rule would require an employment background investigation for persons who screen passengers and cargo in airports. The employment background investigation would include a fingerprint-based criminal history record check in certain cases, for unescorted access privileges to security areas at airports. The purpose of this rule is to help ensure the integrity and safety of the airport environment. This rulemaking is considered significant because of the safety factor.

Statement of Need:

Both Vice President Gore's Commission on Aviation Safety and Security and the Congress in the FAA Reauthorization Act of 1996 have found that additional employment background investigations for persons who screen passengers and cargo are needed for reasons of national security.

Summary of the Legal Basis:

49 USC section 44701 empowers the Administrator to prescribe regulations and minimum standards in the interest of safety for aircraft and equipment.

Alternatives:

The current requirements for background investigations for employees who perform screening functions have been determined to be inadequate to ensure a sufficient level of security in access areas. Alternatives to the rule include going even further back in the line of persons responsible for delivery, packaging, etc., of cargo. The FAA determined that background checks on screeners and their supervisors provide a reasonable safety improvement in the airport atmosphere.

Anticipated Costs and Benefits:

The costs of this rule were estimated to range from $4.16 million to $5.44 million over 10 years. Though not directly quantifiable, the benefits compare to the avoidance of a tragedy if a bomb or other explosive were to destroy an aircraft.

Risks:

The purpose of this rulemaking is to provide an additional measure of security at airports in terms of ensuring that the front line of persons who screen passengers and cargo are not themselves a security risk. Commenters have told the FAA of some difficulties of administering the rule, which are receiving due attention. However, the FAA finds that these additional measures for providing a more secure airport environment are worth the effort of promulgation and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	03/19/97	62 FR 13262
Correction	04/08/97	62 FR 16892
NPRM Comment Period End	05/19/97	
Final Rule	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 03/19/97 (62 FR 13262)

Additional Information:

Project Number: ACP-96-557R.

Agency Contact:

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RIN: 2120–AG32

DOT—FAA

95. ● +REVISED STANDARDS FOR CARGO OR BAGGAGE COMPARTMENTS IN TRANSPORT CATEGORY AIRPLANES

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44711 to 44713; 49 USC 44715 to 44717

CFR Citation:

14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline:

None

Abstract:

This action proposes to upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments altogether. Compartments that could no longer be designated as Class D would have to meet the standards for Class C or Class E compartments, as applicable. Certain other transport category airplanes that would not have to meet these new standards for type certification would have to meet them for use in air carrier, commuter, on-demand, or commercial service. These improved standards are needed to increase protection from possible in-flight fires. This rulemaking is considered significant because of the safety implications.

Statement of Need:

There have been a number of fires in the cargo or baggage compartments of transport category airplanes in recent years. Some of which have resulted in accidents and loss of life. Although the FAA has already taken action to improve the safety of these compartments by improving the fire-resistance of liners, the continuing occurrence of fires and the seriousness of the consequences of an uncontrolled fire have resulted in a review of the entire cargo compartment classification system.

Summary of the Legal Basis:

49 USC empowers the Administrator to prescribe regulations and minimum standards in the interest of safety for aircraft and equipment.

Alternatives:

The FAA considered the possibility of requiring only the installation of detection systems. Having a detection system would enable the flight crew to abort a takeoff if an ignition occurred during the brief period before the airplane became airborne. If, on the other hand, the fire occurred after the airplane became airborne, which is more likely, the fire could burn out of control before a safe landing could be made. Since the installation of detection systems alone would provide only a small incremental increase in safety, it is essential that both detection and suppression systems be provided for these compartments.

Other alternatives include use of suppression agents other than halogenated hydrocarbon (halon) and use of a waterspray system. The FAA has participated in an extensive program to develop criteria on which to evaluate possible alternatives. Objectives of this international program, with active participation by the aviation industry and other regulatory authorities, include research and development of alternative agents and systems. The FAA has accelerated development of criteria for certification of alternatives and is committed to expeditious review and certification of alternatives as they are developed.

Anticipated Costs and Benefits:

The rule would allow three years for compliance. Therefore, airplanes that are expected to be permanently retired from service on or before December 31, 2001, are omitted from the analysis (assuming the rule would become effective on January 1, 1998). The FAA estimates that total life-cycle costs for the retrofitted fleet in nominal terms are approximately $296 million or $194 million at present value. The expected reduction in the proportion of occupants fatally injured in an accident resulting from a fire occurring in a Class D compartment is estimated as the ratio of fatalities to total occupants. Of the 1,411 individuals involved in accidents discussed in the regulatory evaluation, 523 were fatally injured, representing approximately 37% of occupants. Applying a risk reduction estimate to airplane-specific departure, capacity, and load factor information, the FAA estimates that the rule would yield benefits of approximately $458 million over the life of the affected in-service fleet (or approximately $228 million at present value.)

Risks:

At least 19 fires have occurred in Class D compartments over the past two decades. The consequences of those fires ranged from no airplane damage and no occupant injury to complete destruction of an airplane. The exception, insofar as injuries are concerned, was the fire that occurred in May of 1996 in the Class D compartment of a McDonnell Douglas DC-9 operated by ValuJet Airlines, which resulted in the destruction of the airplane with a loss of 110 lives.

An additional potential hazard in the cargo or baggage compartments of passenger-carrying airplanes has resulted from passengers transporting aerosol cans in checked baggage. Tests show that these cans can burst if they are in a burning suitcase for more than two minutes. These tests further show that if the burst occurs in a non-inert atmosphere, such as that of a Class D compartment, there is an immediate auto-ignition of the propellant. If, on the other hand, the burst occurs in an inert atmosphere, such as that of a Class C compartment in which an extinguishing agent has been discharged, the propellant does not ignite and poses no further hazard.

Improved standards are needed to increase protection from possible in-flight fires.

Timetable:

Action	Date	FR Cite
NPRM	06/13/97	62 FR 32412
NPRM Comment Period End	09/11/97	
Final Rule	12/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Evaluation 06/13/97 (62 FR 32412)

Additional Information:

Project Number: ANM-97-009R

Agency Contact:

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RIN: 2120–AG42

DOT—National Highway Traffic Safety Administration (NHTSA)

PROPOSED RULE STAGE

96. +FEDERAL MOTOR VEHICLE SAFETY STANDARDS: HEAD IMPACT PROTECTION

Priority:

Other Significant

Legal Authority:

49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation:

49 CFR 571.201

Legal Deadline:

None

Abstract:

This rulemaking would amend Federal motor vehicle standard No. 201 ''Occupant Protection in Interior Impact'' to modify the performance requirement and test procedures for head impact protection in order to facilitate the introduction and assess the performance of crash deployed restraint systems that will provide occupants with protection in side impacts and other crash modes. This action is considered significant because of substantial public interest.

Statement of Need:

Having installed air bags to provide crash-deployed protection in frontal crashes, motor vehicle manufacturers are now developing a variety of technologies for providing crash-deployed protection in other crash modes, including side crashes. However, the manufacturers believe that they cannot manufacture and install these without amendments to the upper interior head protection requirements of Federal motor vehicle safety standard No. 201.

Those requirements are intended to reduce deaths and injuries to motor vehicle occupants resulting from head impacts with the interior of the passenger compartment. They were adopted in a rulemaking proceeding completed in 1995. In that year, NHTSA published a final rule amending Standard 201 to require passenger cars and trucks, busses, and multipurpose passenger vehicles (collectively, LTVs) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, to provide protection against injury when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash (60 FR 43031). The amendments added procedures and performance requirements for a new in-vehicle component test. It is expected that vehicle manufacturers will comply using a variety of energy absorbing materials. The potential benefits of this rulemakings place it among the highest benefit rulemaking in the agency history.

The advent of new crash-deployed restraint and head protection systems such as side air bags, may require modification of this standard. These systems, which may offer significant safety benefits, may not conform to the standard as it is currently written. Accordingly, NHTSA is considering amendments to Standard No. 201 that would facilitate the introduction of these crash-deployed systems and specify new requirements and test procedures to assess their performance.

Summary of the Legal Basis:

Section 30111, Title 49 of the United States Code, states that the Secretary shall prescribe motor vehicle safety standards. Section 2503(5) of the Intermodal Surface Transportation Efficiency Act required the Secretary to issue requirements for improved head injury protection. Authority to prescribe such standards is delegated to the Administrator by 49 CFR 501.2.

Alternatives:

Based in part on the comments and suggestions included in petitions for reconsideration of the August 1995 final rule, the agency is evaluating a variety of performance requirements and test procedures for the purpose of making a tentative assessment of which would most appropriately measure the performance of the crash-deployed systems, and assure their effectiveness. Given that the petitioners are contemplating significantly different types of technology, more than one set of requirements and test procedures may be necessary.

Anticipated Costs and Benefits:

The potential costs and benefits of this action have not yet been determined.

Risks:

Even in the future when all cars and light trucks on the road are equipped with air bags, an estimated 1,924 fatalities per year will occur from an occupant's head striking an upper interior surface. A variety of crash-deployed systems are being considered as an alternative or supplement to simply padding certain portions of these surfaces. Padding is estimated to be able to reduce these fatalities by 873 to 1,045 annually. The effectiveness of crash-deployed systems, some of which also address additional accident modes, is currently being studied.

Timetable:

Action	Date	FR Cite
ANPRM	03/07/96	61 FR 9136
ANPRM Comment Period End	04/22/96	
NPRM	08/26/97	62 FR 45202
NPRM Comment Period End	10/27/97	
Final Action	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 08/26/97 (62 FR 45202)

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RIN: 2127–AG07

DOT—NHTSA

97. +ADVANCED AIR BAGS

Priority:

Other Significant

Legal Authority:

49 USC 332; 49 USC 30115; 49 USC 30117; 49 USC 30122; 49 USC 30166

CFR Citation:

49 CFR 571.208

Legal Deadline:

None

Abstract:

The agency is proposing to set a phase-in schedule for the next generation of air bags. The proposal will include a definition and performance tests for advanced air bags. With the growth of research and competition in air bag technology, the agency believes that advanced air bags will substantially reduce air bag-related deaths and seeks to secure their introduction while preserving design flexibility. Advanced air bags will suppress or adjust air bag deployment in response to factors like occupant size and location and crash severity. This action is considered significant because of the degree of public interest in this subject.

Statement of Need:

As part of NHTSA's program to mitigate adverse effects of current-design air bags, the agency has stated that the next step in the evolution of air bags would be systems that automatically prevent those effects. As of July 1, 1997, the agency was aware of 40 children and 30 adults who had been killed by current air bags. The agency has already required warning labels on all new air-bag-equipped vehicles, permitted depowered air bags and participated in public programs to increase safety belt and child restraint use, to reduce fatalities. This program will pursue the next step: advanced, interactive restraint systems.

Summary of the Legal Basis:

Section 30111, Title 49 of the United States Code, states that the Secretary shall prescribe motor vehicle safety standards. Authority to prescribe such standards is delegated to the Administrator by 49 CFR 501.2.

Alternatives:

The agency is participating with motor vehicle manufacturers, equipment suppliers, the insurance industry, and academia, through the Advanced Air Bag Technology Working Group of NHTSA's Motor Vehicle Research Advisory Committee. The agency is utilizing the resources of this partnership in identifying alternatives for this proposed rulemaking process. Moreover, the agency has joined with the National Aeronautics and Space Administration in a comprehensive state-of-the-art assessment for near-term air bag technology. We anticipate that these partnerships will lead to a comprehensive identification of options to promote future air bag technology.

Anticipated Costs and Benefits:

The potential costs and benefits of this action have not yet been determined.

Risks:

Air bags have been shown to substantially reduce fatalities in traffic accidents. When fully implemented, NHTSA estimates that air bags will save 3,000 lives per year and result in about 34,000 fewer moderate-to critical injuries. However, almost all current air bags deploy the same way for all occupants, regardless of their size or location at the time of deployment, and for all crashes above a deployment threshold, regardless of their severity. As a result, there have been some adult and child fatalities. Therefore, the development and introduction of advanced air bags is being pursued aggressively by both the industry and the agency.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 12/00/97

Additional Information:

This rulemaking action is an additional part of the Adverse Side Effects of Air Bags (RIN 2127-AG14). A technical workshop was held February 11 and 12, 1997, in Washington, DC.

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RIN: 2127–AG70

DOT—Federal Railroad Administration (FRA)

PROPOSED RULE STAGE

98. +PASSENGER EQUIPMENT SAFETY STANDARDS

Priority:

Other Significant

Legal Authority:

49 USC 20103; 49 USC 20133; 49 USC 20111 to 20113; 49 USC 20301 to 21311; PL 103-440, sec 215

CFR Citation:

49 CFR 238

Legal Deadline:

Final, Statutory, November 2, 1997.

Final, Statutory, November 2, 1999.

Abstract:

This action would establish comprehensive federal safety standards for railroad passenger equipment. It is being taken pursuant to the Federal Railroad Safety Authorization Act of 1994. This action will address inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service, supplementing existing railroad safety standards. This is considered significant due to public interest.

Statement of Need:

Effective federal safety standards for freight equipment have long been in place, but equivalent federal standards for certain aspects of railroad passenger equipment do not exist. Further, the rail passenger environment is rapidly changing. Worldwide, operating speeds are increasing and several passenger trainsets have been proposed for operation at high speeds in the United States. A clear set of federal safety standards for passenger equipment is needed to provide for the safety of the nation's rail passenger service.

Summary of the Legal Basis:

This rulemaking is required by section 215 of the Federal Railroad Safety Authorization Act of 1994, PL 103-440.

Alternatives:

The proposed rule permits railroads under specified conditions to obtain special approval to comply with safety standards in the alternative to certain

of those standards specifically prescribed in the rule. In addition, the proposed rule allows railroads to petition FRA to operate equipment that does not specifically comply with individual standards in the rule, provided the railroad can demonstrate that the equipment will otherwise operate at a level of safety at least equivalent to that afforded by the provisions of the rule with which the equipment does not comply. FRA would expect an analysis showing the effectiveness of clearly compensating features, such as closing grade crossings, providing absolute separation of lighter rail equipment from heavy rail equipment, or using highly capable signal and train control systems that significantly reduce the probability of accidents caused by human error.

Anticipated Costs and Benefits:

The rule is expected to save the passenger rail industry a Net Present Value (NPV) of approximately $40.6 million over the next 20 years. The estimated NPV of the total 20-year costs associated with the rule is $41.0 million, and the estimated NPV of the total 20-year savings (economic benefits) expected to accrue from the rule is $81.6 million. The total net impact of the proposed rule could be a savings of $26.6 million, however, depending on the results of fire safety analyses and accompanying remedial action required by the rule. Overall, the net savings results from reducing current regulatory burdens specifically involving the inspection, testing, and maintenance of power brakes for passenger trains, by providing for safety through less burdensome requirements proposed as part of a comprehensive set of passenger equipment safety regulations. Additional benefits will accrue, although such benefits have not been estimated, as rail accidents are prevented or their effects are mitigated by restricting the use of passenger equipment not having necessary structural or emergency features, by providing for comprehensive mechanical inspections, and by requiring system safety planning, in addition to other safety requirements.

Risks:

In the last six years there have been at least six passenger train accidents which resulted in more than one train occupant fatality. Notably, on February 16, 1996, a Maryland Rail Commuter Service (MARC) train collided with an Amtrak train near Silver Spring, Maryland, resulting in the deaths of three crewmembers and eight passengers on board the MARC train. Further, passenger trains are exposed to risks from operating commingled with very heavy and long freight trains, as well as from operating over track with frequent grade crossings used by heavy highway equipment. However, comprehensive federal safety standards governing the design, maintenance, and safety planning of rail passenger equipment do not currently exist.

Timetable:

Action	Date	FR Cite
ANPRM	06/17/96	61 FR 30672
ANPRM Comment Period End	07/09/96	
NPRM	10/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DOT—FRA

FINAL RULE STAGE

99. +RAIL PASSENGER SERVICE: EMERGENCY PREPAREDNESS

Priority:

Other Significant

Legal Authority:

49 USC 20103; 49 USC 20133; 49 USC 20111 to 20113; 49 USC 20301 to 20306; 49 USC 21301 to 21302; 49 USC 21304 to 21311; PL 103-440, sec 215

CFR Citation:

49 CFR 239

Legal Deadline:

NPRM, Statutory, November 2, 1997.

Final, Statutory, November 2, 1997.

Final, Statutory, November 2, 1999.

Abstract:

This action would establish minimum emergency preparedness standards to ensure that railroads involved in passenger train operations can effectively and efficiently manage emergencies. This action is being taken pursuant to the Federal Railroad Safety Authorization Act of 1994. The NPRM provides flexibility to each railroad to establish procedures and policies appropriate to its particular operations, subject to review and approval by the FRA. This is considered significant due to public interest.

Statement of Need:

After the 1993 derailment of the ''Sunset Limited'' near Mobile, Alabama, the NTSB found that rescue efforts were delayed by a lack of prompt and accurate communication between Amtrak and emergency responders. Even before this, the FRA had commissioned a study by the Volpe Transportation Systems Center, which resulted in a publication containing guidelines for emergency preparedness for passenger train operators. Finally, some passengers in the MARC train collision in Silver Spring, Maryland had difficulty finding and opening emergency window exits.

Summary of the Legal Basis:

This proposal would implement a number of statutory requirements contained in the Federal Railroad Safety Authorization Act of 1994, PL 103-440, section 215 entitled Passenger Car Safety Standards. The Secretary of Transportation has delegated these rulemaking responsibilities to the FRA.

Alternatives:

The proposed rule is expected to incorporate a variety of alternatives, in order to allow each railroad to adapt the basic requirements to its specific operations. In addition, the NPRM invites comment on whether certain additional emergency preparations should be mandatory for all railroads conducting passenger operations.

Anticipated Costs and Benefits:

FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The net present value of the total twenty-year costs which the industry is expected to incur is $4.510 million. The amount associated with the requirements aimed at ensuring that in a life threatening situation passengers trapped in a car would be afforded enough opportunity to escape safely is $1.2 million. Specifically, the $1.2 million cost figure applies to the proposed requirement for equipping each passenger car with a pry bar, as well as marking and inspecting emergency exits.

If as a result of adoption of the proposed regulations only two fatalities were to be avoided over a twenty-year period, then the rule would be cost beneficial. Also, FRA believes that it is reasonable to expect that the measures called for in this proposal would prevent or mitigate the severity of injuries greater in value than the costs of developing and implementing emergency preparedness plans.

Risks:

Although the passenger rail industry has a very high level of safety, the potential for injuries and loss of life in certain emergencies is very high. In the last ten years, there have been about seven passenger train accidents which resulted in a significant loss of life. This action addresses the need for standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. This action is expected to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency.

Timetable:

Action	Date	FR Cite
NPRM	02/24/97	62 FR 8330
Notice of Public Hearing	03/06/97	62 FR 10248
NPRM Comment Period End	04/24/97	
Final Action	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

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DOT—Research and Special Programs Administration (RSPA)

PROPOSED RULE STAGE

100. +REQUIREMENTS FOR CYLINDERS (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

49 USC 5101 to 5127

CFR Citation:

49 CFR 172; 49 CFR 173; 49 CFR 178

Legal Deadline:

None

Abstract:

This rulemaking would amend the Hazardous Materials Regulations (HMR) to update and consolidate requirements for the manufacture, maintenance, requalification, repair, and use of compressed gas cylinders. RSPA intends to provide for the manufacture of compressed gas cylinders to certain new DOT specifications and to revise requirements applicable to the maintenance, requalification, and repair of all DOT specification cylinders (including those cylinders that may no longer be manufactured). RSPA also proposes to simplify the requirements for filling cylinders and consolidate and revise requirements applicable to persons who requalify cylinders. This rulemaking will recognize advances in cylinder manufacturing technology and clarify and simplify regulatory requirements. This rulemaking, which will affect persons who manufacture, requalify, repair, refill and use compressed gas cylinders, is of significant interest to the compressed gas industry. As part of this action, a small entities review under 5 USC section 610 will be included.

Statement of Need:

This rulemaking action is the first comprehensive review and revision of the cylinder requirements since the first cylinder specification was adopted in the early 1900's. Since that time, additional cylinder specifications and related requirements for cylinder requalification and use have been added on a piece-meal basis in response to the development of new construction materials, accidents and incidents, shipping experience, and the development of industry consensus standards. RSPA seeks to improve the integrity of cylinders by adopting manufacturing and testing standards based more on performance than detailed design requirements. RSPA has received over 25 petitions for rulemaking and has issued numerous exemptions relating to requirements for cylinders and for the transportation of hazardous materials in cylinders. The merits of these petitions and the need to convert provisions of exemptions into regulations of general applicability will be considered in this rulemaking action.

Summary of the Legal Basis:

Section 5103 of Title 49 U.S.C. specifies that the Secretary shall prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. These regulations shall apply to persons transporting or causing to transport hazardous materials in commerce, and persons manufacturing, fabricating, marking, maintaining, repairing or testing packagings that are represented, marked, certified, or sold by such persons as qualified for use in transporting hazardous materials in commerce.

Alternatives:

The proposed rule is expected to incorporate a variety of alternatives to provide greater flexibility to cylinder manufacturers, refillers and users. There will be proposals to allow harmonizing of the manufacturing practices between the U.S. and other countries, to provide greater flexibility in the filling of cylinders based on performance criteria, and to simplify the regulations by streamlining the commodity sections and by standardizing the new cylinder specifications.

Anticipated Costs and Benefits:

A preliminary regulatory evaluation is being developed. The potential costs and benefits of this action have not yet been determined. A major industry association has indicated that this rulemaking could result in significant cost reductions for the cylinder manufacturing industry.

Risks:

Improving the integrity of cylinders will reduce the risk of leakage in overturns and other accidents. In addition, simplifying the regulations will reduce misunderstandings and the possibility of processing errors that may adversely affect safety.

Timetable:

Action	Date	FR Cite
NPRM	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation

Additional Information:

Formerly entitled Review: Consolidation of Specifications for High-Pressure Seamless Cylinders. Docket No. HM-220.

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DOT—RSPA

101. +EMERGENCY FLOW RESTRICTING DEVICES

Priority:

Other Significant

Legal Authority:

49 USC 60101 to 60125

CFR Citation:

49 CFR 195

Legal Deadline:

Final, Statutory, October 24, 1996.

Abstract:

This rulemaking would specify those circumstances under which operators of hazardous liquid pipelines are required to use emergency flow-restricting devices (EFRDs) and other procedures, systems, and equipment to detect and locate pipeline ruptures and minimize releases. This action is considered significant because of substantial public interest.

Statement of Need:

The adverse safety and environmental effects of pipeline accidents are often the result of an operator's failure to rapidly detect and locate a leak and to rapidly shut down the pipeline. Quicker response to pipeline leaks through the strategic placement and use of additional emergency flow-restricting devices, with a reliable leak detection capability, can reduce the amount of liquid spilled into the environment and the consequent damages to life and property.

Summary of the Legal Basis:

Section 60102 of Title 49 U.S.C. requires the Secretary to survey and assess the effectiveness of emergency flow-restricting devices (including remotely controlled valves and check valves) and other equipment used to detect and locate pipeline ruptures and minimize product releases. It also requires the Secretary, within two years after completing the survey and assessment, to issue regulations prescribing the circumstances under which operators of hazardous liquid pipeline facilities must use emergency flow-restricting devices or other equipment.

Alternatives:

The alternatives under consideration are different types of emergency flow-restricting devices and associated leak detection systems.

Anticipated Costs and Benefits:

The potential costs and benefits of this action have not yet been determined.

Risks:

This action addresses the increased risks to safety and the environment that result from the lack of prompt response to a line leak. Although the magnitude of potential risk reduction has not yet been determined, an example of the type of accident that this action might mitigate is the 1989 spill from an Exxon pipeline in the harbor between New York and New Jersey. Over 500,000 gallons of No. 2 fuel oil entered the water from a gash in the pipeline. A leak detection system that had been malfunctioning failed to immediately alert the operator to shut down the pipeline system.

Timetable:

Action	Date	FR Cite
ANPRM	01/19/94	59 FR 2802
ANPRM Comment Period End	04/19/94	
NPRM	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

Docket No. PS-133; RIN 2127-AC39. Public workshop was held on 10/19/95 (60 FR 44822). This action is being coordinated with other rulemakings on onshore emergency response plans (Docket No. PS-130; RIN 2137-AC30), areas unusually sensitive to environmental damage (Docket No PS-140; RIN 2137-AC34), and pipeline leak detection systems (Docket No. RSPA 97-2362; RIN 2137-AD05). These actions are being pursued in coordination with and as part of the response to the EFRD mandate.

First, RSPA has engaged in a rulemaking to require pipeline operators to file onshore emergency response plans as required by the Oil Pollution Act of 1990. Operators have filed plans and participated in emergency response spills under an interim final rule in Docket No. PS-130. This rule, which is subject to change based a recent response plan experience, requires operators to develop and execute oil spill response plans. Like the EFRD action, this is directed toward improving operator's accident response capabilities and minimizing accident consequences.

Second, RSPA is preparing a proposed rule to adopt the American Petroleum Institute's (API) pipeline leak detection system technical standard (Standard API 1130, Computational Pipeline Monitoring) to guide industry implementation of leak detection systems. This proposal would require that operators of hazardous liquid pipelines use API 1130 in conjunction with other information in the design, evaluation, operation, maintenance, and testing of their software-based leak detection systems. This will result in a significant advancement toward the acceptance of leak detection technology on hazardous liquid pipelines. This is a necessary precedent to the possible adoption of regulations on emergency flow restricting devices. This matter is being considered under Docket No. RSPA-97-2362.

Third, RSPA is working cooperatively with the Environmental Protection Agency (EPA), the U.S. Coast Guard and others to develop a definition of ''areas unusually sensitive to environmental damage from pipeline spills'' (USAs) in Docket No. PS-140. This effort will define areas that are candidates for the application of additional emergency flow-restricting devices.

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RIN: 2137–AC39

DOT—RSPA

102. +RISK-BASED ALTERNATIVE TO PRESSURE TESTING RULE

Priority:

Other Significant

Legal Authority:

49 USC 60101 to 60125

CFR Citation:

49 CFR 195

Legal Deadline:

None

Abstract:

This rulemaking would provide a risk-based alternative to the existing pressure testing rule for older hazardous liquid and carbon dioxide pipelines. On June 7, 1994 (59 FR 29379), RSPA issued a final rule requiring the hydrostatic pressure testing of certain older pipelines. On June 23, 1995, the American Petroleum Institute (API) filed a petition on behalf of many liquid pipeline operators that recommended a risk-based alternative to the required pressure testing rule. RSPA finds considerable merit in a risk-based approach to pressure testing and thus has suspended the time for compliance with the final rule issued on June 7, 1994, to allow for evaluation of the API petition. The risk-based alternative would allow operators to elect an approach to evaluating the integrity of these lines that takes into account individual risk factors. This would allow operators to focus resources on higher-risk pipelines and effect a greater reduction in the overall risk from pipeline accidents. This rulemaking is considered significant because of the substantial industry interest.

Statement of Need:

API's petition expressed strong concerns about requiring pressure testing of all older pipelines. RSPA evaluated the API proposal and found merit in it. RSPA has been working actively with the pipeline industry to develop a risk management approach to safety and environmental protection. The API proposal provides an opportunity to pilot a risk-based approach in a rulemaking forum. OPS anticipates increased use of risk-based approaches in future rulemakings.

Summary of the Legal Basis:

Section 60102 of title 49 U.S.C requires the Secretary of Transportation to prescribe minimum safety standards for pipeline transportation and for pipeline facilities. These standards apply to owners and operators of pipeline facilities and cover design, construction, inspection, emergency plans, and operations and maintenance.

Alternatives:

An alternative to the rule is to continue with RSPA's June 7, 1994 final rule on ''Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines,'' to ensure that certain older pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is to be provided by pressure testing according to part 195 standards or operation at 80 percent or less of a qualified prior test or operating pressure.

Anticipated Costs and Benefits:

RSPA analyzed this risk based-alternative to pressure testing and found the increased flexibility given to pipelines operators will result in an even more cost-beneficial rule. The regulatory evaluation of the risk-based alternative to pressure testing will result in a present value cost of approximately $90 million compared to the pressure testing rule which was estimated to cost approximately $160 million. RSPA believes the benefits of the risk-based alternative will be similar to the pressure testing rule. The present value benefits of the pressure testing rule are approximately $250 million.

Risks:

Older pipelines may contain inherent defects that could lead to failure over time. Pressure testing and internal inspection can detect many of these defects. This rulemaking is intended to reduce the risk of pipeline failure by focusing regulatory requirements on the basis of the level of that risk.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting	03/08/96	61 FR 9415
NPRM	10/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

Docket No. PS-144. A final rule issued 8/20/96 (61 FR 43026) extends time for compliance with the final rule issued June 7, 1994 (58 FR 29379).

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RIN: 2137–AC78

BILLING CODE 4910-62-F

DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are: Protecting and collecting the revenue under the Internal Revenue Code and customs laws; supervising national banks and thrift institutions; managing the fiscal operations of the Federal Government; enforcing laws relating to counterfeiting, Federal Government securities, firearms and explosives, money laundering, foreign commerce in goods and financial instruments, and smuggling and trafficking in contraband; administering the Community Development Financial Institutions program; protecting the President, Vice President, and certain foreign diplomatic personnel; training Federal, State, and local law enforcement officers; and producing coins and currency.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. Unless circumstances require otherwise, it is the policy of the Department to issue a notice of proposed rulemaking (NPRM) and carefully consider public comments before adopting final regulations. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while the NPRM is being developed and to hold public hearings to discuss a proposed rule.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866 and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Pursuant to the President's 1995 regulatory reform initiative, each of the Department's regulatory offices and bureaus conducted a thorough page-by-page review of all of its regulations. As a result of this process, which included consultation with regulated entities, the Department identified over 2,200 pages of its non-tax regulations in the Code of Federal Regulations (CFR) that will be streamlined or eliminated. In addition, the Internal Revenue Service identified over 1,200 pages of CFR regulations and other ruling documents that will be streamlined or eliminated. During fiscal years 1996 and 1997, the Department accorded priority to implementing as many of these changes as possible, taking into consideration its ongoing regulatory responsibility to issue regulations necessary to implement or interpret the laws as enacted by the Congress. As a result of these efforts, the Department initiated or completed rulemakings or other actions to eliminate or streamline over 3,200 pages of its regulations and other ruling documents.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. In developing these regulations, every effort is made to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 1998, the IRS will accord priority to the following regulatory projects:

- Stock Transfer Rules under Section 367. Section 367 of the Internal Revenue Code governs the application of the corporate nonrecognition rules to transactions involving foreign corporations. The IRS published proposed regulations addressing stock transfers under section 367(a) and (b) on August 26, 1991. The portion of these regulations involving transfers of domestic stock to foreign corporations was finalized on December 30, 1996. The IRS expects to finalize the remainder of the proposed regulations in fiscal year 1998.
- Excise Taxes on Excess Benefit Transactions. The Taxpayer Bill of Rights 2 (July 30, 1996) added section 4958 to the Internal Revenue Code. Section 4958 imposes excise taxes on excess benefit transactions occurring after September 13, 1995. Disqualified persons, and in some instances organization managers, are liable for these new taxes. Under section 4958, a disqualified person is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the tax-exempt organization involved in the transaction. Only transactions with section 501(c)(3) (except private foundations) or section 501(c)(4) organizations are subject to the taxes. An excess benefit transaction is any transaction in which an economic benefit is provided by an applicable organization directly or indirectly to, or for the use of, any disqualified person if the value o the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. The taxable excess benefit amount is the excess of the benefit over the value of the consideration. Proposed regulations will be issued to clarify certain definitions and rules contained in section 4958.
- Application of the Partnership Rules to Subpart F of the Code. Subpart F of the Internal Revenue Code requires certain income (called subpart F income) of a controlled foreign corporation to be currently included in the gross income of its U.S. shareholder, whether or not this income actually is distributed to the U.S. shareholder. The IRS has opened a regulations project to clarify how the subpart F rules operate with respect to a CFC partner's distributive share of partnership income in light of the Eighth Circuit's decision in Brown Group, Inc. v. Commissioner (8th Cir. 1996). In Brown Group, the court held that a CFC partner's distributive share of the partnership's commission income was not subpart F income, although it would have been subpart F income to the CFC if it had earned this income directly, under the circumstances in which the partnership earned the income. The proposed regulations will confirm that whether a CFC partner's distributive share of partnership income is subpart F income generally is determined at the CFC partner level.
- Amortization of Intangible Assets. The Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) added section 197 to the Internal Revenue Code. Section 197 provides for a 15-year amortization of goodwill and certain other intangible assets. OBRA 1993 also amended section 167 of the Code

to provide specified amortization periods for certain computer software and mortgage servicing rights. These provisions are generally effective for intangibles acquired after August 10, 1993. Final regulations will be issued to implement these two Code sections and to provide guidance to taxpayers on the meaning and scope of certain provisions of the statute and its anti-churning rules.

- Credit for Increasing Research Activities. Section 41 of the Internal Revenue Code provides a tax credit equal to a percentage of the amount by which a taxpayer's qualified research expenses for a taxable year exceeds its base amount for that year. To be qualified research, the research activities must not only satisfy the requirements of section 174 of the Code but must be undertaken for the purpose of discovering information that is technological in nature; the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and substantially all of the activities of which must constitute a process of experimentation pertaining to the functional aspects, performance, reliability, or quality of a business component. The regulations under section 41 will explain the term ''qualified research'' and the exclusions from research credit eligibility.
- Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA contains parallel provisions amending the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act. In April 1997, the IRS, together with the Department of Labor and the Department of Health and Human Services, issued temporary regulations that provided significant guidance on the health insurance certification requirements and preexisting condition limitations imposed by HIPAA. The temporary regulations also contained some guidance on the nondiscrimination provisions of HIPAA. During fiscal year 1998, the IRS, working with the Departments of Labor and Health and Human Services, intends to issue temporary regulations providing additional guidance on the nondiscrimination provisions of HIPAA.
- Private Activity Rules for Output Facilities. Section 141 of the Internal Revenue Code defines the term ''private activity bond'' and sets forth certain additional conditions imposed on private activity bonds in order for such bonds to qualify as tax-exempt bonds. In 1994, the IRS issued proposed regulations regarding the definition of private activity bonds. On January 16, 1997, the IRS published final regulations regarding the 1994 proposed regulations but reserved, among other issues, special rules affecting output facilities such as electric power generation facilities. This project will, for example, address issues including the tax-exempt status of bonds used to finance municipal output facilities that subsequently sell electricity to, or permit the use of their transmission facilities by, other providers of electricity.
- Tax Refund Offset Program. Section 6402(c) of the Internal Revenue Code provides that the amount of a tax refund generally shall be reduced by the amount of certain past-due child support obligations owed by the taxpayer. Section 6402(d) provides that the amount of a tax refund shall be reduced by the amount of certain past-due legally enforceable debt that the taxpayer owes to certain Federal agencies. Under section 6402, the amount by which the refund is reduced shall be remitted to the relevant State (in the case of past-due support obligations) or to the Federal agency (in the case of certain debt owed to a Federal agency). The IRS intends to issue regulations to conform existing guidance under section 6402(c) and (d) to reflect the transfer of the Tax Refund Offset Program to Treasury's Financial Management Service pursuant to the Debt Collection Improvement Act of 1996.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The substantive content of the OCC's regulations reflects four organizing principles that support this mission:

- The OCC's regulations help ensure safety and soundness by establishing standards that set the limits of acceptable conduct for national banks.
- The OCC's regulations promote competitiveness by facilitating a national bank's ability to develop new lines of business, subject to any safeguards that are necessary to ensure that the bank has the expertise to manage risk effectively and adapt its business practices to deal responsibly with its customers.
- Regulations can also affect national banks' ability to compete by contributing significantly to their costs. The OCC's goal is to improve efficiency and reduce burden by updating and streamlining its regulations and eliminating those that no longer contribute significantly to the fulfillment of its mission.
- The OCC's regulations help assure fair access to financial services for all Americans by removing unnecessary impediments to the flow of credit to consumers and small businesses, by encouraging national banks' involvement in community development activities, and by implementing Federal laws designed to protect consumers of financial services.

In December 1996 the OCC completed the review and revision of all of its rules pursuant to its Regulation Review Program. The program comprised a top-to-bottom review of all of the OCC's regulations and was part of the OCC's overall effort to promote an environment where risk is prudently managed by banks and appropriately monitored by the OCC, without imposing unnecessary regulatory burdens that undermine the ability of banks to operate efficiently, compete vigorously, and provide credit and other financial products and services to the public. The program was also designed to respond to the need for regulation that is effective but sensible and cost-conscious.

Among the significant regulatory projects completed are:

- Investment Securities: The OCC substantially revised its rules that prescribe the standards under which national banks may purchase, sell, deal in, and underwrite investment securities. The new regulations group related subjects together, clarify areas where the previous rules were unclear, and updated various provisions to address market developments and incorporated significant OCC interpretations, judicial decisions, and amendments to the governing statute.
- Disposition of Credit Life Insurance: The OCC revised its regulations regarding the provision of credit life insurance by national banks, which were both outdated and incomplete.
- Fiduciary Activities of National Banks: The final rule makes less burdensome the requirements regarding the exercise of fiduciary powers, while preserving appropriate protection for

trust customers. The rule reflects recent court and administrative decisions relating to, among other things, collective funds for IRA and Keogh accounts.

- Recordkeeping and Confirmation Requirements for Securities Transactions: The OCC revised its regulations specifying the recordkeeping and confirmation requirements for bank securities transactions to bring them up to date, as well as to streamline and clarify them.
- Community Development Corporation and Project Investments: The OCC rules relating to community development corporations and project investments were revised to conform the regulation's standards and procedures to the processes and concepts used in other OCC regulations. This revision also gives banks greater flexibility in conducting their community development activities and investments.

The OCC's regulatory priorities for fiscal year 1998 include the continuation of the OCC's work with the other Federal banking agencies to maintain and, where necessary, improve consistency in the agencies' risk-based capital standards. Regulatory projects in this area include the following, all of which would amend Part 3 of the OCC's rules.

- Risk-Based Capital Guidelines Generally: The OCC, the FRB, the FDIC, and the OTS are considering several amendments to their respective risk-based capital guidelines to eliminate certain interagency differences in capital treatment. Specific areas in the risk-based capital guidelines under consideration include (1) junior and senior liens on one-to-four family residential mortgages, (2) presold one-to-four family construction loans, and (3) mutual funds.
- Servicing Assets: In 1995, the banking agencies published an interim rule to eliminate the distinctions between originated mortgage servicing rights and purchased mortgage servicing rights and to clarify that both originated and purchased mortgage servicing rights are subject to the deduction requirements for regulatory capital. This interim rule was developed to respond to the Financial Accounting Standards Board (FASB) Financial Accounting Statement (FAS) 122, which addressed mortgage servicing rights. Subsequent to the interim rule, FASB published FAS 125, which eliminated the distinction between excess and normal servicing fees relating to servicing rights. The agencies are planning to issue a new proposed rule on capital treatment of excess servicing fees; a final rule will address both mortgage servicing rights and excess servicing fees.
- Recourse on Small Business Loan Obligations: This rule, which implements section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325 (September 23, 1994) (CDRIA), generally would permit banks to hold capital against the face amount of recourse obligation (rather than the amount of the asset transferred with recourse) on qualifying small business loans if the bank establishes a reserve equal to the bank's reasonable estimated liability under the recourse obligation.
- Recourse and Direct Credit Substitutes: This proposal by the banking agencies will amend the risk-based capital guidelines to provide consistency between the capital treatment for recourse arrangements and for direct credit substitutes. The agencies expect to describe several approaches that would enable them to match the risk-based capital assessment more closely to an institution's relative risk of loss in asset securitization.
- Unrealized Revaluation Gains: This joint notice of proposed rulemaking (NPRM) would amend the risk-based capital guidelines to permit a bank to include up to 45 percent of unrealized revaluation gains on available-for-sale equity securities in Tier 2 capital. This proposed rule is consistent with the International Convergence of Capital Measurement and Capital Standards as adopted by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Accord) and would make the risk-based capital treatment of unrealized revaluation gains uniform among the banking agencies.

The OCC's other regulatory priorities for the coming fiscal year include the following:

- Professional Qualification Requirements in Connection with the Recommendation or Sale of Certain Securities: The OCC, together with the FRB and the FDIC, is considering issuing a proposed rule that would require bank employees who want to sell non-deposit investment products to pass the same licensing and continuing education requirements that apply to persons not employed by banks. This currently would entail passing the Series 6 and Series 7 examinations administered by the National Association of Securities Dealers and complying with the continuing education requirements in the second, fifth, and tenth years after becoming licensed.
- Allocated Transfer Risk Reserves: The OCC is working in consultation with the FRB and the FDIC to review the agencies' current regulations implementing the International Lending Supervision Act of 1983 and is considering issuing a proposed rule updating the OCC's regulations that apply to national banks. Under the OCC's regulations, a national bank must establish an allocated transfer risk reserve (ATRR) if required by the OCC to guard against risks presented by certain international lending activities. The regulations provide guidance on the criteria that is applied to determine when a bank must establish and the amount of an ATRR, as well as the accounting treatment of the ATRR and other fees charged by banks in connection with international loans.
- Prohibition Against Deposit Production Offices: The OCC, as part of a joint agency rulemaking effort with the FRB, the FDIC, and the OTS are promulgating a new regulation required by section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Public Law No. 103-328 (12 U.S.C. 1835a)).
- Examination Frequency/Increase in Asset Amount: The OCC, as part of a joint agency rulemaking effort with the FRB, the FDIC, and the OTS expect to promulgate a new rule that raises the maximum asset limit on institutions eligible for an 18-month examination schedule. Section 306 of the CDRIA gives the Federal banking regulatory agencies discretion to raise the $100 million maximum asset limit on CAMEL 2-rated institutions eligible for the 18-month examination schedule to as much as $175 million. The agencies have already issued an interim rule implementing this provision.
- Lending Limits: The OCC intends to issue a final rule, making several technical amendments to the current lending limit regulation.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to effectively and efficiently supervise thrift institutions. These objectives include maintaining and enhancing: The safety and soundness of the thrift

industry; a flexible, responsive regulatory structure that enables savings associations to provide credit and other financial services to their communities, particularly housing credit; and an approach to supervision that is risk-focused and proactive. The objectives and priorities of OTS are consistent with those established by the President.

During fiscal year 1997, OTS issued in final form a series of substantive rules to make significant burden-reducing changes in a number of key areas of its regulations, including regulations governing lending, subsidiaries, corporate governance, and conflicts of interest.

Under the auspices of the Federal Financial Institutions Examination Council, OTS continues to implement, with the other Federal banking agencies, section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires the Federal banking agencies to make uniform all regulations and guidelines implementing common statutory provisions or supervisory policies.

Interagency capital-related projects underway include amendments concerning:

- The leverage capital standard and the risk-based capital standards for certain loans involving residential properties and investments in mutual funds.
- Risk-based capital standards for recourse obligations and direct credit substitutes that expose institutions to credit risk.
- Capital standards for servicing assets.
- Risk-based capital standards for collateralized transactions.
- Risk-based capital treatment of small business loans and leases of personal property with recourse.
- Risk-based capital standards for unrealized gains on equity securities.

It is anticipated that, in fiscal year 1998, a final rule will be issued regarding risk-based capital treatment of small business loans and leases of personal property with recourse and that proposed rules will be issued regarding the remainder of the capital-related issues listed above.

In addition, section 306 of CDRIA authorizes the Federal banking agencies to increase the threshold asset size of certain financial institutions that may be examined every 18 months. The Federal banking agencies issued an interim rule implementing this authority in February 1997 and anticipate completing this rulemaking during fiscal year 1998.

In the past, OTS identified and brought to Congress's attention certain statutory impediments to OTS' efforts to reduce the regulatory burden and to update some regulations. For example, OTS recommended that savings associations be provided with additional lending flexibility under the Qualified Thrift Lender requirements under section 10(m) of the Home Owners' Loan Act (HOLA). Recently, Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), which provided that investments in education, small business, credit card, and credit card account loans are includable for the purposes of the QTL test. In April 1997, OTS put in place a final regulation implementing EGRPRA.

OTS has also made recommendations for statutory changes regarding the liquidity regulation at part 566, which is required by section 6 of the HOLA, and the requirement that Federal savings associations maintain membership in a Federal Home Loan Bank, which is required by section 5(f) of the HOLA. In the interim, OTS proposed revisions to its liquidity regulation to update, simplify, and streamline it to the extent possible under the current statutory framework. The proposal, which was issued in May 1997, would reduce the liquidity base calculation, decrease the frequency of the calculations, decrease the liquid asset requirement, and allow additional types of liquid assets to be counted toward satisfying the requirement. OTS expects to issue a final rulemaking on liquidity early in fiscal year 1998.

During fiscal year 1998 OTS intends to pursue a number of new regulatory projects as part of its ongoing effort to review and streamline its regulations. These projects include revisions to OTS's regulations concerning application processing, deposits, fiduciary powers, and conversions.

The application processing rule would revise and reorganize existing regulations governing the comment procedures for certain applications and notices. The rule regarding deposits would streamline OTS' existing deposit regulations to eliminate duplication and overlap and consolidate them in a single part. OTS' fiduciary powers regulations would be updated and streamlined to better reflect current legal, regulatory, and business developments in that area. The conversion rule would facilitate the conversion of mutual depository institutions, including credit unions, to Federal mutual savings associations by eliminating several steps in the conversion process. Lastly, following a detailed review of all definitions contained in its regulations, OTS plans to propose a complete overhaul of the definitions, which includes the creation of a new part devoted solely to definitions.

Notices of proposed rulemaking were issued in April 1997 regarding application processing, deposits, and conversions. It is expected that final rules in these areas, in addition to proposed rules concerning fiduciary powers and definitions, will be issued during fiscal year 1998.

In April 1997, OTS published an advance notice of proposed rulemaking seeking comment on whether its existing regulations impede savings associations' appropriate use of advancing electronic banking technology. OTS would like to ensure that its rules are sufficiently flexible to accommodate technological changes in the marketplace and that the regulated industry uses technology within the boundaries of safety and soundness standards. OTS expects to complete this rulemaking during the first quarter of fiscal year 1998.

United States Customs Service

The United States Customs Service is responsible, among other things, for administering laws concerning the importation of goods into the United States. This includes inspecting imports, collecting applicable duties, overseeing the activities of persons and businesses engaged in importing, and enforcing the laws concerning smuggling and trafficking in contraband. The regulatory priorities of Customs for fiscal year 1998 are to continue to facilitate procedures for legitimate commercial transactions and to provide further obstacles to the flow of narcotics and other contraband into the United States.

During fiscal year 1997, one of Customs priorities was to continue the reinvention of its regulatory procedures began under the authority granted by the Customs Modernization provisions of the North American Free Trade Implementation Act (the Customs Mod Act). Customs reinvention efforts, in accordance with the principles of E.O. 12866, have involved and will continue to involve much input from the importing public. Two key regulatory packages that are integral to implementation of the Customs Mod Act were published as proposals during the past fiscal year. One proposed to revise the Customs regulations regarding drawback and the other proposed

provisions regarding the recordkeeping responsibilities of persons involved with Customs transactions. Customs expects to finalize these regulations this fiscal year.

During fiscal year 1998, Customs will also accord priority to publishing proposals to revise the procedures by which Customs will issue administrative rulings answering requests of prospective importers as to how Customs will treat their transactions and to revise the regulations pertaining to customs brokers.

During the fiscal year 1998, Customs also plans to undertake several other regulatory actions that will affect the traveling and importing public, customs brokers, carriers, and commercial importers. Customs will accord priority to several regulatory actions focusing on the development of a more automated environment to expedite the entry, processing, and release of imported commercial merchandise. These regulations will benefit the importing public by streamlining the work of Customs officers and the trade community. Among the actions that Customs will pursue in this regard, which will improve the efficiency of Customs operations and reduce paperwork and administrative costs, are:

- Liquidations. Customs will propose regulations allowing paperless procedures for extension and suspension of liquidation notices, improving and clarifying the administrative process, and simplifying the regulations pertaining to liquidations and extensions and suspensions of liquidation.
- Entry Reconciliation. Customs will propose regulations to establish a ''reconciliation'' process that will allow elements of an entry (other than those relating to the admissibility of merchandise) that are undetermined at the time an entry summary or an import activity summary statement is required to be submitted to be provided to Customs at a later date. A ''reconciliation'' will permit importers to submit information not available at the time of entry that is necessary for the importer and Customs to determine the correct amount of duty on a shipment. The procedure will allow Customs to finalize the duty assessment process by liquidating the underlying entry as to all merchandise covered by the entry, except the merchandise identified by the importers as requiring the submission of additional information.
- Commercial Laboratories. Customs will propose regulations to provide standards and procedures for accrediting commercial laboratories that will permit them to analyze a wide range of commercial products for Customs purposes. This change will facilitate the release of merchandise because it will enable importers to receive laboratory results earlier.
- Remote Location Filing. Customs will propose regulations allowing electronic filing of entries with Customs from locations in the United States other than the port of arrival of the merchandise or the place at which the merchandise is examined. Remote location filing will provide entry filers (such as brokers and couriers) with greater flexibility and will allow Customs to make more efficient use of its resources.

Bureau of Alcohol, Tobacco and Firearms

The Bureau of Alcohol, Tobacco and Firearms (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of alcohol products, tobacco products, firearms, and explosives.

ATF's regulations carry out these missions and are designed to:

- Curb illegal traffic in, and criminal use of, firearms and assist State, local, and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the alcohol, tobacco, firearms, and explosives industries, including the issuance of licenses and permits;
- Assure the collection of all alcohol, tobacco, firearms, and ammunition tax revenues and obtain a high level of voluntary compliance with those laws.
- Suppress commercial bribery, consumer deception, and other prohibited practices in the alcoholic beverage industry;
- Suppress the illicit manufacture and sale of alcoholic beverages for which Federal tax has not been paid; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes in avoidance of State taxes.

ATF is in the final stages of accomplishing the goals of the President's regulatory reform initiative. The previously reported page-by-page review of all its regulations—and its outreach effort with the public and the regulated industries—resulted in the streamlining or eliminating of many regulatory requirements. For example, ATF is analyzing the current alcohol beverage label and formula approval system with the goal of changing to a simplified registration system and to reduce the administrative burdens associated with the current basic permit application process for producers, wholesalers, and importers of alcohol beverages. A reduced and simplified basic permit application form will be implemented this year.

ATF is according priority during fiscal year 1998 to issuing a notice of proposed rulemaking to revise its regulations governing storage requirements for explosives, including firew materials. ATF published a general notice soliciting public comments on January 10, 1997. As a result of the comments received and a further analysis of the matter, ATF plans to issue the notice of proposed rulemaking that will be expanded to address additional explosives issues. This project is described in more detail in Part II of this Regulatory Plan.

Another priority during fiscal year 1998 will be the issuance of a notice of proposed rulemaking to streamline regulations applying to the brewing industry. These proposed changes have been incorporated into a broader beer regulation revision project that will address related matters. This project is described in more detail in Part II of this Regulatory Plan.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management; link program and financial management objectives; and provide financial services, information, advice, and assistance.

FMS' regulatory priorities for fiscal year 1998 consist of continuing to implement the provisions of the Debt Collection Improvement Act of 1996 (DCIA). The DCIA contains important provisions governing the use of electronic funds transfer (EFT) for Federal payments and establishes the Treasury Department as the lead agency for the enhancement and centralization of Federal debt collection efforts. FMS will promulgate new regulations to provide guidance for Federal agencies in making payments by EFT; this rule is discussed in Part II of this Regulatory Plan.

FMS also will promulgate new regulations concerning the DCIA's debt

collection tools. These regulations will govern the administrative offset of Federal payments for the collection of debts owed to Federal agencies and States and for the collection of past-due child support. Regulations will be issued addressing the collection of Taxpayer Identifying Numbers (TINs), the status of payment requests lacking TINs, administrative wage garnishment, cross-servicing, barring delinquent debtors from obtaining Federal loans or guarantees, dissemination of delinquent debtor information, debt sales, and matching for Federal salary offset. FMS also will continue implementing the Electronic Federal Tax Payment System to eliminate paper processing.

FMS also plans to revise its rules governing the Federal Government's participation in the Automated Clearing House (ACH). These revisions will provide the basis for broader use of the ACH system to meet future payment, collection, and information management needs. They will speed the flow of funds to the Treasury and ease the regulatory burden on private industry.

With the establishment of a permanent and indefinite source of funding as an integral part of the Check Forgery Insurance Fund, FMS plans to revise its regulations which govern the processing of claims on Treasury checks that are lost or stolen and then paid over forged or unauthorized endorsements. Finally, FMS plans to revise its regulations to implement DCIA provisions governing the Treasury Check Offset program, which authorizes collection by offset of amounts owed by financial institutions to the U.S. Government.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) administers regulations governing transactions in Government securities by Government securities brokers and dealers and regulations that implement Treasury's borrowing authority, including rules governing the sale and issue of marketable Treasury securities.

The Government Securities Act of 1986 (GSA) authorizes the Secretary of the Treasury to prescribe rules governing financial responsibility, the protection of customer funds and securities, recordkeeping, reporting, audit, and large position reporting for all Government securities brokers and dealers, including financial institutions. These rules fulfill the Treasury's statutory responsibilies to safeguard the efficient functioning of the Government securities market and are designed to prevent fraudulent and manipulative acts and practices and to protect the integrity, efficiency, and liquidity of the market. The Department and BPD are committed to implementing rules that make sense from both a regulatory and market efficiency perspective. Accordingly, the Department and BPD seek to balance the benefits of regulation with the compliance costs imposed on the Government securities market and its participants.

The rules setting out the terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes, and bonds are also known as the uniform offering circular. These rules apply to securities held in accounts in the book-entry system established by the Department and operated by the Federal Reserve Banks, known as the Treasury/Reserve Automated Debt Entry System, as well as to securities held in accounts directly with Treasury in the TREASURY DIRECT system. The uniform offering circular describes the types of securities offered for sale, the auction methods by which they are sold, the process by which bidders submit bids, the process for awarding securities to successful bidders, and the authorized payment methods.

In fiscal year 1998, priority will be given to amending the uniform offering circular to accommodate fungible stripped interest components of Treasury inflation-indexed securities. Making the inflation-indexed interest components fungible means that each interest component with the same payment/maturity date would be treated as the same security and would have the same security identification number, even if the components were stripped from different securities. Fungibility would increase the liquidity and efficiency of the market for inflation-indexed securities since fungibility facilitates trading of the stripped interest components because they would be interchangeable.

Financial Crimes Enforcement Network

The regulations of the Financial Crimes Enforcement Network (FinCEN) constitute the core of Treasury's anti-money laundering initiative and an essential component of Treasury's anti-narcotics effort. The Bank Secrecy Act (BSA) authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory proceedings and to implement counter-money laundering programs and compliance procedures.

Since mid-1994, FinCEN has been engaged in a thorough review of its regulatory policies and has been building a partnership between Government and the financial sector to fight money laundering. The keystone of that partnership is the recognition that only a cooperative relationship between Government and industry can provide a way to implement a three-pronged strategy of prevention, detection, and enforcement against those who seek to use the financial system to promote or further illegal activity. FinCEN recognizes that BSA compliance imposes costs on the financial community and that recordkeeping and reporting should be required only when the benefits to law enforcement efforts are clear.

During fiscal year 1998, FinCEN will continue to review and revise its existing regulations. In all cases, FinCEN will continue to work with the financial community to reduce administrative burdens associated with complying with the statutes while enhancing the usefulness of BSA information for law enforcement, financial regulators, and policymakers. FinCEN is continuing a general revision and simplification of all of its regulations and will accord priority to the following projects:

- Federal Registration of Money Services Businesses. In response to a specific statutory directive, FinCEN published, in May 1997, a notice of proposed rulemaking setting forth the terms and conditions under which certain non-bank financial institutions or money services businesses must register with the Treasury Department. FinCEN will issue a final rule during fiscal year 1998.
- Suspicious Transaction Reports. FinCEN will finalize a May 1997 notice of proposed rulemaking that would require suspicious transactions reporting by certain money services businesses. FinCEN also plans to issue proposed rules to extend this requirement to casinos and securities brokers and dealers.
- Special Currency Transaction Reporting. In order to address the misuse of money transmitters by money launderers, FinCEN will finalize a May 1997 proposed rule to require money transmitters and their agents to report and retain records of currency transactions in amounts between $750 and $10,000 in connection with a transmission or other transfer of funds to a person

outside the United States and to verify the identity of the senders of such transmissions or transfers.

- Exemptions from Cash Transaction Reporting (CTR) Requirements. As required by legislation enacted in 1994, FinCEN is seeking to reduce by 30 percent the number of CTRs required to be filed. FinCEN recently finalized an interim rule issued in April 1996 that exempts many transactions from the CTR filing requirement and issued a notice of proposed rulemaking to exempt additional transactions. FinCEN plans to finalize this proposal in fiscal year 1998.
- Foreign Bank Drafts. FinCEN will expects to finalize its rulemaking to expand the definition of ''monetary instrument'' to include certain foreign bank drafts for purposes of the reporting of cross-border transportation. This expansion will implement only as much of the broad authority granted by a 1994 amendment to the BSA as FinCEN believes is required to address the issue of the sale of these foreign bank drafts.
- ''Know Your Customer'' and Other Anti-Money Laundering Programs. FinCEN plans to issue proposed regulations to require banks and other financial institutions to implement certain ''know your customer' and other anti-money laundering programs. These programs are closely related to the requirement to report suspicious transactions.
- Delegation of Civil Penalty Authority for Bank Secrecy Act Violations to Bank Regulatory Agencies. Pursuant to a specific statutory directive, FinCEN intends to delegate to the five financial institutions supervisory agencies and the Securities and Exchange Commission the authority to impose and collect civil monetary penalties for BSA violations committed by their respective regulated institutions. FinCEN will work closely with these agencies in developing this rulemaking.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.). The primary purpose of the Fund is to promote economic revitalization and community development through investments in and assistance to community development financial institutions (CDFIs), principally through the CDFI Program. The Fund administers the Bank Enterprise Award (BEA) Program, which encourages insured depository institutions to engage in certain eligible development activities and to make equity investments in CDFIs. The Fund also administers the Presidential Awards for Excellence in Microenterprise Development, which recognize outstanding microenterprise development and support programs in an effort to advance an understanding of ''best practices'' in the field of domestic microenterprise development.

The Fund's regulatory priority for fiscal year 1998 is to continue to streamline the application and review process for the CDFI and BEA programs.

TREAS—Financial Management Service (FMS)

PROPOSED RULE STAGE

103. MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

Priority:

Other Significant

Legal Authority:

5 USC 301; 31 USC 321; 31 USC 3301-2; 31 USC 3321; 31 USC 3325; 31 USC 3327-8; 31 USC 3332; 31 USC 3335; 31 USC 6503

CFR Citation:

31 CFR 208

Legal Deadline:

Final, Statutory, January 1999.

Abstract:

Public Law 104-134 amended 12 USC 3332 to require Federal agencies to convert all Federal payments (other than payments under the Internal Revenue Code) from checks to electronic funds transfer (EFT) in two phases. First, persons who become eligible for Federal payments on or after July 26, 1996 are to receive those payments by EFT. The first phase was implemented by interim regulations published that date. Second, persons who were receiving Federal payments before July 26, 1996 will receive those payments by EFT beginning January 2, 1999. A notice of proposed rulemaking to implement phase two was published on September 16, 1997.

Statement of Need:

Section 31001(x) of the Debt Collection Improvement Act of 1996 (DCIA) amended 31 U.S.C. 3332 to require Federal agencies to convert all Federal payments (other than payments under the Internal Revenue Code) from checks to electronic funds transfer (EFT) in two phases. Phase one began July 26, 1996; all recipients who become eligible to receive Federal payments on or after that date are required to receive such payments by EFT unless the recipient certifies in writing that the recipient does not have an account at a financial institution or authorized payment agent. The Financial Management Service issued an interim rule on July 26, 1996 to implement these requirements.

Phase two begins for payments made after January 1, 1999. The DCIA provides that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments (other than payments under the Internal Revenue Code) made after that date must be made by EFT. After a 90-day public comment period for the proposed rule, FMS will issue final regulations to implement the requirements that take effect after January 1, 1999.

Summary of the Legal Basis:

Section 31001(x) of the DCIA amends 31 U.S.C. 3332 to require Federal agencies to convert from paper-based payment methods to EFT in two phases under regulations prescribed by the Secretary of the Treasury.

Alternatives:

FMS is evaluating options for implementing the Secretary's authority to grant waivers from the EFT requirements.

Anticipated Costs and Benefits:

Costs and benefits of converting from paper checks to EFT are directly imposed by the underlying statute and are not attributable to the implementing regulations.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/26/96	61 FR 39254
Interim Rule Comment Period End	11/25/96	
NPRM	09/16/97	62 FR 48714
NPRM Comment Period End	12/16/97	
Final Action	03/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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TREAS—Bureau of Alcohol, Tobacco and Firearms (BATF)

PROPOSED RULE STAGE

104. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

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:

26 USC 5051 to 5056; 26 USC 5401 to 5417; 27 USC 205

CFR Citation:

27 CFR 7; 27 CFR 25

Legal Deadline:

None

Abstract:

ATF intends to streamline regulations applying to breweries. ATF will eliminate obsolete regulatory provisions. A formula system for manufactured beer products will replace statements of process attached to the brewers notice. The annual notice for small brewers to pay reduced rate of tax will be eliminated. Separate regulations for brewpubs will be added to part 25. A section will be added to part 25 to authorize and regulate the alternating use of brewery premises by different brewers. Regulations authorizing the operation of brew-on-premises facilities will be added to part 25.

Statement of Need:

ATF intends to streamline its regulations applying to the brewing industry. These changes will simplify brewery reports and operations and eliminate obsolete regulatory provisions. Specific changes would include the implementation of a formula system for the breweries to replace the statement of process; the establishment of a separate subpart containing simplified regulations for brewpubs; authorizing alternating brewery premises among different proprietors; eliminating the annual notice to pay reduced rate of tax for most breweries; authorizing brewers to file the Brewer's Report of Operations on a quarterly basis; and authorizing many brewers to take inventories quarterly rather than monthly. The rule will also propose minimum production standards for beer thereby reducing formula filings and a revised statement of net contents requirement for certain container sizes.

Summary of the Legal Basis:

ATF has undertaken this review of brewery regulations as part of the President's Regulatory Initiative. These regulations are issued under the general authority of the Secretary of the Treasury to promulgate regulations to implement the Internal Revenue Code and the Federal Alcohol Administration Act.

Alternatives:

Not applicable. ATF believes that industry will support these regulatory changes because they will streamline regulatory requirements applying to the brewing industry.

Anticipated Costs and Benefits:

The proposed regulations will benefit the brewing industry by reducing required inventories, notices, and other submissions to ATF.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1512–AB37

TREAS—BATF

105. • COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY)

Priority:

Other Significant

Legal Authority:

5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 18 USC 1261; 19 USC 1612 to 1613; 19 USC 1618; 26 USC 7101; 26 USC 7322 to 7326; 31 USC 9301; 31 USC 9303 to 9304; 40 USC 304(k)

CFR Citation:

27 CFR 55

Legal Deadline:

None

Abstract:

Pursuant to section 610 of the Regulatory Flexibility Act, ATF published a notice on January 10, 1997 seeking public comments on whether it should revise its regulations codified at 27 CFR part 55, governing Commerce in Explosives (Including Explosives in the Fireworks Industry). Based on comments received, ATF plans to initiate a rulemaking to revise these regulations in 1998.

Statement of Need:

This notice of proposed rulemaking will address many of the issues in part 55 - Commerce in Explosives, especially the storage requirements for explosives, including fireworks explosive materials. Pursuant to the periodic review requirements of the Regulatory Flexibility Act (5 U.S.C. 610), ATF published on January 10, 1997 a General Notice initiating the review of a final rule published in 1990 concerning the storage of fireworks explosives materials. The 1990 rule, which was issued as a result of the number and severity of explosions occurring on the premises of special fireworks plants, amended certain regulations codified at 27 CFR part 55, generally concerning the recordkeeping

and storage of fireworks explosive materials. The regulations also codified two fireworks related rulings issued in 1979 and 1985, and the provisions of Pub. L. 99-308 relating to black powder. As a result of the public comments received in response to the General Notice and further study of this issue, ATF will issue a notice of proposed rulemaking covering this and related commerce and storage of explosives issues.

Summary of the Legal Basis:

Section 847 of title 18, United States Code, grants the Secretary of the Treasury broad discretion to promulgate regulations necessary for the importation, manufacture, distribution and safe storage of explosives materials. Section 846 of title 18, United States Code, authorizes the Secretary to prescribe precautionary measure to prevent the recurrence of accidental explosions in which explosive materials were involved. The General Notice and upcoming notice of proposed rulemaking are also being issued pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610), which requires an agency to review within ten years of publication rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities.

Alternatives:

Alternatives will be examined in the context of public comments to the notice of proposed rulemaking.

Anticipated Costs and Benefits:

Unknown at this time.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
General Notice of Regulatory Review	01/10/97	62 FR 1386
NPRM	03/00/98	
NPRM Comment Period End	06/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1512–AB48

BILLING CODE 4810-25-F

DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) is the custodian and administrator of important public obligations to those who served this Nation. The VA's regulatory responsibility is almost solely confined to carrying out the mandate of the laws enacted by Congress relating to programs for veterans and their beneficiaries. The VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by the VA involve three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery System. The basic goal of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their beneficiaries. The principal goal of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The National Cemetery System's primary mission is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to honor the memory and service of those who served in the Armed Forces.

VA

FINAL RULE STAGE

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106. SCHEDULE FOR RATING DISABILITIES—THE CARDIOVASCULAR SYSTEM

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:

38 USC 1155

CFR Citation:

38 CFR 4.100; 38 CFR 4.101; 38 CFR 4.102; 38 CFR 4.103; 38 CFR 4.104

Legal Deadline:

None

Abstract:

The Department of Veterans Affairs (VA) is conducting the first comprehensive review of its rating schedule since 1945. These revisions will update the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. This comprehensive review includes a review of the different body systems identified under additional information.

Statement of Need:

Because evaluation criteria in the rating schedule are based on medical findings, the advances that have occurred in medicine since the last overall revision of the rating schedule in 1945 need to be incorporated into the schedule so that it reflects the current state of medicine, including the use of new techniques and procedures, such as liver and heart transplants. Some medical terms and nomenclature in the current schedule are obsolete, and the course of some illnesses has changed because of modern therapy. The rating schedule criteria need to reflect these advances. There are also new disease entities that have been defined or become more common since the last revision.

Summary of the Legal Basis:

Under 38 USC 1155, the Secretary of Veterans Affairs is required to establish a schedule for rating disabilities and has the authority to readjust the schedule from time to time in accordance with experience.

Alternatives:

Although VA has made some ad hoc revisions and additions to the rating schedule, this is the first comprehensive review since 1945. We could continue to make ad hoc revisions; however, we feel that this would be inadequate. We also intend to review three to four body systems per year on a cyclical basis to ensure that the schedule remains current.

Anticipated Costs and Benefits:

There are no known administrative costs directly related to these regulatory amendments of 38 CFR part 4. The same personnel will adjudicate disability claims utilizing the same procedures. There are no readily ascertainable entitlement costs or savings related to these amendments. There is no accurate way to quantify their impact. We expect these revisions to result in greater precision and consistency within the disability evaluation process, but anticipate no net savings or cost within the entitlement account.

Risks:

None known.

Timetable:

Action	Date	FR Cite
ANPRM	02/26/90	55 FR 6658
ANPRM Comment Period End	04/27/90	
NPRM	01/19/93	58 FR 4954
NPRM Comment Period End	03/22/93	
Final Action	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

For the purposes of the Regulatory Plan, VA has identified the individual schedules for rating disabilities (AE91, AF00, AF22, AF23, AF24, AH05, AH43) under the umbrella RIN 2900-AE40.

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RIN: 2900–AE40

BILLING CODE 8320-01-F

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Regulatory Priorities

An Era of Opportunity

During the past 25 years, the Nation made great headway in cleaning up the air, water, and land. But as the next century approaches, we are finding that many of the problems remaining are more complex than those of the past and they require more sophisticated, tailor-made remedies. EPA has begun a wholesale effort to rethink its current public health and environmental strategies to better meet the challenges of today and the future. And because this effort comes at the same time the President and Vice President are calling for a Government that works better and costs less, EPA has had an unprecedented opportunity to develop tough, new protections that not only solve today's difficult problems, but do so in cheaper and smarter ways.

Building a Better System

EPA's efforts to develop a system that works better and costs less are focused on four areas: Reducing regulatory and paperwork burdens, improving environmental compliance, regulating for greater results, and increasing community participation and partnerships. We are pursuing this through every possible venue, internally and externally, and we can already see results.

Internally, EPA has streamlined its management, restructured programs, and given EPA employees broader responsibilities. For example, enforcers are emphasizing compliance assistance, permitters are paying more attention to pollution prevention and market mechanisms, and rule writers are developing public health and environmental protections that include alternatives proposed by regulated industries. These are innovative alternatives that are less costly but that still meet environmental and public health protection goals.

Externally, EPA is bringing together stakeholders from businesses, State and local governments, and labor and public interest groups so that all interested parties can participate in the design of innovative, less costly approaches to environmental and public health protection. This stakeholder involvement increases flexibility, promotes local stewardship, and helps establish and strengthen partnerships between the public and private sectors—all without sacrificing environmental or public health protection.

Also, as EPA develops this new regulatory system, it will increase its focus on protecting the health of children, taking into account their unique characteristics and vulnerabilities. By April 24, 1998, EPA will develop guidance to implement the new Executive order on protecting children's health from environmental risks. This guidance will assist the Agency in preparing a ''Children's Impact Statement'' for economically significant regulations. In addition, following an inclusive public process, EPA will identify and then reevaluate five existing environmental or public health standards to ensure that they sufficiently protect children's health.

Eliminating Unnecessary Regulations

The Agency continues to examine existing environmental regulations and paperwork in order to simplify and streamline compliance for the regulated community. This is consistent with the President's announcement in February 1995 that all Federal agencies must conduct a line-by-line review of their regulations and eliminate those that are obsolete or redundant. EPA has already made changes to more than 70 percent of its regulations and eliminated approximately 1,400 pages of obsolete rules from the Code of Federal Regulations (CFR), some 10 percent of EPA's total CFR regulations. In March 1995, EPA set a goal of reducing by 25 percent the paperwork burden associated with requirements in effect as of January 1, 1995. By January 1997, EPA had removed 15.6 million hours of paperwork burden, a reduction of about 15 percent, and had targeted an additional 8.3 million hours for future removal. In a more recent analysis prepared in April 1997 for the Agency's Information Streamlining Plan, EPA projects that by October 1, 1998, reductions will exceed the Agency's goal by more than 2 million hours.

EPA is creating several opportunities for regulatory and paperwork streamlining. For example, in partnership with the States, the Agency is developing a ''one-stop'' environmental reporting system that will allow facilities to submit required environmental permitting and compliance data on-line. This can save businesses and other regulated facilities time and money, help bring about quicker decisions on permitting and compliance actions, improve data accuracy, and enhance public access to environmental information.

In the area of clean water regulation, an innovative streamlining policy allows facilities to significantly reduce discharge monitoring and reporting, as long as they have good historical compliance records and are discharging higher quality water than required by their permit. In pesticide regulation, a new streamlining procedure allows pesticide registrants to make limited changes to their registration with a simple notification to the agency rather than with the usual burdensome amendment application.

Improving Environmental Compliance

Once EPA establishes public health and environmental protection rules, the Agency must ensure that businesses and others can understand and comply with them. This is particularly important for small businesses and communities that have limited staff and resources. To help these small entities, EPA is taking several steps. First, the Agency is establishing compliance assistance centers to serve as direct, readily available sources of information on the latest regulatory requirements for small businesses. EPA is also offering to reduce or eliminate penalties for violations if small businesses establish programs to detect, publicly disclose, and fix problems—as long as the violation does not involve criminal activity or a serious risk to public health or the environment. Besides making life easier for businesses and other regulated facilities, these steps can help prevent pollution and lessen the burden and expense of cleanup.

Increasing Community Participation and Partnerships

EPA recognizes that a new and improved system of environmental protection must include stronger partnerships between the public and private sectors and between the States and the Federal Government. It would also include a greater role for citizens in local, community-based decisionmaking. The Agency has taken several steps to improve these relationships and involve citizens. For example, the Agency offers Brownfields grants and Sustainable Development Challenge grants that give communities the resources necessary to clean up contamination, especially from abandoned industrial sites, and to restore environmental quality and provide environmentally sound economic opportunities. EPA also is providing better public access to environmental data, including information specific to individual communities. In fact, the public

retrieves more than 3.5 million EPA electronic documents every month, information that citizens can use to make a difference in their communities.

EPA and the States are reinventing their working relationship to strengthen management of the Nation's environmental programs. Under the National Environmental Performance Partnership System (NEPPS), EPA has negotiated agreements with 30 States to give strong State programs more leeway to set environmental priorities, design new strategies, and manage their own programs, while concentrating EPA oversight and technical assistance on weaker programs. Also, the recent agreement between EPA and the States on Core Performance Measures is another major step forward. These measures emphasize outcomes over activities and should strengthen EPA's ability to measure environmental progress over the long term.

To stregthen the relationship between the private and public sectors, EPA now is consulting with regulated industries earlier in its rule development processes. EPA sometimes employs formal consensus-based rulemaking, such as regulatory negotiations. More frequently, however, the Agency depends on informal outreach to potentially affected parties. The Agency has paid particular attention to its relationship with small businesses and, in fact, EPA has long been prominent among Federal agencies in its outreach to these small entities. The Agency not only rigorously implements the Small Business and Regulatory Enforcement Fairness Act of 1996 (SBREFA) and the Regulatory Flexibility Act (RFA), but it also uses its Small Business Ombudsman and its Office of State and Local Relationships to reach out to small entities.

Highligts of EPA's Regulatory Plan for 1997

EPA's regulatory plan for 1997 reflects the Agency's continuing commitment to create new environmental protection strategies that better protect public health and the environment at lower cost. Here are some highlights from each program office:

Office of Air and Radiation

EPA is committed to taking advantage of the flexibility granted by the Clean Air Act that enables companies, States, and communities to meet clean air goals with innovative, low-cost approaches. The Office of Air and Radiation will make nearly 200 changes in existing rules and regulations and is drafting future rules to reflect the common-sense principles of the reinvention effort. Here are a few examples:

- EPA recently established more stringent air quality standards for ozone and particulate matter based on new scientific and technical information. While the new standards offer tough protection for public health and the environment, EPA is also developing an implementation strategy that gives States and industry flexibility with which they can meet these air quality goals. The implementation strategy: (a) Respects agreements already reached by communities and businesses and does not disrupt current progress toward improving air quality; (b) recognizes the need to take regional approaches toward addressing air pollution and finds that the most cost-effective mechanism for doing so is an emissions trading plan for utilities that was recommended by 37 States; (c) gives areas that use these regional measures a ''transitional'' status and allows EPA to devise an approach that eliminates unnecessarily burdensome planning and pollution reduction requirements; and (d) provides sufficient time for developing cost-effective control plans and for compliance.
- EPA, building on successful State programs, has been working with stakeholders to develop a more streamlined way that facilities can get operating permit updates from State or local agencies. Depending on the environmental significance of the change, States would have greater flexibility to decide the appropriate amount of EPA and public review for most permit revisions.
- EPA will issue a final policy for open-market trading of ozone/smog precursors (volatile organic compounds and oxides of nitrogen) that will allow companies to trade emission credits without prior State or Federal approval. EPA believes this flexibility will help areas meet or maintain EPA's ozone standard at far less cost and provide greater incentive for companies to develop innovative emission reduction technologies.
- EPA will issue a final rule requiring additional emission reductions of nitrogen oxides, hydrocarbons, and particulate matter from mobile heavy-duty engines such as those used in trucks and buses. The Agency brought together potentially affected industries, States, regional air management organizations, and public health and environmental interest groups to participate in the rule's development.
- The Agency has proposed changes to simplify and streamline the New Source Review Program, which requires newly built facilities or those undergoing major modification to obtain a permit to ensure that emissions will not cause or contribute to air pollution problems.
- EPA will issue a final rulemaking to complete the framework for the national low-emission vehicle (NLEV) program. The program, developed in conjunction with States, automakers, and others will help States meet national air quality standards by providing cleaner cars nationwide.
- Reflecting a new emphasis on multi-media environmental protection, EPA will soon issue a final integrated rule for the pulp and paper industry that controls the release of pollutants to both water and air. The regulations are being developed jointly to provide greater protection to human health and the environment, promote pollution prevention, and enable the industry to comply more effectively.
- Because the ozone/smog problem in the cities cannot be solved by emissions reductions from cars and factories alone, the Clean Air Act calls for reducing emissions from smaller sources of smog-causing volatile organic compounds (VOCs). EPA is developing final rules to require such reductions from consumer products and architectural coatings. EPA is soliciting extensive input from the regulated industries, especially small businesses, and is designing the rules to maximize their cost-effectiveness and sensitivity to small business concerns.
- EPA has worked with major stakeholders to design a final rule assuring that air emissions control equipment is properly monitored and maintained. This underscores EPA's commitment to preventing pollution rather than imposing additional command-and-control regulations.
- From discussions with affected industries, EPA has learned that many companies find it difficult to know what is expected of them given the growing complexity of the regulatory system during the last 25 years. In many cases, regulations may be duplicative, overlapping, or inconsistent, especially in the areas of monitoring, recordkeeping, and reporting. In response to these problems, early next year, EPA will propose a rule intended to consolidate and synchronize all Federal air regulations that apply to the synthetic

organic chemical manufacturing industry. If this pilot program proves successful, it will be expanded to cover air rules for other industries and also possibly to water and waste requirements.

- EPA will also carry out its statutory responsibility to certify whether the Department of Energy's Waste Isolation Pilot Plant (WIPP) in New Mexico complies with regulations governing the disposal of radioactive waste. In addition, the Agency will establish health and safety standards for the high-level nuclear waste repository planned for Yucca Mountain in Nevada and will set safety standards for cleanup of radioactively contaminated sites.

Office of Water

- On August 6, 1996, President Clinton signed the Safe Drinking Water Act Amendments of 1996. The amendments will bring about substantial changes to the national drinking water program for EPA, States, and water utilities and provide greater protection and information for the 240 million Americans served by public water systems. To implement the new law, EPA will be involving diverse stakeholders in developing a new program to protect water sources; developing guidelines for consumer confidence reports that water suppliers will provide to their customers; increasing research and cost-benefit analysis; gathering data that will be used to develop a list of potential drinking water contaminants; and helping the States implement a billion-dollar drinking water State revolving fund.
- To provide more regulatory flexibility, EPA is streamling five of its water-related programs: The National Pollutant Discharge Elimination System (NPDES) program, the pretreatment program, the national primary drinking water program, the sewage sludge program, and the water quality planning and management program.
- In the NPDES program, EPA is removing outdated requirements, removing and streamlining unnecessary procedures, streamlining permit application and modification procedures, and reducing monitoring and reporting requirements. For example, EPA will consolidate and revise industrial and municipal permit application forms and streamline the application process.
- EPA is proposing to streamline the 301(h) regulations, which allow POTWs the opportunity to obtain a modification of secondary treatment requirements under certain conditions. This action would streamline the renewal process for POTWs with 301(h) modified NPDES permits.
- EPA is revising NPDES pretreatment program regulations to simplify program operation and streamline requirements. The Agency is currently considering a number of simplifying changes that would reduce the current burden to publicly owned treatment works (POTWs) and industrial users discharging to POTWs. The changes under consideration include exclusions from various requirements for small facilities that contribute insignificant amounts of pollution and reduced and/or more flexible reporting, inspection, and sampling requirements.
- The Agency is reformatting existing drinking water and effluent guideline standards to make them easier for Federal, State, and local governments and the regulated community to read and understand.
- The Agency is also streamlining the drinking water monitoring requirements to provide greater latitude for State discretion in customizing the timing and sampling frequencies for monitoring to local circumstances.
- EPA is modifying the Round I Sewage Sludge Use or Disposal Regulations to make the requirements for sewage sludge incinerators self-implementing and to provide the regulated community flexibility in meeting other sludge requirements. These changes will increase flexibility and reduce regulatory burden.
- The Agency is also streamlining the State Sewage Sludge Management Regulations to make it easier for States with well-run sewage sludge management programs to be eligible for program authorization without having to make unnecessary administrative changes to their programs.
- EPA is revising requirements for water quality planning and management to reduce the burden associated with the program and to make it more efficient. EPA is also working with a FACA Committee to identify ways to improve the efficiency, effectiveness, and pace of EPA, State, and tribal total maximum daily load programs. FACA recommendations may include changes to the water quality planning and management regulations.
- Finally, the Agency will be pursuing innovative, less-costly, nonregulatory water protection strategies, such as effluent trading within watersheds.

Office of Prevention, Pesticides, and Toxic Substances

- The new Food Quality Protection Act (FQPA), signed into law on August 3, 1996, overhauls U.S. pesticide laws to regulate pesticides on foods and better protect children. During the next 2 years, EPA will be engaged in an intensive implementation effort, including developing new regulations, guidance, and programs. As specific regulatory and program changes are identified, the Agency will enter them into the regulatory agenda.
- EPA will continue to improve the public's right to know about toxic chemicals in their community through the Toxic Release Inventory (TRI) program of the Emergency Planning and Community Right-to-Know Act (EPCRA). The TRI is a data base that provides communities with information on releases to air, water, and land for approximately 600 toxic chemicals. Armed with this information, communities can better understand the nature of toxic releases at the local level, assess risk, and make informed decisions about local priorities.
- For chemicals that are highly toxic at very low dose levels, persist for extended periods in the environment, and/or bioaccumulate through the food chain, EPA is evaluating under TRI whether to lower the reporting threshold amount—the amount of chemical a facility uses, manufactures, or processes before it must report releases. In addition, EPA is working with stakeholders to simplify the chemical reporting forms and the Agency's annual reports to make them easier to understand.
- By the end of 1997 or early 1998, EPA plans to issue a final rule that will streamline the Toxic Substances Control Act's (TSCA) PCB management program. This rule is the first comprehensive review of the PCB regulations in 17 years. The modification will allow currently prohibited activities that do not pose an unreasonable risk to health and the environment and is expected to result in significant cost savings for the regulated community.
- Currently, chemical manufacturers are required to report the names of the chemicals they produce, the quantity produced, and the locations of manufacturing facilities. EPA plans to propose expanding this to include information on potential exposure to

the chemical and how the chemicals are used (e.g., in manufacturing processes). This allows EPA and others to identify the chemicals of highest concern so that the Agency can set goals for chemical assessment, risk management, and prevention programs. The action will also encourage pollution prevention by identifying safer chemical substitutes.

- EPA intends to issue the remaining regulations mandated by the Residential Lead-Based Hazard Reduction Act of 1992, which requires EPA to establish standards for lead-based paint, lead-contaminated soil, and lead-contaminated dust. EPA will issue final regulations that require renovators to provide a lead-hazard information brochure (developed by EPA) to clients before beginning work. EPA will also propose regulations identifying what lead levels in paint, dust, and soil and what lead-paint conditions (e.g., flaking, peeling) pose a health hazard.

Office of Solid Waste and Emergency Response

- The Office of Solid Waste and Emergency Response (OSWER) is planning to propose a number of actions to streamline and simplify compliance under the Resource Conservation and Recovery Act (RCRA), the Federal law governing hazardous waste management. As part of its effort to refocus hazardous waste regulations on high-risk wastes, EPA is undertaking a number of actions to tailor standards to the nature or degree of risk posed by particular wastes. One example of this is the development of management standards for cement kiln dust. The proposed standards for this large volume waste will be tailored to protect public health and the environment while imposing minimal burden on the regulated community.
- EPA is streamlining the regulation of materials that contain substances listed as hazardous waste. Certain regulations are overly broad in that they apply regardless of the concentrations of the listed wastes or the mobility of the toxicant in the waste. As a result, they regulate certain low-risk wastes (in particular, treatment residuals) as if they posed high risk. EPA's common-sense approach would exempt these low-risk wastes from the full management requirements designed for high-risk hazardous wastes.
- On May 1, 1996, EPA published an advance notice of proposed rulemaking to solicit comment on alternative approaches to contamination cleanup at hazardous waste management facilities. EPA believes final regulations are needed to promote national consistency, clarify cleanup requirements, and reduce the number of site-specific negotiations and costly litigation.
- EPA is developing a regulation which will address the problems posed by contaminated media found at hazardous waste management facility cleanups. The Agency plans to make targetted fixes which will promote ongoing and future cleanups, as well as provide significant regulatory relief in several areas.
- EPA also plans to establish new emissions standards for hazardous waste combustors under joint Clean Air Act and RCRA authority. These revised standards will avoid duplicative Agency effort and piecemeal regulation of the hazardous waste management industry while protecting public health and the environment from chlorinated dioxins and furans.
- Finally, EPA is in the process of developing new streamlined rules governing the definition of solid waste. These rules will make it easier for companies to determine what wastes/processes are subject to RCRA jurisdiction. In addition, EPA is streamlining the requirements for managing recycled hazardous waste to provide more clarity and to remove disincentives to safe recycling.

Summary

In developing all of these actions, EPA is committed to flexible, common-sense, cost-effective regulatory programs that protect public health and the environment.

EPA

PRERULE STAGE

107. REPORTING THRESHOLD AMENDMENT; TOXIC CHEMICALS RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

Priority:

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

Legal Authority:

PL 99-499

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

The Toxics Release Inventory (TRI) currently requires reporting from facilities which manufacture or process at least 25,000 pounds of a listed chemical, or otherwise use 10,000 lbs of a listed chemical. These thresholds were initially established under the Emergency Planning and Community Right-to-know Act (EPCRA) section 313(f)(1). Section 313(f)(2) of EPCRA gives the Administrator the power to establish a threshold amount for a toxic chemical different from the amount established by paragraph (1) and that such altered thresholds may be based on classes of chemicals. EPA is considering lowering the thresholds for those chemicals which it determines to be highly toxic at very low dose levels and/or have physical, chemical, or biological properties that make the chemicals persist for extended periods in the environment, and/or bioaccumulate through the food chain. Persistent bioaccumulative toxic chemicals are of particular concern in ecosystems such as the Great Lakes Basin due to the long retention time of the individual lakes and the cycling of the chemicals from one component of the ecosystem to another. EPA is currently conducting analysis to determine which chemicals present the specific problems described above, and to determine what the altered threshold value(s) should be.

Statement of Need:

TRI is the most complete and accessible source of information for the public on toxic chemical releases in communities across the United States. The intention of Congress was for TRI, and indeed all of EPCRA, to provide information to local communities. Communities need this information to better understand the nature of the releases at the local level. The intent of TRI has been to share information on releases with local communities to help in their assessments of the risks. This basic local empowerment is the cornerstone of the right-to-know program.

Yet because of the current reporting thresholds, TRI does not collect release and transfer data on small quantities of chemicals that may persist and bioaccumulate in the environment. Even small releases of such chemicals can have significant impacts on human health and the environment. Congress gave EPA the authority to adjust

reporting thresholds, because it recognized that this might be necessary in order to address the American publics right to know what is happening to the environment near their homes, schools, and businesses.

Summary of the Legal Basis:

42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076; EPCRA S313

Alternatives:

EPA recognizes the reporting burden inherent in TRI, and is continuing to take every reasonable opportunity to minimize this burden while ensuring the public's right-to-know. As such, all available alternatives will be identified and evaluated.

Anticipated Costs and Benefits:

The anticipated costs related to this action are unknown at present. At this point the Agency is still unsure how low to set reporting thresholds or for what specific list of chemicals the lower reporting thresholds should apply. The information reported in TRI increases the knowledge levels of pollutants released to the environment and pathways to exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

Risks:

Currently communities do not have access to TRI data on chemicals that, although released in relatively small quantities, pose a potential risk to human health and the environment because they persist and bioaccumulate. By lowering the reporting thresholds for such chemicals the public will be able to determine if such chemicals are being released into their communities and whether any action should be taken to reduce potential risks.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal

Sectors Affected:

495 Sanitary Services; 516 Chemicals and Allied Products; 517 Petroleum and Petroleum Products; 738 Miscellaneous Business Services

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3880.

OTHER SECTORS AFFECTED: Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939).

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RIN: 2070–AD09

EPA

PROPOSED RULE STAGE

108. ● TOXICS RELEASE INVENTORY (TRI): REVIEW OF CHEMICALS ON ORIGINAL TRI LIST

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 1101 et seq

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

When TRI was established by Congress in 1986, the statutory language placed 309 chemicals and 20 categories of chemicals on the TRI list; that is referred to as the original TRI list. The chemicals on the original list were taken from two existing lists of toxic substances: the Maryland Chemical Inventory Report List of Toxic or Hazardous Substances, and the New Jersey Environmental Hazardous Substances list. This action constitutes the first systematic review of toxicology and environmental data for all the chemicals on the original TRI list to determine whether data for those chemicals conform with the statutory criteria for listing of chemicals on TRI. Chemicals for which data do not meet the statutory criteria will be delisted.

Statement of Need:

When chemicals on the original TRI list have been subjects of petitions for delisting, thorough reviews have been carried out of toxicity and environmental data for the chemicals to determine whether the chemicals should be retained on TRI or should be delisted. Although petitions for delisting have resulted in reviews of a substantial number of chemicals on the original TRI list, this action is the first systematic review of toxicity and environmental data for all the chemicals on the original list. This action is needed to ensure that TRI lists chemicals for which data on toxicity and environmental harm meet the statutory criteria, therefore justifying the burden placed on entities required to report for the TRI program.

Summary of the Legal Basis:

Section 313(d) of EPCRA authorizes EPA to add or delete chemicals from the TRI list, and sets forth criteria for these actions.

Alternatives:

EPA recognizes the reporting burden inherent in compliance with TRI, and takes all reasonable opportunities to minimize the burden while ensuring that the public receives information necessary for protection of health and the environment. Reporting burdens would be reduced if chemicals are taken off the TRI list as a result of the data review. The possibility that chemicals will be delisted as a result of the data review is an alternative to retaining chemicals on the TRI list.

Anticipated Costs and Benefits:

The anticipated costs to industry related to this action are unknown at present. Costs to industry would be reduced if chemicals are removed from the TRI list. Benefits would result from any reduction in reporting burden as a result of the delisting of a chemical.

Risks:

TRI provides information to industry, governments and the public on chemicals that can cause harm to health or the environment. The review of toxicology and environmental data for all chemicals on the original TRI list will ensure that the list focuses only on those chemicals that pose meaningful possibilities of risks to human health or the environment, increasing the effectiveness of the TRI.

Timetable:

Action	Date	FR Cite
NPRM	07/00/98	
Final Action	12/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Federal

Sectors Affected:

495 Sanitary Services; 516 Chemicals and Allied Products; 517 Petroleum and Petroleum Products; 738 Miscellaneous Business Services

Additional Information:

SAN No. 4015.

OTHER AFFECTED SECTORS: Identify the affected industry(ies) and provide the SIC code(s): Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939).

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RIN: 2070–AD18

EPA

109. TRI CHEMICAL EXPANSION; FINALIZATION OF DEFERRED CHEMICALS

Priority:

Other Significant

Legal Authority:

42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076; Emergency Planning and Community Right-To-Know Act sec 313

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

On November 30, 1994, EPA added 286 chemicals and chemical categories to the EPCRA section 313 list, including 39 chemicals as part of two delineated categories. Each chemical and chemical category was found to meet the statutory criteria described in EPCRA section 313(d)(2)(A)-(C). At the time, EPA deferred final action on 40 chemicals and one chemical category until a later date. These were deferred because the comments received on them raised difficult technical or policy issues which required additional time to address. EPA chose not to delay final action on the 286 chemicals and chemical categories because the additional time needed to address the issues surrounding the smaller group of 40 chemicals and one chemical category; rather, EPA believed it to be in the spirit of community right-to-know to proceed with the final rulemaking of the addition of the 286 chemicals and chemical categories.

Statement of Need:

The original Toxic Release Inventory (TRI) chemical list consisted of 320 chemicals and chemical categories. In an effort to provide the public with a broader picture of chemicals in their communities, EPA, in accordance with EPCRA section 313(d), is expanding the original toxic chemical list. By providing the public with information on these chemicals they can participate in informed environmental decisionmaking to reduce risks to human health and the environment. On January 12, 1994 (59 FR 1788), EPA published a proposed rule to add 313 chemicals and chemical categories to the TRI chemical list. Of the 313 chemicals and chemical categories proposed, there are approximately 160 pesticide active ingredients. The chemicals being proposed were selected from numerous other regulatory lists and meet the criteria for human health and environmental toxicity in EPCRA section 313(d)(2). In addition, the chemicals passed a production volume screen to ensure that reports would be received if they are added to the TRI list. Part of this activity included the review of 17 chemicals, previously described in RIN 2070-AC40/SAN 3007. Sixteen of these chemicals are from a list of hazardous air pollutants subject to requirements of the Clean Air Act Amendments of 1990, and one was considered for addition due to its extreme aquatic toxicity. Of these 17 chemicals nine were included in the proposed rule.

Summary of the Legal Basis:

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the TRI list and sets forth the criteria for these actions.

Alternatives:

EPA recognizes the reporting burden inherent in TRI, and is continuing to take every reasonable opportunity to minimize this burden while ensuring the public's right-to-know. As such, all alternatives will be identified and evaluated.

Anticipated Costs and Benefits:

The final total costs are not yet known, since the final listing decisions have not yet been made. However, estimates of the potential costs were provided as part of the economic analysis that was prepared for the proposed action. Undoubtedly, the addition of any of these chemicals or the chemical category will result in additional costs to the reporting community. The additional information reported in TRI increases the public's knowledge regarding the levels of pollutants released to the environment and pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals. It allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liabilities; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

Risks:

With more information, communities will be empowered to determine whether they need to take action to reduce risks potentially associated with

the chemicals being released in their communities. Without such information, local communities would not be aware of potential risks to the environment and human health that may result from the chemical releases of local facilities. The public can also use this data to evaluate potential risks from these chemicals and to determine how to avoid these risks.

Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Final Finalizes listing of 286 chemicals and chemical categories	11/30/94	59 FR 61432
Supplemental NPRM Deferred Chemicals	04/00/98	
Final Deferred Chemicals	12/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Sectors Affected:

20 Food and Kindred Products; 21 Tobacco Products; 22 Textile Mill Products; 23 Apparel and Other Finished Products Made from Fabrics and Similar Materials

Additional Information:

SAN No. 3007.

Includes SIC codes 10 (except 1011, 1081, 1094); 12 (except 1241); 20-39, 4911; 4931; 4939; 4953; 5169; 5171; and 7389

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RIN: 2070–AC47

EPA

110. TSCA INVENTORY UPDATE RULE AMENDMENTS

Priority:

Other Significant

Legal Authority:

15 USC 2607(a)

CFR Citation:

40 CFR 710

Legal Deadline:

None

Abstract:

This action would amend the current Toxic Substances Control Act (TSCA) Inventory Update Rule (IUR) to require chemical manufacturers to report to EPA data on exposures and the industrial and consumer end uses of chemicals they produce. Currently, EPA requires chemical manufacturers to report the names of the chemicals they produce, as well as the locations of manufacturing facilities and the quantities produced. About 3,000 facilities reported data on about 9,000 unique chemicals during the last reporting cycle under the IUR. Data obtained would be used by EPA and others to: better understand the potential for chemical exposures and then screen the chemicals now in commerce and identify those of highest concern; establish priorities and goals for their chemical assessment, risk management and prevention programs and monitor their progress; encourage pollution prevention by identifying potentially safer substitute chemicals for uses of potential concern; and enhance the effectiveness of chemical risk communication efforts. EPA has held meetings with representatives of the chemical industry, environmental groups, environmental justice leaders, labor groups, State governments and other Federal agencies to insure public involvement in the TSCA Inventory Update Rule Amendments Project.

Statement of Need:

There are approximately 70,000 chemicals in commerce and listed on the updated TSCA Inventory. EPA faces the challenge of sorting through these chemicals to identify the ones of most concern and then taking action to mitigate unreasonable risks. The current IUR collects some of the key data, such as production volumes, that help to identify chemicals of concern; however, information on how chemicals are used commercially, which is essential to determining possible exposure routes and scenarios and potential safer substitute chemicals, is not covered by IUR. This action will propose to modify the inventory update process so that data essential to an effective TSCA Inventory screening program are available to EPA.

In addition to the specifics of the kind and format of the desired end use data reporting, EPA will consider reforms of the IUR: How to include inorganic chemicals, which have been exempted from reporting in the past, so that risks from these chemicals can be better assessed and managed; How to ease the linkage of amended IUR data to other environmental data sources like the Toxic Release Inventory to enhance the data's usefulness; and How to change IUR reporting so that the frequency of submitter confidentiality claims is reduced so that the public can have better access to relevant data on toxics.

A national report will make data collected via the amended IUR publicly available. This report will not contain any information claimed to be confidential.

Alternatives:

Although data on the use of specific chemicals can be found in varying sources, there is no national, comprehensive, current searchable database providing consistent information on a wide variety of chemicals. EPA has examined alternate sources of the information including state information, Federal databases and privately collected information. EPA can find no information comparable to the data anticipated to be collected through amendments to the IUR.

Anticipated Costs and Benefits:

EPA anticipates costs of this action to be well under $100 million for the first year of reporting. Total costs of this action depend on the amendments to IUR that are contained in a proposed rule. The amended IUR will assist EPA in screening chemicals in commerce and identify those of highest concern; establishing priorities and goals for its chemical assessment, risk management and prevention programs and monitor their progress; identifying potentially safer substitute chemicals for uses of potential concern; and enhancing the effectiveness of chemical risk communication efforts.

Risks:

This action will secure data on describing how chemicals in commerce are used; this data is essential to determine possible exposure routes and scenarios. Using these exposure estimates, EPA's toxics program will be able to better focus on chemical risks of most concern.

Timetable:

Action	Date	FR Cite
NPRM	05/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3301.

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RIN: 2070–AC61

EPA

111. DATA EXPANSION AMENDMENTS; TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

Priority:

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

Legal Authority:

42 USC 11013; Emergency Planning and Community Right-To-Know Act sec 313; 42 USC 11023; 42 USC 11048; 42 USC 11076

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

The original Toxics Release Inventory (TRI) required reporting from manufacturing facilities on the releases and transfers of toxic chemicals and wastes including waste treatment and disposal methods. This requirement was imposed under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313(g). Information on waste management practices, including recycling, energy recovery, and source reduction activities, were added to TRI pursuant to the 1990 passage of the Pollution Prevention Act. EPA is currently considering whether additional data elements related to a mass balance/materials accounting program should be considered for incorporation into the TRI database. The additional data elements included for consideration include: quantity brought on site; quantity produced on site; quantity consumed on site; quantities manufactured, processed or otherwise used; quantity contained in or as product; quantity stored on site as waste, and beginning and ending raw materials inventory. The issue of collecting mass balance/materials accounting information has been debated for over a decade. Congress, in enacting EPCRA, directed the National Academy of Sciences (NAS) to study this issue further. NAS recommended that the issue of adding materials accounting data merited further analysis.

Statement of Need:

TRI is the most complete and accessible source of information for the public on toxic chemical releases in communities across the United States. The intention of Congress was for TRI, and indeed all of EPCRA, to provide information to local communities. Communities need this information to better understand the nature of the releases at the local level. The intent of TRI has been to share information on releases with local communities to help in their assessments of the risks. This basic local empowerment is the cornerstone of the right-to-know program.

Yet TRI would be enhanced by collecting chemical use/ materials accounting data. This additional data would provide the public with the information to measure source reduction progress, better participate in pollution prevention planning, identify source reduction opportunities and follow the flow of toxic chemicals into the community, through the manufacturing process and leaving the plant not only as transfers and releases, but also in products. Materials accounting information also allows a method of checking data reported to TRI, provides a better picture for regulatory integration and can be used for others objectives such as research and priority-setting. Congress gave EPA the authority to expand TRI, both in terms of the data reported and the facilities required to report, because it recognized that the American public has a right to know what is happening to the environment near their homes, schools, and businesses.

Summary of the Legal Basis:

42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076; EPCRA Sec. 313

Alternatives:

EPA recognizes the reporting burden inherent in TRI, and is continuing to take every reasonable opportunity to minimize this burden while ensuring the public's right-to-know. As such, all available alternatives will be identified and evaluated.

Anticipated Costs and Benefits:

The anticipated costs related to this action are unknown at present. At this point the Agency is still unsure about what data elements need to be added to TRI, whether this data will even need to be collect or is already available and therefore is unable to estimate any costs. The information reported in TRI increases the knowledge levels of pollutants released to the environment and pathways to exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

Risks:

Currently communities do not have access to chemical use/ materials accounting data on the TRI. By adding such data to the TRI the public will have a more complete picture of the use and distribution of toxic chemicals in their communities as well as potential risks that might result from such use. The public will also be able to better assess how pollution prevention activities may be reducing potential risks in their communities.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/96	61 FR 51322
NPRM	08/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal

Sectors Affected:

495 Sanitary Services; 516 Chemicals and Allied Products; 517 Petroleum and Petroleum Products; 738 Miscellaneous Business Services

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3877.

OTHER SECTORS AFFECTED: Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10

except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939).

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RIN: 2070–AD08

EPA

112. ● TRI; ADDITION OF OIL AND GAS EXPLORATION AND PRODUCTION TO THE TOXIC RELEASE INVENTORY

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

42 USC 11013; EPCRA 313; 42 USC 11023; 42 USC 1108; 42 USC 11076

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

The original Toxics Release Inventory (TRI) required reporting from facilities in Standard Industrial Classification (SIC) codes 20-39. These SIC codes cover manufacturing facilities only. This requirement was specified under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313(b)(1)(A). EPCRA section 313(b)(1)(B) and (b)(2) provide the Administrator with the authority to add or delete SIC codes and the discretion to add particular facilities based on a broad set of factors. The Environmental Protection Agency (EPA) has recently expanded this original list of covered industries. EPA is beginning analyses to determine whether facilities which perform exploration and production of oil and gas should also be added to the list of facilities covered under EPCRA section 313. Facilities recently added include certain electric generating facilities, waste management facilities, metal and coal mining, hazardous waste treatment facilities, solvent recyclers, and wholesale distributors of chemicals and petroleum products.

Statement of Need:

The Emergency Planning and Community Right-To-Know Act (EPCRA) was passed to better plan for and prevent chemical accidents and emergencies and to provide the public with access to information regarding the release and disposition of toxic chemicals in their communities. The public access requirements of EPCRA originally covered facilities operating within the manufacturing sector. It has come to EPA's attention that industry groups not classified within the manufacturing sector also manage toxic chemicals and that information concerning their management practices is limited and not publicly available. EPA believes that activities conducted by oil and gas exploration and production facilities involve toxic chemicals and may be associated with wastes that are managed for which limited information is publicly available. EPA believes that information related to the management of wastes associated with oil and gas exploration and production activities may significantly contribute to the public's knowledge of the release and disposition of toxic chemicals in the environment.

Summary of the Legal Basis:

This requirement was specified under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313(b)(1)(A). EPCRA section 313(b)(1)(B) and (b)(2) provide the Administrator with the authority to add or delete SIC codes and the discretion to add particular facilities based on a broad set of factors. The statute as originally passed required reporting from facilities in Standard Industrial Classification (SIC) codes 20-39 only. The Environmental Protection Agency (EPA) has recently expanded this original list of covered industries.

Alternatives:

Based on currently available information, existing sources of information are incomplete and do not satisfy the need of making publicly available information on the release and disposition of toxic chemicals in communities.

Anticipated Costs and Benefits:

Based on the current status of the project, anticipated costs are unknown. Estimated costs for compliance with EPCRA section 313 reporting requirements are available, but until further evaluation is completed no estimates are available for the impact of the resulting requirements. Equally true, until further evaluations are performed, estimated benefits cannot be accurately calculated. Generally, anticipated benefits will be in the form of making available more complete information regarding the release and disposition of toxic chemicals in the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/00/98	
Final	08/00/99	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Federal

Sectors Affected:

13 Oil and Gas Extraction

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 4023.

Program is implemented at the Federal level. States are designated as co-recipients of the information, but are not required to manage the information in any particular manner.

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RIN: 2070–AD19

EPA

113. TRI; POLLUTION PREVENTION ACT INFORMATION REQUIREMENTS

Priority:

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

Unfunded Mandates:

Undetermined

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 11013; Pollution Prevention Act

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

Section 6607(b) of the Pollution Prevention Act of 1990 (PPA)(Pub.L. 101-508) requires the addition of several data elements to the Toxic Chemical Release Inventory (TRI) reporting requirements as promulgated under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub.L. 99-499). Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process or otherwise use listed toxic chemicals to annually report their releases of these chemicals to each environmental medium. The PPA mandates that section 313 covered facilities also report on source reduction and recycling activities relating to the toxic chemicals beginning with the 1991 reporting year. Since 1991, covered facilities have been providing this information to EPA in section 8 of EPA's Form R. On September 25, 1991 (56 FR 48475), EPA proposed regulations which would provide definitions and instructions for reporting the PPA data elements on the Form R. EPA intends to issue a supplemental proposal to amend certain aspects of the 1991 proposed rule, as well as seek comment on a few new proposals.

Statement of Need:

TRI is the most complete and accessible source of information for the public on toxic chemical releases in communities across the United States. The intention of Congress was for TRI, and indeed all of EPCRA, to provide information to local communities. Communities need this information to better understand the nature of the releases at the local level. The intent of TRI has been to share information on toxic chemical releases with local communities to help in their assessments of the potential risks associated with such releases. This basic local empowerment is the cornerstone of the right-to-know program.

Beginning with the 1991 reporting year, the PPA has mandated the collection of source reduction and recycling information on the Form R. Without complete instructions and definitions for the terms used, facilities across the nation have been reporting this information inconsistently. These inconsistencies severely compromise the data quality of the information reported. This action will improve the understanding, awareness, and decision-making related to the collection, provision, and distribution of these required data elements.

Summary of the Legal Basis:

Section 6607 of the Pollution Prevention Act of 1990 requires the reporting of pollution prevention data under the TRI program established by section 313 of EPCRA. In order to collect data of good quality, EPA must provide instructions and definitions to ensure consistency in the interpretation of the various words and phrases used by the PPA.

Alternatives:

EPA recognizes the reporting burden inherent in TRI and the PPA, and is continuing to take every reasonable opportunity to minimize related burdens, while ensuring the public's right-to-know. Providing guidance to facilities on how to properly report the PPA data will reduce their overall reporting burden.

Anticipated Costs and Benefits:

EPA estimates that industry currently incurs a cost of $61.3 million annually to report PPA data on the Form R. This estimate does not include the costs related to the seven industries newly subject to EPCRA 313. The cost to EPA to process source reduction and waste management data equals $2.7 million each year. This action is not expected to add to these existing costs, and may actually result in a reduction to the overall industry burden and costs .

Risks:

Because of the inconsistencies in the PPA data currently reported on the Form R, communities are unable to accurately compare the risks related to release and recycling activities between different facilities. By providing covered facilities with clear guidance for reporting this information, the public will be better equipped to determine and compare the risks associated with toxic chemicals being released and managed in their community.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48475
Supplemental NPRM	04/00/98	
Final	12/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Federal

Sectors Affected:

516 Chemicals and Allied Products; 517 Petroleum and Petroleum Products; 738 Miscellaneous Business Services

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2847.

Affected Sectors Include: SIC 10 (except 1011, 1081,1094); 12 (except 1241); 20-39; 4911; 4931; 4939; 4953;

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RIN: 2070–AC24

EPA

114. SELECTED RULEMAKINGS FOR ABATING LEAD HAZARDS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 2683; PL 102-550

CFR Citation:

40 CFR 745

Legal Deadline:

Final, Statutory, April 28, 1994, (Sections 402(a) - 403 - 404).

Other, Statutory, October 28, 1994, See additional information.

Abstract:

The Residential Lead-Based Hazard Reduction Act of 1992 requires EPA to promulgate a number of regulations intended to address lead poisoning in the U.S. EPA is to promulgate regulations to (a) identify the paint conditions and lead levels in dust and soil that would result in adverse human health effects (Section 403) (on July 14, 1994, EPA issued guidance to provide preliminary information while a proposal is being developed); (b) promulgate regulations (section 402(a)) governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified (in addition, EPA must promulgate a Model State program (section 404) which may be adopted by any State which seeks to administer and enforce a State Program); (c) promulgate regulations (section 406) requiring renovators to provide a lead hazard information brochure (developed separately by EPA) to clients before beginning work; (d) promulgate, with HUD, regulations (section 1018) that require the following before the sale or lease of pre-1978 housing: disclosure of lead-based paint hazards, provisions of a lead-paint information brochure to the prospective buyer or renter, and for buyers, and the opportunity to conduct a lead risk assessment or inspection; and (e) promulgate regulations (section 402(c)(3)) addressing lead risks from renovation and remodeling activities or state why no regulation is necessary.

Statement of Need:

Childhood lead poisoning is a pervasive problem in the United States, with almost a million young children having more than 10 ug/dl of lead in their blood, Center for Disease Control's level of concern. Elevated blood-lead levels can lead to reduced intelligence and neurobehavioral problems in young children, as well as causing other adverse health effects in children and adults. Although there have been dramatic declines in blood-lead levels due to reductions of lead in paint, gasoline, and food sources, remaining paint in older houses remains the significant source of childhood lead poisoning. These rules are designed to reduce exposure to that source in a targeted and sensible manner.

Alternatives:

Alternatives to each of the mandated activities will be analyzed. However, in many cases (particularly regulations written under Sections 406 and 1018) the statute is very prescriptive.

Anticipated Costs and Benefits:

For rules promulgated under section 406 cost estimates have been provided with the proposed rule, and will be available with the final rule. For sections 402, 404 and 1018, the costs have been provided in the final economic impact analysis that was prepared in conjunction with the final rules. For section 403, costs will still need to be estimated in a draft economic impact analysis that will be prepared for the proposed rule. Since benefits depend on private sector implementation of certain lead hazard abatement activities which are not mandated by any of these rules, benefits will be difficult to quantify.

Risks:

These rules are aimed at reducing the prevalence and severity of lead poisoning, particularly in children.

Timetable:

Action	Date	FR Cite
NPRM Section 406(b)	03/02/94	59 FR 11108
NPRM Sections 402(a) and 404 (Residential)	09/02/94	59 FR 45872
NPRM Section 1018	11/02/94	59 FR 54984
Final Section 1018	03/06/96	61 FR 9064
Final Sections 402(a) and 404 (Residential)	08/29/96	61 FR 45778
Final Section 406(b)	12/00/97	
NPRM Section 403	02/00/98	
NPRM Section 402(a) (Debris)	03/00/98	
NPRM Sections 402(a)(3)/404(h)	08/00/98	
NPRM Section 402(a) (Public/Commercial)	12/00/98	
NPRM Section 402(c)	12/00/98	
Final Section 402(a) (Debris)	12/00/98	
Final Section 402(a) (Public/Commercial)	12/00/99	
Final Section 402(c)	12/00/99	
Final Section 403	12/00/99	
Final Sections 402(a)(3)/404(h)	02/00/00	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3243.

Lead Hazard Standards (section 403)(RIN 2070-AC63)

SAN 3244 - Lead-Based Paint Activities Rules: Training, Accreditation and Certification Rule and Model State Plan Rule (Sections 402 and 404(RIN: 2070-AC64).

SAN 3242 - Lead-Based Paint Disclosure Requirements at Renovation of Target Housing (section 406)(RIN: 2070-AC65).

SAN 3499 - Lead-Based Paint Hazard Information Requirements at the Transfer of Target Housing: Joint with HUD (Section 1018)(RIN: 2070-AC75) Lead-Based Paint Activities, Training, and Certification: Renovation and Remodeling (section 402(c)(3))(RIN: 2070-AC83).

Legal Deadlines: Statutory: (sections 403; 402; 404) Final: Statutory April 28, 1994 (sections 403; 402; 404), Other Statutory: (sections 406; 1018) Final; Statutory; October 28, 1994 (sections 406; 1018); Final Statutory; October 28, 1996 (Section 402(c)(3)).

Additional Legal dateline information: Fin. Stat. (Sec. 1018; 406(b)); Fin. Stat.: 10/28/96 (Sec. 402(c)); Fin. Stat.: 08/30/98 (Sec. 404(h); 402(a)(3)).

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EPA

115. NPDES STREAMLINING RULE—ROUND III

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:

33 USC 1311; Clean Water Act sec 301; 33 USC 1312; Clean Water Act sec 302;

33 USC 1314; Clean Water Act sec 304; 33 USC 1316; Clean Water Act sec 306; 33 USC 1318; Clean Water Act sec 308; 33 USC 1342; Clean Water Act sec 402; 33 USC 1361; Clean Water Act sec 501

CFR Citation:

40 CFR 122; 40 CFR 123; 40 CFR 124

Legal Deadline:

None

Abstract:

On February 21, 1995, President Clinton issued a directive requesting that Federal agencies review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations. In response to that directive, EPA plans to issue several rulemaking packages to revise NPDES requirements in parts 122, 123, and 124 to eliminate redundant regulations, provide clarification, and remove or streamline unnecessary procedures. Revisions under consideration in this rule include adding additional permit modifications that can be considered minor modifications at 122.63, and changes to requirements concerning EPAs review of State permits. Other revisions may be considered as work on this rule progresses. This rulemaking is expected to affect entities which implement the NPDES program or are regulated by it. This includes small businesses and State, Tribal and local governments. Most of these effects are expected to be deregulatory or streamlining in nature. This rulemaking is in the very early stages.

Statement of Need:

This is in response to the President's directive.

Summary of the Legal Basis:

This action is not being taken as a result of a court order and is not required by law.

Alternatives:

Rulemaking is in too early a stage for there to be alternatives. However, alternatives will be considered later on.

Anticipated Costs and Benefits:

Rulemaking is expected to provide benefits in costs and labor to regulated entities and permitting authorities. Rule is not expected to impose substantial costs.

Risks:

Risk is expected to be minimal.

Timetable:

Action	Date	FR Cite
NPRM	09/00/98	
Final	09/00/99	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3786.

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RIN: 2040–AC84

EPA

116. STREAMLINING THE GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

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:

33 USC 1314; Clean Water Act sec 304; 33 USC 1317; Clean Water Act sec 307; 33 USC 402(b)(8); Clean Water Act sec 402(b)(8); 33 USC 1361; Clean Water Act sec 501

CFR Citation:

40 CFR 403

Legal Deadline:

None

Abstract:

The National Pretreatment Program was established in 1972. The Office of Water is exploring ways to reduce federally mandated activities under the program that don't result in benefits to the environment and to improve program efficiencies. For example, this rule will consider appropriate exclusions or variable requirements for numerous smaller facilities that contribute insignificant amounts of pollutants.

Statement of Need:

Many POTWs and smaller industrial users have identified problems with the effectiveness of some requirements of the Pretreatment Program. Reducing the administrative and monitoring costs for these entities will provide greater flexibility in the use of program resources to achieve environmental protection.

Summary of the Legal Basis:

This action is not required by law or court order.

Alternatives:

None known.

Anticipated Costs and Benefits:

Undetermined as of this date; a very preliminary estimate of the burden reduction is 10-20% of the total annual burden (a net reduction of 176,000 - 350,000 hours).

Risks:

None known.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
Final	12/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3663.

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EPA

117. REVISION OF NPDES INDUSTRIAL PERMIT APPLICATION REQUIREMENTS AND FORM 2C—WASTEWATER DISCHARGE INFORMATION

Priority:

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

Unfunded Mandates:

Undetermined

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:

33 USC 1342; Clean Water Act sec 402

CFR Citation:

40 CFR 122.21(g)

Legal Deadline:

None

Abstract:

All existing manufacturing, commercial, mining, and silvicultural operations requiring a National Pollutant Discharge Elimination System (NPDES) permit must submit an application in order to obtain a permit. The existing industrial application form has not been revised since 1984 and needs to be updated to reflect statutory and regulatory changes in the NPDES program, advances in analytical methods and an increased emphasis on toxic control. The purpose of this action is to revise and consolidate existing application forms and requirements for industries, and to streamline the permit application process for these facilities. The Agency seeks to establish a unified process that minimizes the need for additional information from applicants while providing permit writers the necessary information, including toxics data, to ensure that permits adequately address concerns of permittees and environmental protection. The Agency will seek to allow the use of existing data to the extent possible and to avoid unnecessary reporting. The Agency is also considering how to utilize electronic data submission. Although these forms will increase the burden on permittees not already required to provide these data, many other permittees are already required to submit the data. The Agency is reviewing ways to minimize the need for information from small dischargers, including tribal facilities. EPA will also seek to minimize and reduce the burden on States through improvements to the application forms.

Statement of Need:

Section 402(a) of the CWA, as amended, authorizes the EPA to issue permits under the National Pollutant Discharge Elimination System (NPDES) permits program for the discharge of any pollutants or combination of pollutants. Form 2C is the NPDES permit application for discharges from manufacturing, commercial, mining and silviculture operations. Form 2C has not been revised since 1984 despite many amendments to the CWA and to the regulations under the Act which have significantly changed the permitting strategy of the NPDES program. The proposed rule will finalize changes to the regulations at 122.21(d) and 122.21(g) and to Form 2C that will make a number of improvements to the Form 2C permitting process. The proposed rule will consolidate application requirements and clarify the process for permit applicants, therefore, reducing redundant reporting and reduce permitting burden on facilities. It will effectively provide permit writers with the information necessary to develop appropriate NPDES permits consistent with requirements of the CWA. Additionally, the proposed rule will meet the updated NPDES requirements, scientific advancements, and current socioeconomical concerns.

Summary of the Legal Basis:

Not required by law or court order.

Alternatives:

The Form 2C workgroup identified several key issues to be addressed and revised. For each key issue several options were suggested and consensus was reached on these options during an April, 1996 initial Form 2C workgroup closure meeting. The proposed rule reflects the options selected.

Anticipated Costs and Benefits:

It is anticipated that the rule will reduce permitting application burden to facilities and improve the permit writers ability to evaluate discharges because of improvements made to information and data submission requirements. Generally, it is anticipated that the rule will clarify the permitting application requirements. As a whole, such changes to the rule and Form 2C will enable it to serve its regulatory purpose more efficiently, thereby, benefitting the environment and human health.

Risks:

The application form rule will allow permit writers to better evaluate industrial discharges, and the better a permit writer can evaluate the discharge the better he or she can protect the environment and human health.

Timetable:

Action	Date	FR Cite
NPRM	03/00/98	
Final	03/00/99	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3234.

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RIN: 2040–AC26

EPA

118. COMPREHENSIVE NPDES STORMWATER PHASE II REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

33 USC 1311; Clean Water Act sec 301; 33 USC 1342; Clean Water Act sec 402; 33 USC 1361; Clean Water Act sec 501

CFR Citation:

40 CFR 122; 40 CFR 123

Legal Deadline:

NPRM, Judicial, November 25, 1997.

Final, Judicial, March 1, 1999.

Abstract:

EPA will be proposing changes to the stormwater regulations for the remaining unregulated dischargers that require regulation. Also known as Phase II dischargers, these sources potentially could include all stormwater discharges from municipal separate storm sewer systems serving populations of less than 100,000 and construction activities resulting in the land disturbance of less than 5 acres. Data collected under sections 305(b) and 402(p)(5) of the CWA indicate that benefits will be derived from addressing these discharges under the Phase II program. Urban stormwater runoff is a real cause of water quality use impairment. EPA has invited stakeholders to participate in the development of comprehensive Phase II

rules under the Federal Advisory Committee Act (FACA). This FACA subcommittee is assisting in the development of the rule. Currently, all Phase II dischargers are required to have stormwater permits by 2001. EPA is planning to limit the universe of designated Phase II sources and is planning to recommend an approach that would promote the use of general permits for most Phase II sources. The proposed changes would also provide regulatory relief by waiving Phase I facilities that have no exposure to stormwater from applicable requirements.

Statement of Need:

Data collected under sections 305(b) and 402(p)(5) of the CWA indicate that uncontrolled stormwater discharges from municipalities serving populations less than 100,000 and construction sites that result in the disturbance of less than 5 acres of land cause water quality use impairment. The proposed changes to the NPDES stormwater regulations would address these currently unregulated stormwater discharges. The proposed changes would also provide needed regulatory relief to Phase I facilities that have no exposure to stormwater and do not cause water quality use impairment.

Summary of the Legal Basis:

CWA section 402(p)(6) requires EPA, in consultation with States and local officials, to issue regulations for the designation of the remaining unregulated discharges to be regulated to protect water quality. The United States Court of Appeals for the Ninth Circuit remanded EPA's de minimis exemption of construction sites below 5 acres and the no exposure exemption for category (XI) industrial facilities under the Phase I rule (NRDC v. EPA, 966 F.2d 1292 (9th Cir. 1992)). This remand requires EPA to examine construction sites below 5 acres for possible designation. EPA is also currently subject to a court order to propose supplemental rules under CWA section 402(p)(6) by November 25, 1997, and finalize these rules by March 1, 1999 (NRDC v. Browner, Civ. No. 95-634 PLF (D.D.C., April 6, 1995)).

Alternatives:

The proposed changes to the NPDES stormwater regulations are being developed with significant input from the FACA subcommittee. Alternative options, as well as successive drafts of the proposed changes, were distributed to FACA members for comment. The language of the proposed changes are the result of extensive stakeholder input. The Agency plans to solicit comments on alternative approaches in the preamble to the proposed rule.

Anticipated Costs and Benefits:

Undetermined as of this date. However, the no exposure waiver would reduce administrative and compliance costs for those Phase I facilities that have no exposure to stormwater.

Risks:

The proposed changes to the NPDES stormwater regulations will reduce adverse water quality impacts from stormwater thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	
Final	03/00/99	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3785.

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RIN: 2040–AC82

EPA

119. MANAGEMENT OF CLASS V INJECTION WELLS UNDER PART C OF THE SAFE DRINKING WATER ACT

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 300h; Safe Drinking Water Act sec 1421 to 1425

CFR Citation:

40 CFR 144; 40 CFR 145; 40 CFR 146

Legal Deadline:

NPRM, Judicial, June 18, 1998. Final, Judicial, July 31, 1999.

Abstract:

In the Safe Drinking Water Act (SDWA) of 1987, Congress required that EPA protect current and future underground sources of drinking water (USDWs) from endangerment. The 1987 Report to Congress: Class V Injection Wells determined that certain types of high risk Class V wells may be contaminating, or have the potential to contaminate, USDWs. Through this regulatory action, EPA intends to propose additional requirements addressing the environmental and health threats posed by the highest risk Class V wells. Class V wells likely to be impacted by this regulation include industrial and commercial disposal wells and large capacity cesspools.

Statement of Need:

Class V wells vary from simple dry wells to complex geothermal wells; injected fluids range from storm water runoff to industrial process wastewater. Likewise, the potential risk posed by the different types of Class V wells varies. A well's potential to endanger Underground Sources of Drinking Water depends largely on its injection fluid quality and volumes, its proximity to the USDW, and its construction and operation. Class V wells that are used to dispose of industrial and commercial wastes present the greatest danger to USDWs. In most cases, industrial and commercial wastes are disposed of in shallow drywells and ''misused'' septic systems that release fluids in strata above USDWs. Cesspools, which inject untreated sanitary wastes, also have a high potential to endanger USDWs.

Class V wells currently are subject to only two major requirements. First, owners or operators of Class V injection wells are prohibited from allowing the movement of fluid that contains any contaminant into USDWs if the presence of that contaminant may cause a violation of any primary drinking water standards. Second, the owner or operator must submit inventory information. While all Class V wells are subject to these general provisions of non-endangerment, instances of ground water contamination from high risk Class V wells have occurred across the country pointing to the need for more specific requirements.

Summary of the Legal Basis:

This action is required by Consent Order (Civil Action No.93-2644 NHJ) filed with the U.S. District Court on January 28, 1997.

Alternatives:

The Agency is considering proposing a geographically targeted Class V rule where the additional requirements would apply only to wells within Source Water Protection Areas around drinking water supply wells. Additionally, the Agency is considering a variety of management control measures to impose on the highest risk Class V wells. These measures could include best management practices, treatment options, and in some instances, bans on certain injection practices.

Anticipated Costs and Benefits:

Because the proposed rule has not completed final Agency review, cost and benefit information have not been completed and are therefore unavailable.

Risks:

Risks posed by Class V wells relate directly to other risks within the Agency's jurisdiction. Many Superfund sites with significant ground-water contamination are a result of uncontrolled discharges from certain Class V wells. Placing these wells under adequate regulatory controls by effective State UIC programs will serve to prevent future Superfund sites. Additionally the control of these wells directly affects other programs under the Safe Drinking Water Act such as the Source Water Protection Program.

Timetable:

Action	Date	FR Cite
NPRM	08/28/95	60 FR 44652
Reproposal	06/00/98	
Final	07/00/99	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

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EPA

120. MODIFICATIONS TO THE DEFINITION OF SOLID WASTE AND REGULATIONS OF HAZARDOUS WASTE RECYCLING: GENERAL

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 6905; Resource Conservation Recovery Act sec 1004; 42 USC 6921 to 6928; Resource Conservation Recovery Act sec 3001 to 3008

CFR Citation:

40 CFR 261; 40 CFR 266

Legal Deadline:

None

Abstract:

Recycling of hazardous waste is governed by the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. The portion of these regulations known as the Definition of Solid Waste (DSW) specifies whether hazardous materials that are recycled are subject to RCRA regulatory jurisdiction or not. Other parts of the regulations set forth requirements for managing recycled hazardous waste. This regulatory action will revise the hazardous waste recycling regulations to respond to concerns that they are overly complex, difficult to understand, and that they pose a barrier to safe hazardous waste recycling.

Statement of Need:

Revisions are needed to improve EPA's regulations for hazardous waste recycling by: (a) eliminating disincentives for the safe recycling of hazardous waste; and (b) developing simpler definitions and regulations.

Summary of the Legal Basis:

This action is not mandated by statute or court order. However, the Agency intends to address several court decisions by clarifying which recyclable materials are excluded from RCRA hazardous waste management requirements.

Alternatives:

The Agency has been developing two options to co-propose for regulating hazardous waste recycling, known as the Transfer-Based option and the In-Commerce option. The Agency presented the general outlines of these options to interested stakeholders and the public at a public meeting in November of 1996 (61 FR 55252). Generally, the Transfer-Based option would regulate those materials that are recycled or managed in certain identified ways (e.g., burned for energy recovery or managed on the land) and materials that are transferred to an off-site entity other than the generator for recycling. This option includes changes to the RCRA hazardous waste management regulations, particularly permitting, to streamline and simplify compliance for those materials that are regulated only because they are transferred to another off-site entity for recycling. The In-Commerce option would regulate only those materials that are recycled in certain identified ways (e.g., burned for energy recovery or managed on the land). These materials would be subject to the existing RCRA regulations for those activities. Based on preliminary analyses of the impacts of these two options and initial reactions from stakeholders, the Agency is at this time assessing potential revisions it may make to the options prior to publishing the proposal.

Anticipated Costs and Benefits:

Analysis of costs and benefits will be conducted as part of the economic analysis for this rule as required under Executive Order 12866.

Risks:

This action aims at more effective risk management by streamlining and tailoring management requirements for low-risk recyclers (including eliminating requirements that are redundant with other statutes). This will allow regulatory resources to be concentrated on those recyclers who engage in activities posing a greater threat to human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Tribal, Federal

Additional Information:

SAN No. 2872.

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EPA

121. MANAGEMENT OF CEMENT KILN DUST (CKD)

Priority:

Other Significant

Unfunded Mandates:

Undetermined

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 6903(5)(b); Resource Conservation Recovery Act sec 1004(5)(B); 42 USC 6912(a); Resource Conservation Recovery Act sec 2002(a); 42 USC 6921(a); Resource Conservation Recovery Act sec 3001(a); Resource Conservation Recovery Act sec 3001(b)(3); 42 USC 6924(x); Resource Conservation Recovery Act sec 3004(x)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

CKD is a high volume material by-product of the cement manufacturing process. While it contains potentially hazardous constituents such as lead, cadmium and chromium, it has been exempted since November 1980 from hazardous waste regulation under RCRA Subtitle C by the Bevill Amendment, which modified Section 3001 of RCRA to exempt certain special wastes until further studies could be completed and any applicable regulations were promulgated. In December 1993, EPA submitted a Report to Congress with its findings on the nature and management practices associated with CKD. This was followed in January 1995 by an EPA regulatory determination published in the Federal Register (60 FR 7366, 2/7/95), which concluded that additional control of CKD is warranted. In the regulatory determination EPA committed to develop additional tailored regulations under RCRA Subtitle C and, if necessary, the Clean Air Act. As part of its regulatory development effort, the Office of Solid Waste within EPA's Office of Solid Waste and Emergency Response has initiated further studies and has held informal discussions with stakeholders interested in regulations under RCRA Subtitle C for the management of CKD. The proposed regulations will be tailored to protect human health and the environment while limiting burden on the regulated community.

Statement of Need:

This action follows EPA's RCRA mandated regulatory determination on CKD, published in the Federal Register (60 FR 7366, 2/7/95), which concluded that additional control of CKD is warranted in order to protect human health, and to prevent environmental damage associated with current disposal practices for this waste.

Alternatives:

EPA will develop a range of landfill management standards for sensitive and non-sensitive environments, each involving protections for groundwater and air pathways. It is anticipated that the base standards would be performance based, and form the basis for a conditional exclusion from Subtitle C regulation. If an owner/operator complied with the base performance standards, his CKD waste would not be subject to Subtitle C regulation. Alternatively, an owner/operator could comply with default technical requirements under Subtitle C.

It is anticipated that the conditions for exclusion and the default technical requirements would be similar and would include: fugitive dust controls, provisions and restrictions for landfills located in sensitive environments, groundwater monitoring requirements, performance standards for liners and caps, metals limits for CKD used as agricultural lime, and corrective action for currently active units. The Agency hopes to afford States considerable flexibility in setting and tailoring requirements in their own programs.

Anticipated Costs and Benefits:

Analysis of costs and benefits will be conducted as part of the economic analysis for this rule as required under Executive Order 12866.

Risks:

As explained in the regulatory determination for CKD, EPA believes that subjecting CKD waste to the full RCRA Subtitle C program would be prohibitively burdensome on the cement industry. EPA believes it is appropriate to apply only those components of Subtitle C that are necessary, based on our current knowledge of the cement industry and the human health and environmental concerns associated with CKD, thereby achieving a common sense result with respect to the hazards posed by CKD on a site-specific basis. EPA anticipates that any such standards would be designed to be protective, yet minimally burdensome, and may not necessarily apply to all facilities, or may not apply to all facilities in the same manner or to the same extent.

Timetable:

Action	Date	FR Cite
NPRM	02/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3856.

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RIN: 2050–AE34

EPA

122. WASTE ISOLATION PILOT PLANT (WIPP) COMPLIANCE CERTIFICATION RULEMAKING

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 102-579 (as amended by PL 104-201)

CFR Citation:

40 CFR 194

Legal Deadline:

Other, Statutory, October 31, 1997, Statutory.

Abstract:

The Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act (Act), was signed by the President on October 30, 1992. The Act gives the EPA the authority to certify WIPP's compliance with standards developed by EPA for disposal of radioactive waste. This Act supplements EPA's authority, under the Atomic Energy Act and Reorganization Plan No. 3 of 1970, to establish environmental standards that protect the public and the environment from radioactive materials. The Act prescribed the framework for EPA's regulatory oversight of the WIPP disposal system.

The Department of Energy (DOE) is developing the WIPP which is a potential geologic disposal facility for transuranic radioactive waste generated as by-products from nuclear weapons production. If the WIPP opens, waste will be stored approximately 2,100 feet underground in excavated, natural salt formations near Carlsbad, New Mexico.

Before DOE can dispose of waste at the WIPP, it must demonstrate that the WIPP complies with EPA's radioactive waste disposal standards at subparts B and C of 40 CFR 191. DOE submitted its compliance certification application (CCA) to EPA on October 29, 1996, showing how the WIPP facility will meet the standards. The compliance criteria at 40 CFR 194, which are specific to the WIPP, will be used by EPA to implement the radioactive waste disposal standards. The purpose of this rulemaking is to certify, through the use of the compliance criteria, whether the WIPP complies with the disposal standards before waste disposal can begin.

Upon receipt of the CCA in October 1996, EPA began reviewing the CCA for both completeness and technical adequacy. On November 15, 1996 the Agency published in the Federal Register, 61 FR 58499, and Advance Notice of Proposed Rulemaking (ANPR) announcing that the CCA had been received and announcing the Agency's intent to conduct a rulemaking to certify whether the WIPP facility will comply with the disposal regulations. The notice also announced a public comment period and EPA's intent to hold public hearings in New Mexico. In its preliminary review, EPA identified additional information necessary for the CCA to constitute a complete application. EPA requested additional information in a letter transmitted to DOE on December 19, 1996. DOE submitted the requested information in letters to EPA in January and February of 1997. On May 16, 1997, the Administrator informed the Secretary of DOE that the CCA was complete. The completeness determination was announced in the Federal Register on May 22, 1997, 62 FR 27996. EPA is required under the WIPP LWA S8(d)(1)(B) to certify compliance within one year after receipt of the Department of Energy's compliance certification application.

Statement of Need:

The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a potential deep geologic repository for the disposal of defense transuranic (TRU) radioactive waste currently being stored on Federal reservations in 10 states, including Washington, Ohio, Idaho, New Mexico, Tennessee, South Carolina, Nevada, and Colorado. TRU waste consists of materials containing one or more elements having atomic numbers greater than 92, in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste, with half-lives greater than twenty years. Most TRU waste consists of items that have become contaminated (e.g., rags, equipment, tools, and organic and inorganic sludges) as a result of activities associated with the production of nuclear weapons. TRU waste is often mixed with hazardous chemical constituents. Before beginning disposal of radioactive waste at the WIPP, DOE must demonstrate that the WIPP complies with the EPA's radioactive waste disposal standards at subparts B and C of 40 CFR 191.

The WIPP LWA specifies that underground emplacement of transuranic wastes for disposal at the WIPP may not commence unless and until EPA makes a positive compliance certification decision. If the Agency certifies compliance, the WIPP LWA requires EPA to subsequently conduct periodic re-certifications of continued compliance throughout waste disposal operations (estimated to last about 30 years) at the WIPP. EPA published the final compliance criteria at 40 CFR 194 on February 1, 1996. DOE submitted its compliance certification application to EPA on October 29, 1996. The Agency is reviewing DOE's application and will make a decision as to WIPP's compliance with the disposal regulations. The WIPP compliance certification rule will be limited to consideration of the WIPP's compliance with the disposal regulations found in subparts B and C of 40 CFR 191 (which include containment requirements, assurance requirements, individual protection requirements, and groundwater protection requirements).

Summary of the Legal Basis:

Under the authority of the Atomic Energy Act, as amended, of 1954, EPA has the responsibility to protect people and the environment from the harmful effects of ionizing radiation. In addition, Reorganization Plan No. 3 of 1970 provides EPA with the authority to establish standards for the protection of people and the environment from the effects of all radioactive materials. Finally, the WIPP Land Withdrawal Act, as amended, of 1992 requires that EPA issue criteria to implement the Agency's radioactive waste disposal regulations specifically at the WIPP, and then certify, through use of such criteria, whether or not the WIPP complies with the regulations and should be allowed to open.

Alternatives:

The compliance certification rule is intended to determine whether or not the WIPP should be allowed to open. The Agency recognizes the uncertainty inherent in projections of the WIPP's performance during the 10,000-year regulatory period. Accordingly, the Agency requires a demonstration of a reasonable expectation that compliance will be achieved. This demonstration will be based on consideration of the entire application for certification submitted by DOE. The criteria against which the WIPP's compliance will be evaluated contain four subparts, consisting of:

(1) subpart A, which specifies general administrative requirements with which DOE must comply during the compliance application and subsequent rulemaking processes. Requirements are specified which contain format and protocols for the submission of applications plus any subsequent suspension, revocation or modification of compliance status.

(2) subpart B, which outlines the information necessary for inclusion with compliance applications. The criteria require DOE to analyze the performance of WIPP and predict release of waste, doses received by individuals and doses received through ground water. The criteria list the information needs for such assessments. Subsequent applications for determinations must note any changes in such information that might have occurred since initial certification.

(3) subpart C, which implements the specific containment, assurance, individual and groundwater protection

requirements of the disposal standards of 40 CFR 191. To account for the likelihood of human activity and human intrusion into the repository during the 10,000- year regulatory period, the criteria specify how the frequency and consequences of such events shall be determined. The results of compliance assessments of individual and groundwater protection shall be expressed to show the likelihood of a given exposure or greater occurring. To increase confidence in performance and compliance assessments, the criteria specify requirements on quality assurance methodologies and characterization of radioactive waste proposed for emplacement in the repository.

Anticipated Costs and Benefits:

The party primarily affected under this action is the DOE, owner and operator of the WIPP. The Agency prepared an Economic Impact Analysis (EIA) for the WIPP compliance criteria (40 CFR 194). This EIA estimated those costs imposed on the WIPP project in excess of those being incurred presently due to other applicable regulations or program requirements. While the total cost may have appeared sizeable, it did not appear to be so sizeable that it would have been significant as defined under the provisions of Executive Order No. 12866, i.e., more than $100 million per year. The portion of the criteria concerning human intrusion into the WIPP was the only potential contributor to significant increases in cost (i.e., as much as $20 million or less than one percent of the total cost; the total cost of the WIPP project is over $8 billion to date). Additional costs could be incurred if compliance could only be achieved through redesign of the repository or treatment of waste in order to reduce the likelihood and consequences of human intrusion.

Risks:

Because this regulation is not setting standards, but implementing an existing standard (40 CFR 191) and making a compliance decision, no analysis of risk has been performed.

Timetable:

Action	Date	FR Cite
ANPRM	11/15/96	61 FR 58499
NPRM	10/00/97	
Final	05/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

SAN No. 3873.

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RIN: 2060–AG85

EPA

123. IMPLEMENTATION OF OZONE AND PARTICULATE MATTER (PM) NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) AND REGIONAL HAZE REGULATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

Clean Air Act of 1990, title 1, subpart 1

CFR Citation:

40 CFR 51; 40 CFR 81

Legal Deadline:

None

Abstract:

EPA recently issued updated, new air quality standards for ozone (62 FR 38856) and particulate matter (PM) (62 FR 38652). Pursuant to President Clinton's directive as outlined in a memorandum to EPA Administrator Carol Browner, EPA is developing a plan for sensibly and cost-effectively meeting the new standards. This plan is being developed with significant stakeholder involvement provided through a committee established in September 1995 under the Federal Advisory Committee Act. Consistent with the schedule outlined in a memorandum from President Clinton dated July 16, 1997, EPA will publish a combination of guidance and rules by the end of 1998 designed to give States, local governments and business the flexibility they'll need to meet protective public health standards in a reasonable, cost-effective manner.

For ozone, the implementation plan will emphasize a regional, State-sponsored approach that addresses the long-distance transport of ozone. On October 10, 1997, EPA issued a proposal (sometimes referred to as the ''OTAG SIP call'') to require broad regional emissions reductions of nitrogen oxides (NOx) gases which contribute to the formation of ozone (which will appear shortly in the Federal Register). EPA will work with the affected States to develop a regional NOx emissions cap-and-trade program modeled after the program used to achieve sulfur dioxide reductions in the acid rain program.

In order to help areas covered by EPA's regional plan avoid burdensome measures associated with non-compliance, EPA will create a new ''transitional'' classification. Areas that attain the 1-hour ozone standard but not the new 8-hour standard as of the time the EPA promulgates designations for the 8-hour standard could obtain this classification if they participate in a regional strategy and/or opt to submit early plans addressing the new 8-hour standard. Because many areas will need little or no additional new local emission reductions to reach attainment, beyond those reductions that will be achieved through the regional control strategy, and will come into attainment earlier than otherwise required, the EPA will exercise its discretion under the law to eliminate unnecessary local planning requirements for such areas. The EPA will revise its rules for new source review (NSR) and conformity so that States will be able to comply with only minor revisions to their existing programs in areas classified as transitional.

In late October, EPA plans to identify areas that have air quality meeting the 1-hour air ozone standard, and revoke that standard for those areas.

For PM2.5 (fine particles), the implementation approach will give businesses ample time to find the most cost-effective pollution controls. Another full scientific review of the health effects of fine particulates will be completed before any ''non-attainment'' designations are made or local controls mandated. EPA will allow five years to gather and analyze necessary data, and then use its discretion under the Clean Air Act to allow another three years for areas that are not in compliance to submit air quality plans on how they will meet the new standard. Following another year and a half for review of the plans, it will be several more years before many areas will actually have to

comply with the new standard for PM2.5. In the fall of 1997, EPA will publish a schedule for reviewing the PM2.5 standard.

For PM10, the EPA is revising the current set of standards. Given that health effects from coarse particles are still of concern, the overall goal during this transition period is to ensure that PM10 control measures remain in place to maintain the progress that has been achieved toward attainment of the current PM10 NAAQS (and which provides benefits for PM2.5) and protection of public health. To ensure that this goal is met, the existing PM10 NAAQS will continue to apply until certain critical actions by the EPA, and by States and local agencies, have been taken to sustain the progress already made. For areas not attaining the existing PM10 NAAQS when the revised standards go into effect, those standards remain in effect until the EPA has completed a section 172(e) rulemaking to prevent backsliding. The EPA will propose this rulemaking in the fall of 1997. For areas attaining the existing PM10 NAAQS, the EPA will retain the existing PM10 NAAQS until the State submits and the EPA approves the section 110 SIP which States are required to submit within 3 years of a NAAQS revision. Once those areas have an approved SIP, the EPA will take action so the standard no longer applies. In addition, the EPA will take action within 3 years to designate areas for the revised PM10 standards.

EPA's approach to addressing regional haze was proposed concurrently with the promulgation of the final ozone and PM NAAQS. The public comment period on this proposal closes on December 5, 1997. EPA plans to promulgate the regional haze rulemaking in the spring of 1998.

Statement of Need:

Development of programs for ozone and PM are necessary to implement the revised NAAQS under title 1 of the Clean Air Act.

Anticipated Costs and Benefits:

EPA's Regulatory Impact Analyses (RIA) for the ozone and PM2.5 NAAQS and the proposed regional haze rulemaking were released on July 17, 1997. This benefit-cost comparison was intended to generally inform the public about the potential costs and benefits that may result when revisions to the ozone and PM2.5 NAAQS are implemented by the States. Costs and benefits of the proposed regional haze rule were included. Monetized benefit-cost comparisons were presented. Significant nonmonetized benefits are also expected. In considering these estimates, it should be stressed that these estimates contain significant uncertainties as discussed in the RIA.

Estimated partial attainment benefits of the PM2.5 standard far outweigh estimated partial attainment costs. Estimated quantifiable partial attainment net benefits (benefits minus costs) of the PM2.5 standard range from positive $10 billion to positive $96 billion. Estimated quantifiable full attainment net benefits range from negative $17 billion to positive $73 billion. Estimated partial attainment quantified and monetized net benefits of the ozone standard range from negative $0.7 billion to positive $1.0 billion. Full attainment benefit estimates are smaller than full attainment cost estimates. Quantifiable net benefits for full attainment of the ozone standard are estimated to range from negative $8.1 billion to negative $1.1 billion.

Estimated quantifiable net benefits from the proposed regional haze program range from $0 to positive $3.0 billion.

Risks:

On July 16, 1997, EPA issued updated air quality standards for ozone and particulate matter. The updated standards, when implemented, will provide cleaner air for 125 million people, including 35 million children. Benefits from the new, updated standards include reductions in premature mortality, aggravated asthma and cases of decreased lung function in children from exposure to these air pollutants.

Timetable:

Action	Date	FR Cite
ANPRM	12/13/96	61 FR 65764
Notice of Proposed Policy	12/13/96	61 FR 65752
Regional Haze Rule (Proposal)	07/31/97	62 FR 41138
Notice Identifying Areas That Have Air Quality Meeting the 1-hour Ozone Standard	10/00/97	
NOx Regional Strategy SIP Call (Proposal)	10/00/97	
Review Schedule for PM2.5 Standard	10/00/97	
Final Guidance on Implementing Pre-existing NAAQS	12/00/97	
Conformity Rule for Transitional Areas (Proposal)	06/00/98	
NSR Rule for Transitional Areas (Proposal)	06/00/98	
Regional Haze Rule (Final)	06/00/98	
Antibacksliding Rule Under Section 172(e) for Existing PM10 Standard (Final)	09/00/98	
NOx Regional Strategy SIP Call (Final)	09/00/98	
Conformity Rule for Transitional Areas (Final)	12/00/98	
Final Implementation Guidance	12/00/98	
NSR Rule for Transitional Areas (Final)	12/00/98	
Antibacksliding Rule Under Section 172(e) for Existing PM10 Standard (Proposal)	00/00/00	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3553.

SAN No. 3552 for Regional Haze

By Presidential Memorandum dated 07/16/97, EPA was directed to complete these rules by 12/31/98.

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RIN: 2060–AF34

EPA

124. CONSOLIDATED FEDERAL AIR RULE FOR THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY

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 7401 et seq

CFR Citation:

40 CFR 60; 40 CFR 61; 40 CFR 63

Legal Deadline:

None

Abstract:

Over the past 25 years, EPA has issued a series of national air regulations, many of which affect the same facility. Some facilities are now subject to five or six national rules, sometimes affecting the same emission points. Each rule has emission control requirements as well as monitoring, record keeping and reporting requirements.

These requirements may be duplicative, overlapping, difficult to understand or inconsistent. It is often difficult for plant managers to determine compliance strategies to satisfy all requirements and for State and local permitting agencies to determine the applicability of different requirements for permitting purposes. Resources are often wasted by both industry and states and localities in sorting out and complying with the panoply of multiple requirements. Moreover, as the Agency continues to issue new air toxics rules, as mandated by the CAA, the problem is compounded.

All existing Federal air rules applicable to an industry sector will be reviewed to determine whether there provisions can be consolidated into a single new rule. Affected industries, state agencies, and other stakeholders will be consulted to identify duplicative and conflicting provisions and to provide assistance in drafting the single rule. The chemical industry and state representatives have agreed to work on a pilot project with EPA's air programs to explore this approach. If the approach is successful with the chemical industry, it will be expanded to air rules for other industry sectors. EPA will then consider extending this program to water and waste requirements.

Statement of Need:

Both industry and regulatory agencies have expressed a great desire to streamline and simplify rules. This rule streamlines and simplifies by consolidating and collapsing the numerous federal rules that apply to the chemical industry, with resulting improved compliances.

Alternatives:

The main alternative is to do nothing and let the many rules with their many provisions remain the only compliance mechanism.

Anticipated Costs and Benefits:

This rule will result in considerable savings to the affected industry. There is significant burden reduction associated with recordkeeping and reporting. The rule will be easier to follow and understand. There will be no change in applicability of the rules being consolidated.

Risks:

This rulemaking deals with consolidated reporting to simplify existing rules. The risks addressed by each of these existing rules were addressed in those individual rulemakings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

Sectors Affected:

286 Industrial Organic Chemicals

Additional Information:

SAN No. 3748.

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RIN: 2060–AG28

EPA

125. ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR YUCCA MOUNTAIN, NEVADA

Priority:

Other Significant

Legal Authority:

Energy Policy Act sec 801

CFR Citation:

40 CFR 197

Legal Deadline:

Final, Statutory, August 1, 1996.

Abstract:

This rulemaking is in response to section 801 of the Energy Policy Act of 1992 which directs the Administrator to promulgate public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. The only regulated entity is the U.S. Department of Energy.

Statement of Need:

In 1985, the Agency issued generic standards for the management and disposal of spent nuclear fuel and high-level radioactive waste. The Nuclear Waste Policy Amendments Act of 1987 mandated the study of Yucca Mountain, Nevada to determine its suitability to be a repository for spent nuclear fuel and high-level radioactive waste. The Waste Isolation Pilot Plant Land Withdrawal Act of 1992 exempted Yucca Mountain from coverage under the 1985 generic standards. Concurrently, the Energy Policy Act of 1992 gave EPA the responsibility of setting site-specific, radiation-protection standards for Yucca Mountain.

Summary of the Legal Basis:

The legal authority is derived from the Energy Policy Act of 1992.

Alternatives:

Since this action is legally mandated, there are no alternatives.

Anticipated Costs and Benefits:

Since the potential cost is dependent upon several factors whose determination has not yet been made, a precise assessment of the economic impact of the rulemaking is not possible at this time. Likewise, the benefits, i.e., the adverse effects averted (which are required to complete a cost-benefit analysis), cannot be determined

in a meaningful manner at this time since the effect of these standards is to avert potential adverse health effects that may occur during very long periods into the future and are, therefore, quantifiable only with a high degree of uncertainty.

Risks:

The potential risks which would be allowed under these standards is dependent upon the level of protection and the regulatory time frame which is selected. Since the standards have not yet been proposed, it is not possible to estimate the potential risks.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
Final	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

SAN No. 3568.

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RIN: 2060–AG14

EPA

126. INTEGRATED NESHAP AND EFFLUENT GUIDELINES: PULP AND PAPER

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7412; 42 USC 7414; 42 USC 7601; Clean Air Act Amendments of 1990 sec 112; Clean Air Act Amendments of 1990 sec 114; Clean Air Act Amendments of 1990 sec 301; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1361; Clean Water Act sec 301; Clean Water Act sec 304; Clean Water Act sec 306 to 308; Clean Water Act sec 501

CFR Citation:

40 CFR 63; 40 CFR 430

Legal Deadline:

Final, Statutory, November 15, 1997.

Abstract:

The Clean Air Act (CAA) Amendments of 1990 direct the Environmental Protection Agency (EPA) to set National Emission Standards for Hazardous Air Pollutants (NESHAP) for new and existing sources under section 112 and to base these standards on maximum achievable control technology (MACT). The Clean Water Act (CWA) directs EPA to develop effluent guidelines for certain categories and classes of point sources. These guidelines are used for setting discharge limits for specific facilities that discharge to surface waters or municipal sewage treatment systems. For the pulp and paper industry, EPA is developing an integrated regulation that includes both effluent guidelines and air emission standards to control the release of pollutants to both the water and the air. The regulations are being developed jointly to provide greater protection to human health and the environment, to promote the concept of pollution prevention, and to enable the industry to more effectively plan compliance via a multimedia approach.

This Regulatory Plan entry also includes RIN 2040-AB53, Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Category, reported in full in part III of this issue of the Federal Register.

Statement of Need:

This action will limit surface water discharges of toxic, conventional, and nonconventional pollutants and emissions of hazardous air pollutants (HAPs) from pulp and paper mills. The NESHAP will limit the release of HAPs such as chloroform, formaldehyde, acetaldehyde, and methanol. The effluent guidelines will limit the discharge of dioxin, furan, and other toxic and conventional pollutants to rivers and other surface waters. The Statutory authorities and deadlines are cited above. Additionally, EPA is required to promulgate these effluent guidelines to satisfy a provision in a Consent Decree entered in settlement of Environmental Defense Fund and National Wildlife Federation v. Thomas, Civ. No. 85-0973 (D.D.C.).

Alternatives:

Both the CAA and the CWA specify that these regulations be established on a technology basis. The CAA specifies that MACT for existing sources can be no less stringent than the average emission limitations achieved by the best-performing similar source. The CWA specifies that effluent limitations guidelines and standards be based on specific technology levels, such as the best available technology economically achievable. For the integration of air and water standards, EPA developed regulatory alternatives from combinations of process changes and pollution control technologies. The Agency considered the combined costs and impacts of these alternatives while remaining responsive to the statutory requirements under both laws.

Anticipated Costs and Benefits:

The proposed integrated air and water rules comprise effluent guidelines for all pulp and paper mills and MACT standards for the noncombustion sources at all Kraft, soda, sulfite, and semi-chemical pulp and paper mills. The Agency plans to propose MACT standards for the chemical recovery combustion sources at these mills at the same time the Agency promulgates the integrated air and water rules. For the rulemaking components that have been proposed, the Agency estimated total annualized costs of $600 million (1992 dollars).

The types of benefits associated with the proposed integrated rule include improvements to air and water quality and reduced human health risks. The estimated reductions in HAP emissions exceed 120,000 tons per year. An estimated reduction in volatile organic compound emissions of 700,000 tons per year and a reduction in total reduced sulfur emissions of 300,000 tons per year are also projected to occur as a result of the proposed integrated rule. Projected reductions in specific toxic pollutant effluent discharges are approximately 2,800 tons per year; conventional pollutant reductions of over 200,000 tons per year are projected. Some categories of the benefits can be expressed in monetary terms; they are in the range of $160 million to $980 million.

The Agency has received extensive public comments and new data since proposal and is in the process of revising these cost and pollutant reduction estimates.

Risks:

Two types of pollutants found in pulp and paper wastestreams, dioxin and furan, are of particular concern due to their carcinogenic risk and their toxicity to aquatic life. Reducing the discharge and emission of these and other toxic pollutants reduces the exposure risks to human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM NESHAP Phase III - Nonchemical and Other Mills	03/08/96	61 FR 9383
NPRM NESHAP Phase II - Combustion Sources	10/00/97	
Final NESHAP Phases I and III and Effluent Guidelines Phase I	10/00/97	
Final All NESHAP Phases	09/00/98	
Final NESHAP Phase II - Combustion Sources	09/00/98	
Final Effluent Guidelines Phase III - Dissolving Grade	03/00/99	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 3105 (Air) and SAN No. 2712 (Water).

ADDITIONAL AGENCY CONTACT: Jeff Teleander (Combustion Sources)

ADDITIONAL AGENCY CONTACT: Elain Manning (Nonchemical and other Pulp and Paper Mills)

SAN No. 2712 (Water) was formerly listed under RIN 2040-AB53.

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RIN: 2060–AD03

EPA

FINAL RULE STAGE

127. PESTICIDES; SELF-CERTIFICATION

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:

7 USC 136 to 136y

CFR Citation:

40 CFR 152

Legal Deadline:

None

Abstract:

The Environmental Protection Agency (EPA) is evaluating self-certification as a possible approach to reinventing the registration process for pesticides. The goal of this effort is to simplify, speed up, and increase the efficiency of the registration process while maintaining protection to human health and the environment.

Statement of Need:

EPA registers pesticides for sale and use in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has issued rules, notices, and guidance which specify how applicants may obtain approval for registration of pesticide products. Against a backdrop of declining resources and a continuous workload of pesticide applications, EPA is examining many possible ways of reinventing the registration process to handle applications faster, more efficiently, and with fewer resources. One of these approaches is self-certification, a concept in which a registrant may certify that a registration application (or part of it) complies with Agency requirements and may then obtain EPA approval for the registration after an abbreviated review or no review at all. EPA has several projects that are exploring the possible use of self-certification in different ways. First, EPA has reinvented the process by which registrants may accomplish amendment of products by notification or nonnotification. The revised process allows a registrant to certify that an application for amendment meets EPA's criteria as a low-risk amendment. This revised process is described in PR Notice 95-2 (May 31, 1995). To formally implement this type of self-certification, EPA has also revised existing rules (40 CFR 152.44 and 152.46) on notifications and nonnotifications.

Second, self-certification of product chemistry data is being considered as a means of reducing the number of studies reviewed by EPA in connection with registration applications. This voluntary program would allow registrants to submit a brief summary of the physical chemical properties of a product, rather than submitting the data. A draft PR Notice was made available for public comment on February 4, 1997 (62 FR 5228), and a final PR Notice is expected to be issued in the Fall of 1997.

Alternatives:

Various alternatives to self-certification are being actively pursued by EPA for reinventing or improving the registration process, including, but not limited to, reviews with the California Department of Pesticide Regulation, issuing guidance for acceptable acute toxicity data, exempting certain active ingredients from registration, developing computer software to standardize precautionary labeling, publishing a manual describing all labeling requirements, automating certain documents, piloting electronic labeling, making labeling policy documents publicly available, and developing internal guidance on how to process ''fast track'' registrations.

Anticipated Costs and Benefits:

EPA does not intend to perform cost analyses on self-certification per se, but will qualitatively evaluate the potential costs and benefits of different kinds of self-certification.

Risks:

EPA will determine whether self-certification will help or hinder protection of human health and the environment. EPA will not adopt any self-certification measure which does the latter.

Timetable:

Action	Date	FR Cite
Final Notification Rule	06/26/96	61 FR 33039
Draft PR Notice Self-Certification of Product Chemistry Data	02/04/97	62 FR 5228

Action	Date	FR Cite
Final PR Notice Self-Certification of Product Chemistry Data	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3932.

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RIN: 2070–AD00

EPA

128. PESTICIDES AND GROUND WATER STATE MANAGEMENT PLAN REGULATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments.

Legal Authority:

7 USC 136a; Federal Insecticide, Fungicide, and Rodenticide Act sec 3

CFR Citation:

40 CFR 152.170

Legal Deadline:

None

Abstract:

This regulation would establish State Management Plans (SMPs) as a new regulatory requirement for certain pesticides. Absent an EPA-approved SMP specifying risk-reduction measures, use of the chemical would be prohibited. The rule would also specify procedures and deadlines for development, approval and implementation of SMPs.

Statement of Need:

EPA is proposing regulations to make specific pesticides subject to the provisions of EPA-approved State Management Plans (SMPs) because of their strong ground-water contamination potential. The rule will also establish SMPs as an ''other regulatory restriction'' and defines the minimum requirements and procedures for developing, approving and managing SMPs. Upon promulgation of this rule, the labels of the designated pesticides will be changed to require use in conformance with EPA-approved SMPs, and to prohibit sale and use in States without such approved Plans (after a period allowed for development and EPA review of these Plans).

An SMP is a State's commitment to EPA and the public to manage the use of a certain pesticide in such a way as to avoid unreasonable risks to ground water that would otherwise warrant cancellation of the use. An approved plan will embody a combination of educational, scientific, and regulatory tools to fulfill the State's ground-water protection goals, developed through a process of public participation. A plan will include a process for disseminating this information to pesticide users and marketers, and for monitoring the effectiveness of the plan through the development of appropriate indicators of environmental improvement and/or protection.

Summary of the Legal Basis:

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) generally requires EPA to regulate pesticide use in such a manner as to prevent unreasonable risks to human health and the environment. Specifically, 7 USC 136a authorizes EPA to prescribe by regulation ''other regulatory restrictions'' for pesticides that may generally cause unreasonable risks to the environment (such as those that are associated with ground-water contamination potential) without those restrictions.

Alternatives:

This Rule is a direct outgrowth of the Pesticides and Ground Water Strategy, published in October 1991 (after extensive consultation with States, localities, and other affected stakeholders). In publishing the Strategy EPA conducted an analysis of three different alternatives to the regulation of pesticides' ground-water risks. One option was to rely exclusively on orthodox national-level pesticide regulatory tools (tantamount to a ''baseline''), which would entail tolerating or remediating a certain level of ground-water contamination. At the other extreme, outright cancellation of candidate pesticides with significant ground-water contamination potential was considered to provide full assurance that no further ground water contamination would occur (taking into account the high economic losses due to the removal of the pesticide from the market). The analysis concluded that a ''partnership'' approach, providing a mechanism for more tailored management of pesticide use (i.e., taking into account the prevailing influence of highly variable hydrologic ''sensitivity'' factors), would be simultaneously a more effective and least costly alternative.

Anticipated Costs and Benefits:

EPA anticipates four categories of costs entailed in requiring SMPs. Federal Program Costs are those of administering ground-water protection activities, such as the review of State proposals. State Program Costs entail both capital and annual costs. Registrant and Pesticide-user Impacts are the economic losses ascribed to the reduced use of the classified pesticides, as well as the costs (to the registrants) of complying with Federal and State provisions. Benefits accrue from the reduced levels of pesticide residues in ground water, and a corresponding reduction in: 1) human and ecological risk (see below); and 2) threats to the economic and intrinsic values of the ground-water resource. Enormous uncertainties attend the quantification of these benefits, however.

Risks:

The pesticides under consideration are those most frequently detected (and frequently detected at concentrations exceeding health-based reference points) of currently-registered pesticides, and display physical and chemical characteristics associated with a ground-water contamination potential. The level of potential contamination (and related risk to both human health and the environment) represent a potential unreasonable risk to the environment in the absence of local management measures. State management measures are expected to avert these risks substantially.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33259
Final	06/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3222.

Effective Date will be 3 years after promulgation.

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RIN: 2070–AC46

EPA

129. POLYCHLORINATED BIPHENYLS (PCBS) DISPOSAL AMENDMENTS (SECTION 610 REVIEW)

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:

15 USC 2605(e); Toxic Substances Control Act sec 6(e)

CFR Citation:

40 CFR 761

Legal Deadline:

None

Abstract:

This rulemaking will make over 50 modifications, additions, and deletions to the existing PCB management program under the Toxic Substances Control Act (TSCA). A notice of proposed rulemaking was published on December 6, 1994 and covered the manufacture (including import) processing, distribution in commerce, export use, disposal, and marking of PCBs.

Statement of Need:

This rulemaking is the first comprehensive review of the PCB regulations in the 19-year history of the program. The Agency has become aware of a number of instances where the existing regulations do not allow for activities which do not pose an unreasonable risk of injury to health and the environment or where they require unreasonable, unrealistic, or non-cost-effective solutions to PCB problems.

Summary of the Legal Basis:

TSCA section 6(e) bans the manufacture, processing, distribution in commerce and use (except in a totally enclosed manner) of PCBs. It also directs EPA to establish standards for disposal and marking of PCBs. However, section 6(e) allows the EPA to modify these bans, through rulemaking, where it finds no unreasonable risk of injury to health and the environment.

Alternatives:

On December 6, 1994, EPA proposed a number of alternatives to the existing statutory bans in section 6(e). The proposal also included new options and standards for disposal (including remediation) of PCBs.

Anticipated Costs and Benefits:

The EPA projects significant cost savings from authorizations for existing uses and the disposal of large-volume wastes such PCB-contaminated environmental media. In addition, the relaxation of certain administrative requirements should increase the speed of remediation of contaminated sites and accelerate the removal from use of PCBs. EPA projects minimal implementation costs and is reviewing comments which highlight areas for additional cost savings over the proposal.

Risks:

The EPA estimates that millions of tons of PCB-contaminated environmental media will be remediated under this rule, thus preventing large quantities of this long-lived, bioaccumulating chemical from entering the food chain.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/91	56 FR 26738
NPRM	12/06/94	59 FR 62788
Final	12/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2878.

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RIN: 2070–AD04

EPA

130. STREAMLINING THE STATE SEWAGE SLUDGE MANAGEMENT REGULATIONS

Priority:

Other Significant

Legal Authority:

33 USC 1345(f); Clean Water Act sec 405(f)

CFR Citation:

40 CFR 123; 40 CFR 501

Legal Deadline:

None

Abstract:

The requirements for States seeking authorization of their sewage sludge programs are set out at 40 CFR parts 123 (for National Pollutant Discharge Elimination System (NPDES) programs) and 501 (for non-NPDES programs). These requirements were modeled on the NPDES requirements for authorization of wastewater effluent discharge programs. Many States manage sewage sludge through their solid waste programs, which are often structured differently from NPDES programs. As a result, States may not always be able to meet all the requirements of parts 123 or 501. The Agency wants States with well-run sewage sludge management programs to be eligible for authorization without having to make unnecessary administrative changes to their programs. Proposed changes would streamline the existing regulations to ease the authorization process for States and ensure that decisions are made based on true environmental and public health considerations.

Statement of Need:

EPA wants States with well-run biosolids management programs to be able to become authorized without having to make unnecessary administrative changes to their programs. This rule will streamline the current regulations to ease the authorization process for States.

Summary of the Legal Basis:

This action is not required by law or court order.

Alternatives:

Several drafts were distributed for wide-spread comment. These drafts ranged from minimum changes to very extensive revisions. The proposed alternative was a compromise based on comments.

Anticipated Costs and Benefits:

There are no anticipated costs to this rule. It provides States with additional flexibility in complying with pre-existing rules. The anticipated benefits are that more States will become authorized to manage the Federal biosolids program.

Risks:

This rule should not have any effect on risks to public health, safety, or the environment since it is a rule to streamline program management requirements.

Timetable:

Action	Date	FR Cite
NPRM	03/11/97	62 FR 11270
Final	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3788.

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RIN: 2040–AC87

EPA

131. NPDES STREAMLINING RULE—ROUND II

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:

33 USC 1311; Clean Water Act sec 301; 33 USC 1314; Clean Water Act sec 304; 33 USC 1312; Clean Water Act sec 302; 33 USC 1316; Clean Water Act sec 306; 33 USC 1318; Clean Water Act sec 308; 33 USC 1342; Clean Water Act sec 402; 33 USC 1361; Clean Water Act sec 501

CFR Citation:

40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline:

None

Abstract:

On February 21, 1995, President Clinton issued a directive requesting that Federal agencies review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations. In response to that directive, the Office of Wastewater Management plans to issue a comprehensive rulemaking package revising certain NPDES requirements in parts 122, 123 and 124 to eliminate redundant regulations, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Some of these revisions include: 1) consolidating regulatory definitions; 2) removal of Part 124 Subpart F non-adversary panel hearings; 3) possible removal of storm water group application requirements; 4) streamlining permit termination procedures; and 5) removing Part 124 evidentiary hearing procedures.

This rulemaking is expected to affect entities who operate the NPDES program or who are regulated by it. This includes small businesses and State and local governments. Most of these effects are expected to be deregulatory or streamlining in nature.

Statement of Need:

This rule is in response to the President's directive.

Summary of the Legal Basis:

This action is not being taken as a result of a court order and is not required by law.

Alternatives:

Alternatives are being considered as part of the proposed rule's comment review.

Anticipated Costs and Benefits:

The proposed rule is expected to provide savings for the regulated entities and permit issuing authorities in respect to costs and labor. It is not expected to result in any increased costs to those entities.

Risks:

Risks to the environment are expected to be minimal.

Timetable:

Action	Date	FR Cite
NPRM	12/11/96	61 FR 65267
Final	12/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 2040–AC70

EPA

132. NPDES WASTEWATER PERMIT APPLICATION FORMS AND REGULATORY REVISIONS FOR MUNICIPAL DISCHARGES AND SEWAGE SLUDGE USE OR DISPOSAL

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:

33 USC 1342; Clean Water Act sec 402; 33 USC 1314; Clean water Act sec 304; 33 USC 1318; Clean Water Act sec 308; 33 USC 1345; Clean Water Act sec 405; 33 USC 1361; Clean Water Act sec 501

CFR Citation:

40 CFR 122.21(j); 40 CFR 122.21(g)

Legal Deadline:

None

Abstract:

The purpose of this action is to revise and consolidate existing application

forms and requirements for Publicly Owned Treatment Works (POTWs) and other Treatment Works Treating Domestic Sewage (TWTDS), and to streamline the application process for these facilities. The Agency seeks to establish a unified process that minimizes the need for additional information from applicants while providing permit writers the necessary information, including toxics data, to ensure that permits adequately address concerns of permittees and environmental protection. The Agency seeks to allow the use of existing data and to avoid unnecessary reporting. The Agency is also considering how to utilize electronic data submission. Although these forms will increase the burden on permittees not already required to submit these data, the Agency is minimizing the need for information from small entities, including tribal facilities. The burden on States would be minimized because of improvements to the application forms.

Statement of Need:

Section 402(a) of the CWA, as amended, authorizes the EPA to issue permits for the discharge of any pollutant or combination of pollutants. The content of the application forms 2A/2S is derived from the requirements in proposed 122.21(j) and 122.21(q). Currently POTWs submit standard form A or short form A (based on size) for wastewater discharges and the interim sewage sludge application form for sludge discharges. EPA has not revised the wastewater forms since 1973, despite many amendments to the CWA and to the regulations under the Act which have significantly changed the permitting strategy of the NPDES program. Increased wastewater treatment required by the CWA has resulted in increased generation of sewage sludge. The interim sludge application form was developed in 1993 in response to regulatory changes to the part 503 sewage sludge regulations.

This rule will finalize changes to the regulations at 122.21(j) and (q) and forms 2A and 2S to provide permit writers with sufficient data to develop appropriate permit limitations that will be effective in ensuring that permittees meet the requirements of the regulations.

Summary of the Legal Basis:

This action is not required by law or court order.

Alternatives:

In preparation of the proposed rulemaking several scenarios for data collection were evaluated for both 2A and 2S. EPA looked at several options for the collection in 2A including all POTWs reporting the maximum data elements. In the end the proposal required two levels of data collection for Form 2A.

Proposed form 2S also evaluated various levels of data collection. In the proposed rule Class 1 facilities complete the most information and the sludge only facilities complete the least.

Anticipated Costs and Benefits:

This rule is a streamlining rule. It is anticipated that overall the final rule will decrease burden on facilities from the existing application burden. The burden reduction will come from streamlined application procedures which will decrease the number of 308 letters necessary.

The costs of the final rule will be decreased from the proposal. The proposed rule costs included a lot of testing which has been eliminated in the final.

Risks:

The application forms rule will allow permit writers to better evaluate discharges from POTWs and other TWTDS. The better the permit writer can evaluate the discharge the better he can protect the environment and public health with appropriate limits and necessary conditions in the permits.

Timetable:

Action	Date	FR Cite
NPRM	12/06/95	60 FR 62545
Final	02/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2501.

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RIN: 2040–AB39

EPA

133. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE I DISINFECTANT/DISINFECTION BYPRODUCTS RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments.

Legal Authority:

42 USC 300; Safe Drinking Water Act sec 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

Final, Statutory, November 1998.

Abstract:

The 1996 SDWA amendments require EPA to promulgate an Interim Enhanced Surface Water Treatment Rule (IESWTR) and a Stage 1 Disinfectants/Disinfection Byproducts (DBP) Rule by November 1998. EPA proposed both rules in 1994 as a result of formal regulatory negotiations. The regulations, along with a long-term ESWTR and Stage 2 DBP Rule that will be promulgated later, are intended to expand existing public health protections and address concerns about risk trade-offs between pathogens and disinfection byproducts.

EPA is working under an expedited schedule to meet the November 1998 deadline for the final IESWTR and Stage 1 Rule. The Agency plans to issue a Notice of Data Availability (NODA) for public comment in the fall of 1997 as part of this schedule. The M/DBP Advisory Committee (established under the Federal Advisory Committee Act (FACA)) met from March through July 1997 to discuss, evaluate and provide advice on data, analysis and approaches to the NODA and develop consensus recommendations on a number of key elements in the rule.

Anticipated Costs and Benefits:

Cost-benefit data is under development and will be available as part of the Fall 1997 NODA.

Timetable:

Action	Date	FR Cite
NPRM	07/29/94	59 FR 38668
Notice of Data Availability	11/00/97	
Final	11/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2772.

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RIN: 2040–AB82

EPA

134. NATIONAL PRIMARY DRINKING WATER REGULATIONS: INTERIM ENHANCED SURFACE WATER TREATMENT RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments.

Legal Authority:

42 USC 300; Safe Drinking Water Act sec 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

Final, Statutory, November 1998.

Abstract:

The 1996 SDWA amendments require EPA to promulgate an Interim Enhanced Surface Water Treatment Rule (IESWTR) and a Stage 1 Disinfectants/Disinfection By-Products (DBP) Rule by November 1998. EPA proposed both rules in 1994 as a result of formal regulatory negotiations. The regulations, along with a long-term ESWTR and Stage 2 DBP Rule that will be promulgated later, are intended to expand existing public health protections and address concerns about risk trade-offs between pathogens and disinfection byproducts.

EPA is working under an expedited schedule to meet the November 1998 deadline for the IESWTR and Stage 1 Rule. The Agency plans to issue a Notice of Data Availability for public comment in the fall of 1997 as part of this schedule. The Agency has also established a committee under the Federal Advisory Committee Act (FACA) to assist in development of the rules. The M/DBP Advisory Committee met from March through July to discuss, evaluate and provide advice on data, analysis and approaches to be included in the NODA to be published in November 1997. On July 15, the Committee formally reached consensus and signed an agreement that includes recommendations to EPA on a number of key rule elements.

Anticipated Costs and Benefits:

Cost-benefit data is under development and will be available as part of the Fall 1997 NODA.

Timetable:

Action	Date	FR Cite
NPRM	07/29/94	59 FR 38832
Notice of Data Availability	11/00/97	
Final	11/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2304.

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EPA

135. REVISED STANDARDS FOR HAZARDOUS WASTE COMBUSTION FACILITIES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 6924; Resource Conservation Recovery Act sec 3004; 42 USC 6925; Resource Conservation Recovery Act sec 3005; Clean Air Act sec 112; Clean Air Act sec 114

CFR Citation:

40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270; 40 CFR 271

Legal Deadline:

Final, Judicial, April 1998, Settlement agreement: industrial furnaces & incinerators 4/98 - boilers 12/99.

Abstract:

The Environmental Protection Agency's (EPA's) strategy for hazardous waste minimization and combustion and a judicial settlement agreement commit EPA to upgrade its standards for burning hazardous waste in incinerators, boilers, and industrial furnaces. These standards would be applicable during the construction and operation of these combustion facilities.

Statement of Need:

Under the Clean Air Act (CAA) Amendments of 1990, EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most hazardous waste combustors (HWCs) (i.e., incinerators, cement kilns, boilers, and some types of smelting furnaces). In addition, under the Resource Conservation and Recovery Act (RCRA), EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. EPA is concerned that its current RCRA standards for HWCs may not be adequately protective given that the standards do not take into account indirect pathways of exposure and that there have been advances both in risk assessment and control technologies since promulgation of the current standards.

Consequently, the Agency plans to establish new emissions standards for HWCs under joint CAA and RCRA authority. This will avoid duplicative Agency effort and piecemeal regulation of the hazardous waste combustion industry.

Alternatives:

Under provisions of the CAA, the Agency plans to consider the cost-effectiveness of emission limits more stringent than the minimum limits mandated by the statute. Further, the Agency plans to evaluate approaches to reduce emissions of hazardous air pollutants by improving good operating practices (e.g., controlling the way in which problematic materials such as toxic metals are introduced into the combustor).

Anticipated Costs and Benefits:

EPA's analysis of the proposed rule indicates that some combustion facilities may experience a substantial change in the cost of burning waste, but that this change is likely to have a limited impact on combustion markets. In terms of effects on waste-burning cost structure, cement kilns and lightweight aggregate kilns (LWAKs) are most affected by the regulation. This is primarily a product of their relatively low baseline costs of burning, meaning that incremental compliance costs represent a large increase in their overall cost of burning waste. For incinerators, compliance costs are lower, represent smaller additions to baseline costs, and change little across regulatory options. The analysis concludes that cement kilns have the lowest waste burning costs even after regulation, and so will continue to have the greatest flexibility in marketing their services.

To the extent that compliance costs cannot be passed through to generators and fuel blenders, the profitability of waste burning in kilns will fall. Nonetheless, waste burning kilns are expected to have healthy operating profit margins after the rule. Market exit in all sectors is concentrated among facilities that burn small quantities of hazardous waste. While as many as 98 combustion facilities may stop burning hazardous wastes as a result of the proposed MACT options, the small quantities these facilities burn suggest that market dislocations will be minor.

Overall, the social costs of the rule are balanced by a set of potentially substantial benefits. Given the severity of the potential adverse health effects from dioxin and mercury (cancer, adverse developmental effects in children, severe neurological effects in adults, and bioaccumulation in ecosystems), EPA believes the substantial reductions of these pollutants from hazardous waste burning sources under the MACT standard justifies moving ahead with the proposed beyond the floor (BTF) option. An alternative way of valuing benefits is the potential increase in property values around closed or more stringently regulated combustion facilities. The fact that this approach also suggests potentially substantial benefits strengthens EPA's belief that the costs of moving forward with the proposed BTF option for certain pollutants and/or source categories are justified.

Risks:

EPA has estimated that hazardous waste incinerators and hazardous-waste burning cement and light weight aggregate kilns currently emit a total of 0.94kg toxicity equivalent (TEQ) of TCDD and TCDF (isomers of dioxin) per year. Therefore, hazardous waste burning sources represent about 9 percent of total anthropogenic emissions of dioxins in the U.S.

EPA estimates that dioxin emissions from hazardous waste-burning sources will be reduced to 0.07kg TEQ per year at the floor levels and to 0.01kg TEQ per year at the proposed beyond the floor standard. These reductions would result in decreases of approximately 8 and 9 percent, respectively, in total estimated anthropogenic U.S. emissions. EPA expects that reductions in dioxin emissions from hazardous waste-burning sources, in conjunction with reductions in emissions from other dioxin-emitting sources, will help reduce dioxin levels over time in foods used for human consumption and, therefore, reduce the likelihood of adverse health effects, including cancer, occurring in the general population.

EPA has estimated that hazardous waste incinerators and hazardous waste-burning cement and lightweight aggregate kilns currently emit a total of 10.1 Mg of mercury per year. Based on these estimates, hazardous waste-burning sources represent about 4 percent of total anthropogenic emissions of mercury in the U.S.

EPA estimates that mercury emissions from hazardous waste-burning sources will be reduced to 3.3Mg per year at the proposed floor levels and to 2.0Mg per year at the proposed beyond the floor standard. These reductions would result in reductions of total anthropogenic U.S. emissions of approximately 3 percent. EPA expects that reductions in emissions from other mercury-emitting sources, will help reduce mercury levels in fish over time and therefore, fish consuming populations.

Timetable:

Action	Date	FR Cite
NPRM Cement Kilns, LWAKs, Incinerators	04/19/96	61 FR 17358
Final MACT "Fasttrack"	02/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State

Additional Information:

SAN No. 3333.

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EPA

136. REQUIREMENTS FOR MANAGEMENT OF HAZARDOUS CONTAMINATED MEDIA COMMONLY REFERRED TO AS HAZARDOUS WASTE IDENTIFICATION RULE FOR CONTAMINATED MEDIA OR HWIR-MEDIA

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 6912(a); Resource Conservation Recovery Act sec 2002(a); 42 USC 6921; Resource Conservation Recovery Act sec 3001; 42 USC 6924; Resource Conservation Recovery Act sec 3004; 42 USC 6926; Resource Conservation Recovery Act sec 3006; 42 USC 6927; Resource Conservation Recovery Act sec 3007

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 268; 40 CFR 269; 40 CFR 271

Legal Deadline:

None

Abstract:

The Agency's goal for the HWIR-media proposal was to provide significant relief from administrative and substantive obstacles for the management of remediation wastes, so that states and EPA could base waste management decisions on actual site conditions and waste characteristics, according to their professional judgment instead of strict national requirements that are not uniformly appropriate at all cleanup sites. The Agency wanted to reduce the overlap between RCRA and the Clean Water Act (CWA) or Marine Protection, Research and Sanctuaries Act (MPRSA)

for dredging operations, and EPA was considering withdrawing the regulations for Corrective Action Management Units (CAMUs). Finally, an additional goal was to streamline state authorization.

The Agency has decided on the general framework for finalization of the HWIR-media rule. The Agency plans to promulgate only targeted elements of the proposal rather than go forward with a more comprehensive approach. EPA plans to complement the targeted elements by leaving the CAMU regulations in place, rather than withdrawing these regulations as proposed. Targeted elements EPA plans to focus on are: alternative land disposal restriction treatment standards for hazardous contaminated soil; streamlined permitting for cleanup sites that would eliminate the requirements for facility-wide corrective action at cleanup-only sites; options for remediation piles that resolve issues raised in the public comments; and a RCRA exclusion for dredged materials managed under CWA or MPRSA permits. At this time, EPA is not planning to finalize the portions of the proposal which would have distinguished between lower- and higher-risk contaminated media and would have given regulatory agencies the flexibility to exempt lower-risk contaminated media from RCRA regulations.

Statement of Need:

Since 1980, the Environmental Protection Agency (EPA) has promulgated comprehensive regulations under subtitle C of RCRA governing the treatment, storage, disposal, and transportation of hazardous wastes. These regulations have been designed to, among other things, discourage hazardous waste generation, and for those wastes generated, to prevent future environmental contamination by ensuring safe management and disposal. In contrast, the primary objective of the cleanup program is to achieve environmental improvement as quickly and effectively as possible.

Although EPA conducted a lengthy outreach process before developing the HWIR-media proposal and tried to balance the concerns and interests of various stakeholder groups, it is now clear after reviewing public comment on the proposal that stakeholders have fundamental disagreements on many remediation waste management issues. EPA has concluded that pursuing comprehensive regulatory reform would be a time and resource intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty. This uncertainty would be detrimental to the program and have a negative effect on ongoing and future cleanups. Based on these conclusions, the Agency has decided that a regulatory response will not solve the remediation waste management issues that HWIR-media was designed to solve.

While EPA believes the targeted elements and corrective action management unit regulations would improve remediation waste management and expedite cleanups, the Agency also recognizes that additional reform is needed, especially for management of non-media remediation wastes like remedial sludges. The Agency will continue to participate in discussions on potential legislation to promote this additional needed reform.

Alternatives:

Alternative regulatory approaches for this rule were proposed and analyzed.

Anticipated Costs and Benefits:

Analyses of costs and benefits will be conducted as part of the economic analysis for this rule required under Executive Order 12866.

Risks:

One of the primary objectives of this rule is to establish requirements for management of contaminated media and other remediation wastes that more accurately reflect the risks posed by such wastes. Thus, the rule is expected to result in cleanups that achieve the Agency's risk reduction objectives in a more efficient and expeditious manner. More quantitative analysis of the risks associated with this rule will be included in the economic analysis.

Timetable:

Action	Date	FR Cite
NPRM	05/20/92	57 FR 21450
NPRM Withdrawn	10/30/92	57 FR 49280
NPRM	04/29/96	61 FR 18780
Final	06/00/98	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 2982.

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EPA

137. COMPLIANCE ASSURANCE MONITORING RULE (PREVIOUSLY ENHANCED MONITORING PROGRAM)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Clean Air Act Amendments of 1990, sections 114(a)(3), 503(b),; Clean Air Act Amendments of 1990, section 504(b)

CFR Citation:

40 CFR 64; 40 CFR 70; 40 CFR 71

Legal Deadline:

Final, Statutory, November 1992.

NPRM, Judicial, September 30, 1993.

Final, Judicial, October 4, 1997.

Abstract:

This action is required by the 1990 Clean Air Act (the Act) Amendments to assure better compliance with existing rules. This rule will require major stationary sources who must obtain permits under title V of the Act to conduct monitoring that provides reasonable assurance of ongoing compliance of the significant emission units with applicable requirements. Affected sources will use the monitoring data in conjunction with other compliance-related data to certify compliance with emission standards and other permit conditions.

Statement of Need:

The Clean Air Act Amendments of 1990 require major stationary sources to provide ongoing monitoring and periodic certification of compliance. Current compliance data based on initial or periodic performance testing, provide only snapshots of the compliance status of stationary sources. Current minimal operation and maintenance monitoring of control technology performance, if applied, provides little assurance of continued good pollution control and little incentive for the source owner or operator to maintain or improve

performance. The compliance assurance monitoring (CAM) rule would require owners or operators of emission sources to increase awareness of the operational status of pollution control technology and to act on discrepancies in that operation to reduce emissions. Certification of compliance would be based on a combination of compliance testing or other compliance data and demonstration of continued good control technology performance and appropriate and timely corrective action.

Alternatives:

The CAM program is designed to assure ongoing compliance with requirements under the Act. If owners or operators are already required to determine continuous compliance with emission limitations or standards, that satisfies the purpose of CAM and no additional assurance of compliance is necessary. If these circumstances do not exist, CAM would use a two-pronged approach to assure compliance. First, CAM would require that owners or operations have reasonable information available to them that can indicate potential problems in emission control performance. Second, CAM would require that owners or operators act on that information in a timely fashion to avoid (if preventable) or reduce (if not preventable) emission control problems that could result in excess emissions. This type of monitoring does not need to be so rigorous as to determine exactly or predict emission levels, but rather should be sufficient to allow for reasonable optimization of the method used by a source to achieve ongoing compliance with emission limitations or standards under the Act.

This approach is consistent with President Clinton's regulatory reform initiatives and EPA's Common Sense Initiative in that it focuses on preventing pollution rather than imposing additional command-and-control regulations on regulated sources. This represents a significant change in Agency direction for implementation of of the monitoring and compliance certification requirements in titles V and VII of the Act. The goal of CAM is to provide a reasonable assurance of compliance. Rather than a direct connection between monitoring and certification, CAM allows for an indirect, symbiotic relationship between these two methods for assuring compliance. The result of this change will be to reduce the emphasis on assuring compliance through the threat of enforcement. Instead, CAM emphasizes assuring compliance by placing the burden on regulated sources to monitor their performance and take proactive steps to minimize emission exceedances.

Anticipated Costs and Benefits:

In keeping with Executive Order 12866, EPA will prepare a detailed regulatory impact analysis (RIA) that will provide costs and benefits associated with the CAM rule.

EPA believes that the adoption of CAM can result in tangible benefits for a facility. Although a self-monitoring program may not always be justified purely on the basis of economic benefit to a source, self-monitoring can, in some situations, reduce operating costs. For example, monitoring data can be used to increase combustion efficiency in an industrial boiler or to increase capture and reuse of solvents at a coating plant. The CAM approach will also alert owners or operators that potential control device problems may exist. The owner or operator can use this information to target control devices for routine maintenance and repair, and reduce the potential for costly breakdowns.

The Agency also believes that the CAM approach will result in tangible benefits to the general public health and welfare. A primary benefit of CAM will be a reduction in overall emissions through increased compliance with the requirements of the Act. The key elements of CAM that will provide these reductions are (a) the emphasis on monitoring that alerts owners or operators to deteriorating control conditions and (b) the requirement that steps be taken to correct those conditions. This approach emphasizes minimizing emissions by avoiding or remedying as quickly as possible situations that may involve emissions in excess of applicable requirements. In addition to the direct environmental benefit of decreased emissions, increased compliance rates will also achieve a corollary economic benefit. As a general matter, increased compliance rates with existing rules will lower the long-term overall cost of air pollution control by decreasing the need for additional regulations to obtain necessary emission reductions, especially for nonattainment areas.

Risks:

Compliance Assurance Monitoring will apply to over 50,000 emission units nationally. The establishment of CAM requirements is estimated to impact about 97 percent of the emissions of carbon monoxide, nitrogen oxide, particulate matter, sulfur dioxide, and volatile organic compounds, as well as certain hazardous air pollutants such as benzene and mercury; exact reductions which will be obtained are yet to be determined. The CAM provisions will apply to existing Clean Air Act standards only; new regulations will incorporate continuous compliance monitoring provisions. As these new rules are developed, pollution reduction will be achieved beyond those obtained through CAM.

Timetable:

Action	Date	FR Cite
NPRM	10/22/93	58 FR 54648
Supplemental Proposal	12/28/94	59 FR 66844
Final Action	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

SAN No. 2942.

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EPA

138. NEW SOURCE REVIEW (NSR) REFORM

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:

Clean Air Act Amendments of 1990 Title I

CFR Citation:

40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline:

None

Abstract:

The purpose of this action is to revise the Clean Air Act new source review

(NSR) regulations, which govern the preconstruction air quality review and permitting programs that are implemented by States and the Federal Government for new and modified major stationary sources of air pollution. This rulemaking will deregulate, that is, exclude from major NSR program requirements those activities of sources that, with respect to air pollution, have little environmental impact. The rulemaking will encourage pollution control and pollution prevention projects at existing sources. Control technology requirements will be clarified with respect to when and how they apply to sources that are covered. The action seeks to more clearly define the appropriate roles and requirements of sources, permitting authorities and Federal land managers and EPA in the protection of air-quality-related values in Federal Class I areas (i.e., certain national parks and wilderness areas) under the new source review regulations. State, local, and tribal permitting agencies will be given more flexibility to implement program requirements in a manner that meet their specific air quality management needs. Consequently, the rulemaking decreases the number of activities that are subject to NSR requirements and also expedites the permitting process for those sources that are subject to NSR. This action is designed to reduce the regulatory burden over all industries without respect to commercial size or capacity; therefore, it should have no detrimental impact on small businesses. Finally, this action also addresses several pending petitions for judicial review and administrative action pertaining to new source review applicability requirements and control technology review requirements. Regulations that will be affected are State implementation plan requirements for review of new sources and modifications to existing sources (40 CFR 51.160-166), the Federal prevention of significant deterioration program (40 CFR 52.21), and Federal restriction on new source construction (40 CFR 52.24) to be proposed in another rulemaking action.

Statement of Need:

In August 1992, EPA voluntarily initiated a comprehensive effort to reform the NSR process. This effort was initiated to examine complaints from the regulated community that the current regulatory scheme is too complex, needlessly delays projects, and unduly restricts source flexibility. Currently there are no applicable statutory or judicial deadlines for the NSR reform rulemaking effort. The goal of this effort is to address industries' concerns without sacrificing the environmental benefits embodied in the present approach; that is, protecting and improving local air quality, and stimulating pollution prevention and advances in control technologies.

In July 1993, the New Source Review (NSR) Reform Subcommittee was formed under the auspices of the Clean Air Act Advisory Committee. The Subcommittee's purpose is to provide independent advice and counsel to EPA on policy and technical issues associated with reforming the NSR rules. The Subcommittee was composed of representatives from industry, State/local air pollution control agencies, environmental organizations, EPA headquarters and regions, and other Federal agencies (Federal Land Managers, National Park Service and Forest Service), Department of Energy, and the Office of Management and Budget).

Summary of the Legal Basis:

There are no applicable statutory or judicial deadlines for the NSR reform rulemaking effort. However, the rule will address two outstanding settlement agreements: CMA Exhibit B and Top-down BACT. The pending settlement on WEPCO may impose a judicial deadline on the rulemaking.

Alternatives:

The Subcommittee discussed numerous options for implementing NSR reform. However, EPA's primary focus will be to consider the specific recommendations developed by the Subcommittee and, where appropriate, use them in this rulemaking effort. In January 1996, EPA, as part of another regulatory streamlining measure, merged portions of a separate rulemaking to implement the 1990 CAA Amendments with the Reform effort. The combined package was proposed in the Federal Register on July 23, 1996.

Anticipated Costs and Benefits:

From a cost perspective, this rulemaking represents a decrease in applications and recordkeeping costs to industry of at least $13 million per year, as compared to the preexisting program, based primarily on the fact that fewer sources will need to apply for major source permits. In addition, the cost to State and local agencies will be reduced by approximately $1.4 million per year. The Federal Government should realize a savings of approximately $116,000 per year. Additional cost reductions, which are difficult to quantify, will be realized due to the streamlining effect of the rulemaking on the permitting process, for example, the opportunity costs for shorter time periods between permit application and project completion and reduced uncertainty in planning for future source growth.

Risks:

This is a procedural rule applicable to a wide variety of source categories. Moreover, it applies to criteria pollutants for which NAAQS have been established. This action is considered environmentally neutral. However, any potential risks are considered in the NAAQS rulemaking from a national perspective.

Timetable:

Action	Date	FR Cite
NPRM	07/23/96	61 FR 38249
Final	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 3259.

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RIN: 2060–AE11

EPA

139. OPERATING PERMITS: REVISIONS (PART 70)

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 7661 et seq

CFR Citation:

40 CFR 70; 40 CFR 71; 40 CFR 51

Legal Deadline:

None

Abstract:

In response to litigation on the part 70 regulations, to several problems identified through implementation of part 70, and to comments provided in response to notices of proposed rulemaking, parts 51, 70, and 71 are being revised. The changes include the following: streamlined procedures for revising stationary-source operating permits issued by State and local permitting authorities or the Environmental Protection Agency (EPA) under title V of the Clean Air Act; changes to the certification of compliance that is required to be submitted as part of the permit documentation; clarification of the title I and title V permitting requirements for research and development facilities; and changes in public participation requirements for minor new source review actions under title I of the Act.

Statement of Need:

These revised rules will establish a simpler, more flexible system for revising operating permits. These revisions reflect the principles articulated in the President's and the Vice President's March 16, 1995 report Reinventing Environmental Regulation. That report established as goals for environmental regulation the building of partnerships between EPA and State and local agencies, minimizing costs, providing flexibility in implementing programs, tailoring solutions to the problem, and shifting responsibility to State and local programs.

Alternatives:

The Clean Air Act requires that EPA develop regulations which set minimum standards for State operating-permit programs. The Clean Air Act also requires that EPA promulgate and administer a Federal operating-permits program for States that have not obtained EPA approval by November 15, 1995. In response to concerns expressed in comments on the initial notice of proposed rulemaking, the EPA talked with representatives from State and local permitting authorities, industry and environmental groups to hear their implementation concerns. This action incorporates many of those recommendations into a final rule.

Anticipated Costs and Benefits:

The administrative cost of implementing the final rules by permitting authorities, EPA, and permitted sources was estimated. Administrative costs include a range of costs which cover the source's preparing an application through EPA's and the permitting authority's effort to complete the process. The administrative costs are estimated to be approximately $33 million. By comparison, the cost of implementing the current part 70 permit revision system is approximately $118 million. Implementing the revised regulations will reduce costs by about $85 million.

Risks:

All major sources of air pollution are required to have a permit to operate by the Clean Air Act. No adverse effect on the public health or ecosystems should result from this action, because the rule will require permit revisions with significant environmental impact to undergo public and EPA review.

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44460
NPRM Supplemental Proposal for Part 71	04/27/95	60 FR 20804
NPRM Supplemental Proposal for Part 70	08/31/95	60 FR 45530
FINAL	03/00/98	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3412.

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RIN: 2060–AF70

EPA

140. NAAQS: SULFUR DIOXIDE (REVIEW AND IMPLEMENTATION)

Priority:

Economically Significant

Legal Authority:

42 USC 7409; Clean Air Act sec 109

CFR Citation:

40 CFR 50.4; 40 CFR 50.5; 40 CFR 51

Legal Deadline:

NPRM, Judicial, November 1, 1994, (review only).

Final, Judicial, April 22, 1996, (review only).

Abstract:

On November 15, 1994, the Environmental Protection Agency (EPA) proposed not to revise the existing 24-hour and annual primary standards. The EPA sought public comment on the need to adopt additional regulatory measures to address the health risk to asthmatic individuals posed by short-term peak sulfur dioxide exposure.

On March 7, 1995, EPA proposed implementation strategies for reducing short-term high concentrations of sulfur dioxide emissions in the ambient air.

On May 22, 1996, EPA published its final decision not to revise the primary sulfur dioxide NAAQS. The notice stated that EPA would shortly propose a new implementation strategy to assist States in addressing short-term peaks of sulfur dioxide. The new implementation strategy - the Intervention Level Program - was proposed on January 2, 1997. Final action on the Intervention level program is anticipated for May, 1998.

Statement of Need:

Brief exposures to elevated concentrations of sulfur dioxide causes bronchoconstriction, sometimes accompanied by symptoms (coughing, wheezing, and shortness of breath), in mild to moderate asthmatic individuals. The existing sulfur dioxide National Ambient Air Quality Standard (NAAQS) provides substantial protection against short-term peak sulfur dioxide levels. At issue is whether additional measures are needed to further reduce the health risk to asthmatic individuals.

Alternatives:

The March 7, 1995, proposal notice sought public comment on three alternatives to further reduce the public health risk to asthmatic individuals posed by short-term peak sulfur dioxide exposures. These included: (a) a new 5-minute NAAQS; (b) a new program under section 303 of the Act; and (c) a targeted monitoring program to ensure sources likely to cause or contribute to high 5-minute peaks are in attainment with the existing standard. The January 2, 1997, notice proposed an alternative program under section 303 of the Act that will assist States in addressing high 5-minute peaks.

Anticipated Costs and Benefits:

A draft regulatory impact analysis was completed and made available for public comment at the time of the January 2, 1997 proposal.

Risks:

Exposure analyses indicate from the national perspective that the likelihood of exposure to high 5-minute sulfur dioxide concentrations is very low. Asthmatic individuals in the vicinity of certain sources or source categories, however, may be at higher risk of exposure than the population as a whole.

Timetable:

Action	Date	FR Cite
NPRM NAAQS Review	11/15/94	59 FR 58958
NPRM NAAQS Implementation (part 51)	03/07/95	60 FR 12492
Final NAAQS Review	05/22/96	61 FR 25566
NPRM Revised NAAQS Implementation (Part 51)	01/02/97	62 FR 210
Final NAAQS Implementation (Part 51)	05/00/98	

Small Entities Affected:

None

Government Levels Affected:

State

Additional Information:

SAN No. 1002.

(Primary Standard) and SAN No

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RIN: 2060–AA61

EPA

141. VOC REGULATION FOR ARCHITECTURAL COATINGS

Priority:

Other Significant

Legal Authority:

42 USC 7401; Clean Air Act sec 183

CFR Citation:

40 CFR 59

Legal Deadline:

Final, Statutory, March 15, 1997.

Abstract:

This regulation will control volatile organic compound (VOC) emissions from architectural coatings. These coatings are applied to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. Traditional VOC limitations, market-based approaches, and phased-in approaches are all being considered. The EPA is working with coating manufacturers and other stakeholders to ensure that this rule is based on the best possible understanding of the industry and that it affords the flexibility to achieve the necessary emission reductions in the most sensible, cost-effective ways.

Statement of Need:

This regulation will establish VOC content limits for over 50 categories of architectural coatings. These limits will reduce the VOC emissions from architectural coatings and will reflect best available controls, as defined by section 183(e) of the Clean Air Act (CAA). The architectural coatings category is a significant contributor of VOC emissions in ozone nonattainment areas.

Summary of the Legal Basis:

Section 183(e) of the CAA requires that the EPA list those categories of consumer and commercial products (CCP) that account for at least 80 percent of VOC from all CCP in ozone nonattainment areas and establish a schedule for regulating the categories. The architectural coatings category was included on the list and schedule published March 23, 1995, and is in the group of categories to be regulated by March 1997.

Alternatives:

There are many alternatives to the proposed rule that were or are being considered, including: alternative VOC content limits for some types of coatings; issuance of a control techniques guideline in lieu of a national rule; low-volume exemptions; payment of fees, if desired, to exceed the VOC content limits; variances based on economic hardship; and an incentive to recycle paint. The requirements in the proposed rule are based on product reformulation, a pollution prevention method.

Anticipated Costs and Benefits:

The proposed rule would impose an estimated cost of $25 million per year for coating manufacturers and would reduce VOC emissions from architectural coatings by an estimated 106,000 tons per year. VOC are a main component in formation of ground-level ozone which can damage lung tissue and cause serious respiratory illness.

Risks:

In the past, the CAA has focused on reducing VOC emissions from mobile sources (cars and trucks) and stationary sources, such as power plants and factories. Requiring additional controls on these sources may be very costly for the emissions reductions achieved. Regulating consumer and commercial products may prove to be a more cost-effective way of substantially reducing VOC emissions nationwide. Consumer and commercial products, such as surface coatings, personal care products, and household cleaning products, contribute about six million tons (approximately 30 percent) annually of VOC emissions nationwide. The architectural coating category is one of the largest contributors.

Timetable:

Action	Date	FR Cite
NPRM	06/25/96	61 FR 32729
Final	11/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local

Additional Information:

SAN No. 3351.

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RIN: 2060–AE55

EPA

142. NATIONAL VOC EMISSION STANDARDS FOR CONSUMER PRODUCTS

Priority:

Other Significant

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 59

Legal Deadline:

Final, Statutory, March 1997.

Abstract:

This regulation will reduce volatile organic compound (VOC) emissions from 24 types of consumer products which are currently regulated by California and several other States. The EPA is working with consumer product manufacturers and other stakeholders to ensure that this rule is based on the best possible understanding of the industry and that it affords the flexibility to achieve the necessary emission reductions in the most sensible, cost-effective ways.

Statement of Need:

This regulation will establish VOC content limits for 24 types of consumer products. These limits will reduce the VOC emissions from these products and will reflect best available controls, as defined by section 183(e) of the Clean Air Act. The consumer products category is a significant contributor of VOC emissions in ozone nonattainment areas.

Summary of the Legal Basis:

Section 183(e) of the CAA requires that the EPA list those categories of consumer and commercial products (CCP) that account for at least 80 percent of VOC from all CCP in ozone nonattainment areas and establish a schedule for regulating the categories. The consumer products category was included on the list and schedule published March 23, 1995, and is in the group of categories to be regulated by March 1997.

Alternatives:

Alternatives to requirements in the proposed rule that were or are being considered, include alternative VOC content limits; issuance of a control techniques guideline in lieu of a national rule; variances based on economic hardship; and an incentive for innovative product development. The requirements in the proposed rule are based on product reformulation, a pollution prevention method.

Anticipated Costs and Benefits:

The rule would impose an estimated cost of $27 million per year for consumer product manufacturers and would reduce VOC emissions from the products by an estimated 90,000 tons per year. VOC are a main component in formation of ground-level ozone which can damage lung tissue and cause serious respiratory illness.

Risks:

In the past, the CAA has focused on reducing VOC emissions from mobile sources (cars and trucks) and stationary sources, such as power plants and factories. Requiring additional controls on these sources may be very costly for the emissions reductions achieved. Regulating consumer and commercial products may prove to be a more cost-effective way of substantially reducing VOC emissions nationwide. Consumer and commercial products, such as surface coatings, personal care products, and household cleaning products, contribute about six million tons (approximately 30 percent) annually of VOC emissions nationwide. The consumer products category is one of the largest contributors.

Timetable:

Action	Date	FR Cite
NPRM	04/02/96	61 FR 14531
Final Action	11/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal

Sectors Affected:

284 Soaps, Detergents, and Cleaning Preparations, Perfumes, Cosmetics, and Other Toilet Preparations; 287 Agricultural Chemicals; 289 Miscellaneous Chemical Products

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3658.

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RIN: 2060–AF62

EPA

143. OPEN-MARKET TRADING GUIDANCE

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:

Clean Air Act sec 182; Clean Air Act sec 187

CFR Citation:

40 CFR 51

Legal Deadline:

None

Abstract:

The Environmental Protection Agency (EPA) will issue a final policy for open-market trading of ozone smog precursors (volatile organic compounds and oxides of nitrogen) that will provide more flexibility than ever before for companies to trade emission credits without prior State or Federal approval. Once a rule is in the State implementation plan (SIP), companies could engage in emissions trades without prior regulatory approval as long as accountability is ensured in accordance with the guidance. The intended benefits of an active market in emissions trading are compliance with the ozone standard at far less cost and an increased incentive to develop innovative emission-reduction technologies. standard at far less cost and an increased incentive to develop innovative emission-reduction technologies.

Statement of Need:

In the last 25 years great progress has been made toward achieving healthy air quality, yet more than 50 million people still live in areas that do not meet the ozone health standard. Continued reductions in ozone precursor emissions are important to protect public health, but additional emission reductions are increasingly more costly to obtain. Emissions trading is one way to lower the overall cost of achieving additional reductions. Historically, the volume of emissions trading under EPA's existing trading policies has been low, suggesting high transaction costs associated with the delays of trade-by-trade government review. Additionally, there have been

significant problems of quality control, reducing the environmental effectiveness of the program. EPA's policy on open-market emissions trading is intended to establish a trading program that minimizes transaction costs and harnesses the power of the marketplace to enhance quality control.

Alternatives:

The EPA endorses several forms of emissions trading, including interfacility and intrafacility emissions trading under the 1986 Emissions Trading Policy Statement, the 1994 Economic Incentive Program Rules and Economic Incentive Program Rules (April 7, 1994). The open-market program is yet another form of emissions trading that can reduce the overall cost of compliance with the ozone standard.

Anticipated Costs and Benefits:

Market-based emissions trading programs allow for greater and/or faster reductions in emissions, lower the cost of pollution control, reduce the adverse impacts of regulation on industry and consumer prices, lower the human health consequences, and improve the environment by achieving early reductions, and provide incentives to develop lower-costs pollution control methods. The actual benefits of open-market trading programs depend on a number of variables, including the number of States that adopt such programs and the number of sources that participate. Estimates of costs savings from established emissions-trading programs such as the nationwide acid rain trading program, the RECLAIM program in the Los Angeles area, and the lead phasedown range from nearly 20 to over 40 percent.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	08/03/95	60 FR 39668
Notice Inclusion of Proposed Model Rule	08/25/95	60 FR 44290
Final	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3660.

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RIN: 2060–AF60

EPA

144. VOLUNTARY STANDARDS FOR LIGHT-DUTY VEHICLES (NATIONAL 49 STATE LOW-EMISSION VEHICLES PROGRAM)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Clean Air Act sec 202; Clean Air Act sec 301(a)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

This rulemaking is a voluntary emissions standards program applicable to manufacturers of light-duty vehicles and trucks beginning in model year 1997. This program would apply only to those manufacturers that chose to opt into the program. This program is designed to be an alternative national program that provides emissions reductions equivalent to the Northeast Ozone Transport Commission's (OTC's) low-emission vehicle (LEV) program.

Statement of Need:

If agreement is reached between the OTC states and the auto makers on a voluntary 49-State LEV program, this rulemaking will establish the regulations for the LEV program. Under these regulations, auto makers would be able to volunteer to comply with more stringent tailpipe standards for cars and trucks (light-duty). Once an auto maker opted into the program, EPA would enforce the standards in the same manner as any other federal motor vehicle pollution control requirement. EPA is proposing that this program would relieve the 13 states in the Northeastern part of the country (OTR) of the December, 1994, regulatory obligation to adopt their own motor vehicle programs. This rulemaking also harmonizes Federal and California motor vehicle standards and test procedures to enable auto makers to design and test vehicles to one set of standards nationwide.

Alternatives:

Under the CAA, EPA is prohibited from adopting more stringent auto tailpipe standards prior to fiscal year 2004. The OTC petitioned the Environmental Protection Agency (EPA) in 1994 and was granted approval to adopt the California Low-Emission Vehicle Program in the OTR. This rulemaking would establish a voluntary LEV program in 49 states.

Anticipated Costs and Benefits:

The annualized costs of the OTC LEV Program will be roughly $400 million. The National LEV program created in this rulemaking is expected to have an annual cost of $1.1 billion. The OTC program would only apply to 2 million vehicles sold in the OTR. The National LEV program would apply to all new vehicles sold in 49 States comprising a vehicle fleet of 12.5 million vehicles sold annually. On a per car basis, EPA expects vehicle price to increase $100. The National LEV program will provide air pollution reductions throughout the country. There are currently 38 ozone nonattainment areas outside the OTR and CA with a combined population of approximately 45 million that will benefit from this voluntary national program.

Risks:

Motor vehicles are a significant cause of smog because of emissions of volatile organic compounds (VOC) and nitrogen oxide (NOx). EPA has projected that, without the California LEV in the OTR, highway vehicles will account for roughly 38 percent of NOx and 22 percent of VOC emissions in 2005. EPA currently estimates that VOC emissions should be reduced by roughly 95 tons per day and NOx emissions by approximately 195 tons per day as a result of the National LEV program.

Timetable:

Action	Date	FR Cite
NPRM	10/10/95	60 FR 52734
Final	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3646.

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RIN: 2060–AF75

EPA

145. CONTROL OF EMISSIONS OF AIR POLLUTION FROM HIGHWAY HEAVY-DUTY ENGINES AND DIESEL ENGINES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

Clean Air Act sec 202(a); Clean Air Act sec 211(c); Clean Air Act sec 213(a); Clean Air Act sec 301(a)

CFR Citation:

40 CFR 9; 40 CFR 86; 40 CFR 89

Legal Deadline:

Final, Judicial, August 29, 1997.

Abstract:

The primary focus of this action will be reducing emissions of nitrogen oxides (NOx), non-methane hydrocarbon (NMHC) and particulate matter (PM) from diesel and gasoline fueled engines used in highway trucks and buses and in nonroad equipment and vehicles. Nitrogen oxides are a significant contributor to urban ozone pollution (smog), acid rain, and particulate pollution. Particulates, including those emitted directly and secondary particulates formed in the atmosphere, have been associated with increased death and illness rates as well as impaired visibility. Non-Methane hydrocarbons also contribute to ozone pollution. Highway and nonroad engines and vehicles are very significant contributors to these air-quality problems. This initiative has been marked by an unprecedented degree of cooperation between EPA, the State of California, and the engine manufacturing industry, as well as the involvement of States, regional air-management organizations, and public interest and environmental organizations. The result has been a plan for very stringent new emission standards that have the support of the industry. EPA has proposed new standards for highway truck and bus engines, and discussions are progressing toward similar standards for nonroad diesel engines. This action will focus on the emission standards and related requirements for control of air pollution from 2004 and later model year highway heavy-duty engines. It will include an assessment of the feasibility of the requirements for these engines promulgated in 1997 plus further consideration of a number of issues left open in the rule including potential diesel fuel changes, diesel particulate control, and other initiatives to control emissions in use.

Statement of Need:

Ozone pollution poses a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. Many ozone nonattainment areas face great difficulties in reaching and maintaining attainment of the ozone health-based air quality standards in the years ahead. Recognizing this challenge, States, local governments, and others have called on the Environmental Protection Agency (EPA) to promulgate additional national measures to reduce nitrogen oxides (NOx), hydrocarbons and particulate matter in order to protect the public from the serious health effects of ozone pollution.

Alternatives:

EPA will consider alternatives for this rule as part of the notices of proposed rulemaking (NPRMs) planned for this initiative.

Risks:

Oxides of nitrogen comprise a family of highly reactive gaseous compounds that contribute to air pollution in both urban and rural environments. NOx is directly harmful to human health and the environment, contributes to particulate pollution, and plays a critical role in the formation of atmospheric ozone. Based on studies of human populations exposed to high concentrations of particles and laboratory studies of animals and humans, there are major human health concerns associated with PM. These include deleterious effects on breathing and respiratory systems, aggravation of existing respiratory and cardiovascular disease, alterations in the body's defense systems against foreign materials, damage to lung tissue, carcinogenesis, and premature death.

Timetable:

Action	Date	FR Cite
ANPRM	08/30/95	60 FR 45580
NPRM Highway	06/27/96	61 FR 33421
ANPRM Nonroad	01/02/97	62 FR 200
Final Action Highway	10/00/97	
Final Action Nonroad	10/00/97	
NPRM Hwy Heavy Duty Diesel 2004 & later	12/00/98	
Final Hwy Heavy Duty Diesel 2004 & later	12/00/99	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3645, 4014, 4043.

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BILLING CODE 6565-50-F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The Equal Employment Opportunity Commission (EEOC) enforces six statutes prohibiting discrimination in employment. Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, sex, religion, or national origin. The Equal Pay Act of 1963, as amended, prohibits the payment of different wages to women and men working in the same establishment, performing equal work that requires equal skill, effort, and responsibility under similar working conditions, unless the pay differential is based on factor(s) other than sex. The Age Discrimination in Employment Act of 1967, as amended (ADEA), prohibits employment discrimination on the basis of age against people age 40 and older. Title I of the Americans with Disabilities Act of 1990, as amended (ADA), prohibits employment discrimination against qualified individuals with disabilities. Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, prohibit Federal agencies from discrimination in employment against qualified individuals with disabilities and require agencies to accommodate the special needs of persons with disabilities. The Government Employee Rights Act of 1991 extends protections against employment discrimination to certain employees who were not previously covered.

The mission of the Agency is to ensure equality of opportunity by vigorously enforcing Federal legislation prohibiting discrimination in employment. Enforcement is accomplished through investigation, conciliation, alternative methods of dispute resolution, litigation, coordination, and regulation, as well as by education, policy research, and technical assistance. In pursuing its mission of eradicating discrimination in the workplace, the Commission intends that its enforcement be certain and predictable and that its remedies be preventive and remedial in scope.

One important step toward these ends is to make sure that employees, employers, and union representatives understand their rights and obligations under the Federal laws prohibiting employment discrimination. In accordance with the President's national regulatory principles, EEOC develops regulations necessary to inform employees and employers of their rights and obligations under the statutes it enforces. EEOC further educates the public on an ongoing and proactive basis through interpretive guidelines, policy documents, management directives, and other public guidance programs.

EEOC is currently considering one significant action of a regulatory nature, which would be published for public comment.

The Commission is considering regulatory guidance on title II of the Older Workers Benefit Protection Act of 1990, which amended the ADEA to permit knowing and voluntary unsupervised waivers of rights and claims arising under the Act. Representatives of both the employer and employee communities have strongly demonstrated their interest in the issuance of additional guidance in this area. As part of the development of a regulation on waivers under the ADEA, the Commission has engaged in a regulatory negotiation to obtain a consensus recommendation to the Commission. The Negotiated Rulemaking Committee began work on December 6, 1995, and conducted a series of meetings culminating on July 23-24, 1996. Thereafter, the Committee unanimously forwarded a recommended proposed rule to EEOC for its consideration. On March 10, 1997, EEOC published for public comment the proposed rule (NPRM) recommended by the Negotiated Rulemaking Committee. EEOC is now assessing all comments received in response to the March 10th NPRM. Future action regarding a possible final regulation on waivers under the ADEA presently is undetermined.

(Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chairman of the Agency. The statement has not been reviewed or approved by the other members of the Commission.)

EEOC

FINAL RULE STAGE

146. REGULATIONS INTERPRETING TITLE II OF THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990 (OWBPA)

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

The Age Discrimination in Employment Act of 1967 (ADEA) was amended in 1990 by OWBPA. Title II of OWBPA sets forth the statutory requirements for a valid waiver of rights under the ADEA.

Regulations under title II would provide guidance on implementing OWBPA's requirements for unsupervised ADEA waivers. As part of the development of this regulation, the Commission engaged in regulatory negotiations on waivers of rights and claims under the ADEA.

Statement of Need:

In 1990, Congress amended the ADEA to permit knowing and voluntary unsupervised waivers of rights and claims arising under the Act. In 1992, the Commission published a notice in the **Federal Register** seeking public comment on various ADEA issues, including the topic of waiver agreements. In response to the notice the Commission received numerous detailed comments on the waiver provisions which demonstrated a need for regulatory guidance. Over the ensuing years, representatives of employer and employee communities have expressed a continuing interest in receiving such guidance. Waiver agreements are widely used in the workplace, particularly when employers find it necessary to reduce the size of the workforce. Employees who sign waiver agreements are bargaining away important Federal rights in return for some form of consideration. Employers are offering additional benefits, sometimes quite substantial, in exchange for employee agreements to forgo potential recovery in age discrimination lawsuits. Both sides have a substantial stake in this area of the law and would benefit from regulatory guidance.

Summary of the Legal Basis:

Section 9 of the ADEA authorizes the Commission to issue such rules and regulations as it may consider necessary or appropriate for carrying out the Act. Moreover, regulatory negotiation is authorized by the Negotiated Rulemaking Act of 1990,

and is consistent with the President's goal of involving stakeholders in the regulatory process.

Alternatives:

The objective of a regulatory negotiation is to seek to obtain a consensus recommendation to the Commission. Thus, the process itself involved consideration of various alternatives with the affected parties agreeing upon proposed regulatory positions.

Anticipated Costs and Benefits:

Clear regulatory guidance for the use of waiver agreements should lead to increased voluntary resolution of potential employment disputes, which in turn will reduce the possibility of protracted and costly litigation. At the same time, providing clear regulatory guidance on what constitutes a valid waiver agreement will ensure that persons enter into such agreements only in a knowing and voluntary manner. It is not anticipated that any costs will arise from issuing regulatory guidance.

Risks:

Regulatory guidance for drafting and implementing valid waiver agreements will lessen the risk that persons might waive important Federal civil rights in an unknowing or involuntary manner. The Commission has a substantial interest in addressing this risk. The ADEA is intended to implement the strong public interest in attaining a workplace free of age discrimination. Individual employees serving as private attorneys general are an integral part of the ADEA enforcement scheme crafted by Congress. Thus, it is of critical import that persons who may choose to relinquish their Federal civil rights do so voluntarily and with full knowledge. Moreover, other Federal civil rights laws enforced by the Commission, for example title VII, envision an important role for aggrieved individuals as private attorneys general. Insofar as waiver agreements may be used under statutes other than the ADEA, clear guidance will also lessen the risk of abuse in those areas.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/92	57 FR 10626
ANPRM Comment Period End	07/27/92	
Notice of Intent To Form Rulemaking Advisory Committee	08/31/95	60 FR 45388
Notice of Establishment of Rulemaking Advisory Committee	10/20/95	60 FR 54207
NPRM	03/10/97	62 FR 10787
NPRM Comment Period End	05/09/97	
Final Action	05/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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BILLING CODE 6570-06-F

GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory and Deregulatory Priorities

The General Services Administration (GSA) establishes policy for and provides economical and efficient management of Government property and records, including construction and operation of buildings; procurement and distribution of supplies; utilization and disposal of property; and transportation, traffic, and communications management.

GSA's regulatory priorities for fiscal year 1998 are to ensure our regulations reflect the President's philosophy of being consistent, sensible, and understandable and do not place an undue burden on the public. Toward that end, in the upcoming year, GSA will monitor and review regulations and use regulatory direction only when it is essential to carry out GSA's mission and responsibilities.

GSA

FINAL RULE STAGE

147. FEDERAL TRAVEL 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:

5 USC 5707; 5 USC 5738; EO 11609, 36 FR 13747, 3 CFR, 1971 to 1975 Comp, p 586

CFR Citation:

41 CFR 301-1; 41 CFR 301-11; 41 CFR 301-15; 41 CFR 302-1; 41 CFR 302-10

Legal Deadline:

None

Abstract:

GSA proposes to amend the FTR to implement statutory and regulatory changes as a result of Joint Financial Management Improvement Program (JFMIP) recommendations and the Federal Employee Travel Reform Act of 1996.

Statement of Need:

The JFMIP identified and addressed obstacles that impede the use of best travel practices in the Federal Government. GSA will implement the FTR changes. The major changes will be in the areas of temporary duty travel and Federal employee relocation reimbursement areas.

Amendment to the FTR includes:

Maximum use of Government charge cards for all travel and relocation expenses, but not limited to, transportation tickets (in conjunction with common carrier reservations), lodging, and car rentals; and increased use of automated teller machines (ATMs) to distribute travel advances and cash for out-of-pocket expenses.

Federal agencies will outsource to Travel Management Centers (TMCs) all travel arrangements and travel cost estimations and expense reports. Agencies will partner to identify requirements to develop a range of expanded standard services. TMCs can use management information to integrate agency defined cost limit controls and meet agency fire safety reporting requirements.

In the area of employee relocation the FTR amendments will include:

Limited relocation allowances for a temporary change of station.

Alternatives:

Continue paying relocation costs and temporary duty duty station travel as currently done, or implement JFMIP recommendations.

Anticipated Costs and Benefits:

Implementation of these changes to the FTR will save the Government $760 million in administrative and direct costs. By amending the FTR, Federal agencies and employees will have options not previously available to them when they are relocating or performing extended assignments. These changes will ease the administrative burden on agencies, and it will provide more equitable reimbursement to employees. The changes reduce paperwork, cut red tape, and humanize the treatment of employees by establishing a parity with their private sector counterparts.

Timetable:

Action	Date	FR Cite
Final Action	04/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

See RIN 3090-AF88, 3090-AF96, and 3090-AF98 for completed actions.

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RIN: 3090–AG11

BILLING CODE 6820-34-F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration (NASA) was established by the National Aeronautics and Space Act of 1958, which laid the foundation for NASA's mission. It directs NASA to conduct space activities devoted to peaceful purposes for the benefit of all humankind. We are to preserve the leadership of the United States in aeronautics and space science and technology, and we are to expand knowledge of the Earth and space. To carry out this mission, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space station, and related equipment; and to perform such other activities as may be required for the exploration of space. NASA conducts activities required for the exploration of space with human-tended and expendable vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

NASA's mission, as documented in its Strategic Plan, dated February 1996, is to explore, use, and enable the development of space for human enterprise; to advance scientific knowledge and understanding of the Earth, the solar system, and the universe and use the environment of space for research; and to research, develop, verify, and transfer advanced aeronautics, space, and related technologies.

The following are narrative descriptions of the most important regulations being planned for publication in the **Federal Register** during fiscal year 1998.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. Consistent with recommendations of the National Performance Review, NASA has completed the final phase of revising the NFS to simplify, shorten, and clarify the regulation, while delegating more responsibility. Major revisions are not expected in FY 98, except to conform to FAR changes that are currently being promulgated in part 15, Contracting by Negotiation; part 19, Small Business Programs; and part 45, Government Property.

In a continuing effort to keep the NFS current with NASA initiatives and Federal procurement policy, minor revisions to the NFS may be published. For instance, NASA is implementing performance-based contracting (PBC) for contracts for services, hardware, and research and development. All new contracts will be considered for suitability to PBC. Existing contracts will be converted to PBC when it is expected to be more efficient and the ongoing mission is not adversely affected. NASA's implementation is expected to result in NFS revisions.

NASA is working on revision of its regulations for implementing the National Environmental Policy Act (NEPA), which are presented at 14 CFR subparts 1216.1 and 1216.3. These changes are being contemplated to streamline and clarify the Agency's NEPA process and conserve time and other resources, while more effectively addressing the purposes of NEPA and developing more responsibility to NASA centers.

NASA is working on technical amendments to revise, refine, and clarify the cross-waiver of liability in NASA contracts and agreements involving activities such as launch services.

BILLING CODE 7510-01-F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) promulgates (a) regulations directed to other Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition and (b) regulations directed to the public relating to access to and use of the historically valuable archives, donated historical materials, Nixon Presidential materials, and Presidential records in the National Archives, regional archives, Presidential libraries, and Presidential Materials Projects operated by NARA. NARA also promulgates regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA's regulatory priorities for fiscal year 1998 will be the clarification and updating of records-management regulations concerning Federal agency recordkeeping requirements.

NARA records-management regulations must provide agencies with the guidance they need to fulfill their statutory obligation to make and preserve records containing adequate and proper documentation of the agency's business. This guidance must be reviewed and updated periodically to reflect changing information technology and recordkeeping practices in agencies. NARA has determined that existing regulations on personal papers and on the removal of nonrecord and personal materials do not provide sufficient protection against improper removal of Federal records from agency control. NARA plans to expand guidance on personal papers and add a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials. NARA also sees a need to revise regulations on records creation and maintenance to emphasize their applicability to electronic records. 3NARA also intends to review and revise other records management regulations, which are discussed in greater detail in the NARA section of the Unified Agenda of Federal Regulatory and Deregulatory Actions. These regulations include NARA evaluations of agency records management programs, storage of non-paper records and three-dimensional objects in records centers, and facility standards for agency records centers.

NARA plans no significant rulemakings in the area of public use of archival records and materials in NARA research rooms in FY 1998. As described in the NARA section of the Unified Agenda, NARA intends to revise its regulations on reseaarch room procedures and use of NARA facilities to reflect changes in policies and procedures.

NARA

PROPOSED RULE STAGE

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148. STANDARDS FOR AGENCY RECORDKEEPING REQUIREMENTS—RECORDS, NONRECORD MATERIALS, AND PERSONAL PAPERS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

44 USC 2904; 44 USC 2905; 44 USC 3101; 44 USC 3102; 44 USC 3301; 44 USC 3314

CFR Citation:

36 CFR 1222

Legal Deadline:

None

Abstract:

This revision of the regulation expands the guidance on personal papers and adds a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials. It also adds a requirement that agencies document the removal of nonrecord and personal materials and certify that no Federal records were taken. Finally, this revision provides more explicit guidance on records in electronic form.

Statement of Need:

This regulation is needed to ensure that Federal records are not improperly removed from agency custody by departing officials and that agencies fully recognize the applicability of records management requirements to records in electronic form.

Summary of the Legal Basis:

This regulation reflects the legal requirements for agencies to create and maintain adequate and proper documentation, to correctly identify documentation that meets the definition of *Federal record*, and to prevent the unauthorized destruction or removal of Federal records. The National Archives and Records Administration (NARA) is required by law to issue standards and guidelines to Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition. The Archivist of the United States is also statutorily responsible for establishing standards for the selective retention of records of continuing value. This regulation reflects the statutory requirements and responsibilities by providing guidance on applying the legal definition of Federal records to materials created on any media including electronic, distinguishing records from nonrecord materials, identifying and maintaining personal papers, and ensuring that appropriate documentation is provided by contractors.

Alternatives:

An alternative to this regulatory change would be to state in the regulations only the statutory requirements for creation of adequate and proper documentation without regard to their applicability to electronic records and without strengthening the requirements for protection against removal of records. NARA plans to issue a records management guide on recordkeeping requirements that contains interpretation and guidance on implementing the statutory requirements and regulations; this guidance could be expanded to include provisions that would be deleted from the regulation under this approach. This alternative, however, would reduce the effectiveness of the regulation since the applicability of the regulations to electronic records and the methods for implementing statutory requirements would be contained in nonmandatory guidance.

Anticipated Costs and Benefits:

The only new costs associated with compliance with the regulation would be in Federal agency staff resources to implement the requirement to review nonrecord and personal materials that individuals wish to remove from their agency and to certify that Federal records are not included. Agencies could choose to implement the requirement by prohibiting the removal of any documentary materials, at little or no cost, or by various levels of

review, where the costs would depend on the size of the agency and the number of individuals likely to request permission to remove materials. We are unable to quantify the costs at this time, but will ask agencies to estimate their costs in the notice of proposed rulemaking. The benefits that will accrue from adherence to this regulation are also not easily quantifiable; they include creation and protection of Federal records that may be needed for accountability, audit and inspection, continuity, and protection of the rights of the Government and of individuals directly affected by Government actions.

Risks:

Failure to follow these regulations could result in an inability to account for the expenditure of funds, lack of documentation of significant decisions that could have serious or wide-ranging effects on the public, lack of evidence of wrongdoing, resources wasted in ''reinventing the wheel,'' failure to acquire useful documentation created under contract, inefficient operation of Government programs resulting from burdensome searches for needed information, and lack of documentation for future research.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
NPRM Comment Period End	12/00/97	
Final Action	03/00/98	
Final Action Effective	04/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 7515-01-F

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management's (OPM) regulatory priorities for the coming year will continue to focus on human resource management reforms that will enable the Federal Government to meet the challenges of downsizing, increased use of technology, delayering, decentralization, improved labor-management relationships, and other changes that are reinventing the Federal workforce.

The progress made by this Administration to date to reinvent Federal human resource management systems has been both important and far-reaching as we strive to build a powerful bridge to the 21st century. It is now critical to continued progress toward centrally needed reform that there be passage of the Federal Human Resource Management Reinvention Act. Many of its provisions will increase the opportunities for Federal agencies to use broadbanding, more demonstration projects, and performance-based pay plans, such as team incentives and goal sharing. All of these tools are needed to lead Federal human resource management into the 21st century.

Pending passage of this legislation, OPM is using its regulatory authority, whenever possible, to achieve these goals. We will be continuing our implementation of the Hatch Act Reform Amendments of 1993 to address issues relevant to the localities whose federally employed residents have been granted a partial exemption from the Reform Amendments' prohibitions on candidacy for partisan political office and on soliciting, accepting, or receiving political contributions.

OPM also expects to produce final regulations implementing provisions of the Family and Medical Leave Act of 1993. These regulations, reflecting the Administration's goal of a family-friendly workplace, will ensure that all employees are fairly treated when they need time off for medical or family needs.

OPM will continue to improve its existing human resource management systems in order to attract and keep the best possible talent, to promote fairness and diversity, and to create a Government that works better and costs less.

OPM

FINAL RULE STAGE

149. POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

5 USC 7325

CFR Citation:

5 CFR 733

Legal Deadline:

Final, Statutory, February 3, 1994.

Abstract:

Congress amended the Hatch Act through the Hatch Act Reform Amendments of 1993. An interim regulation with a request for comments was issued on February 4, 1994, 59 FR 5313. In view of the comments submitted on the interim regulation, substantive revisions to the regulation were proposed (June 24, 1997, 62 FR 34017). The proposed regulation would broaden employee coverage to include employees who work in the sensitive agencies and positions described in 5 U.S.C. 7323(b), specifically describe political activities which the Reform Amendments permit and prohibit in connection with employee participation in elections for local partisan political office in the designated localities, and add two localities to the regulatory list of designated localities.

Statement of Need:

Congress amended the Hatch Act through the Hatch Act Reform Amendments of 1993. An interim regulation with a request for comments was issued on February 4, 1994, 59 FR 5313. In view of the comments submitted on the interim regulation, substantive revisions to the regulation were proposed (62 FR 34017, June 24, 1997). The proposed regulation would broaden employee coverage to include employees who work in the sensitive agencies and positions described in 5 U.S.C. 7323(b), specifically describe political activities which the Reform Amendments permit and prohibit in connection with employee participation in elections for local partisan political office in the designated localities, and add two localities to the regulatory list of designated localities.

Summary of the Legal Basis:

The legal basis for issuing this regulation is the Hatch Act Reform Amendments of 1993, Pub.L. 103-94, 107 Stat. 1001, as codified at 5 U.S.C. 7325.

Alternatives:

A regulatory proposal with a notice and comment period was necessary in view of the substantive changes that were proposed. A final regulation is required to place covered employees on notice of the political activities that the Reform Amendments permit and prohibit in connection with elections for local partisan political office in the designated localities. A consistent interpretation of the Reform Amendments' provisions also is required for purposes of enforcement.

Anticipated Costs and Benefits:

There are no anticipated costs or risks associated with publication of a proposed regulation concerning the political activity of Federal employees residing in designated localities.

Risks:

None

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/94	59 FR 5313
NPRM	06/24/97	62 FR 34017
Final Action	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 6325-01-F

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. PBGC protects the pensions of nearly 42 million working men and women in about 50,000 private defined benefit plans, including about 2,000 multiemployer plans.

Under the single-employer program, PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). At the end of fiscal year 1996, PBGC was trustee of about 2,300 plans and paid $792 million in benefits to nearly 200,000 people during 1996. Another 240,000 people will receive benefits when they retire in the future.

Most terminating single-employer plans terminate with sufficient assets to pay all benefits. PBGC has administrative responsibility for these terminations (standard terminations), but its role is limited to seeing that proper procedures are followed and participants and beneficiaries receive their plan benefits.

The multiemployer program (which covers about 8.6 million workers and retirees in about 2,000 insured plans) is funded and administered separately from the single-employer program and differs in several significant ways. The multiemployer program covers only collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a repayable loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are generally less than a participant's full benefit under the plan (and less than the single-employer guaranteed benefit). PBGC financial assistance occurs infrequently.

PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC must issue regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV: (1) To encourage voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

PBGC implements its statutory purposes by developing regulations designed (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries; (2) to improve services to participants; (3) to ensure that the statutory provisions designed to minimize losses for participants in the event of plan termination are effectively implemented; (4) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible; and (5) to simplify the termination process.

Legislative Initiatives

On December 8, 1994, the Retirement Protection Act of 1994 was enacted. The Retirement Protection Act (1) accelerates the funding of underfunded single-employer pension plans, (2) phases out the cap on the variable rate portion of the premium paid to PBGC by underfunded single-employer plans, (3) provides PBGC with better tools to prevent employers from escaping their plan funding obligations through corporate transactions, (4) requires better information to participants in underfunded plans on plan funding status and PBGC guarantees, and (5) helps assure that workers do not lose pensions because they have lost contact with a terminating pension plan covered by PBGC.

In May 1996, the President submitted the Retirement Savings and Security Act to Congress. The RSAA would have expanded coverage, increased portability and worker protection, and simplified pension law. The proposal included a doubling of the guarantees in the multiemployer insurance program to address inflation since 1980 and expansion of PBGC's missing participant program to include terminating defined contribution plans and non-PBGC-covered defined benefit plans. The Small Business Job Creation Act of 1996, signed by the President on August 20, 1996, included many of these provisions. It did not include the doubling of the multiemployer guarantee or the expansion of the missing participant program. These changes remain legislative objectives.

Regulatory and Deregulatory Initiatives

To implement the new requirements of the Retirement Protection Act (RPA), PBGC issued regulations:

- Requiring plan administrators of underfunded plans to annually notify participants and beneficiaries about the plan's funding status and the limits on PBGC's guarantee of benefits (final rule, June 30, 1995).
- Creating a clearinghouse in PBGC to locate and pay benefits to missing participants in terminating fully funded pension plans (final rule, December 1, 1995).
- Requiring certain corporate groups with large underfunded pension plans to provide annually to PBGC financial and actuarial information (final rule, December 20, 1995).
- Requiring plan administrators and sponsors to report to PBGC certain ''reportable events'' that may jeopardize workers' pensions and the pension insurance system (final rule, December 2, 1996). This rule was developed using a negotiated rulemaking process for the first time.

The RPA regulations seek to facilitate compliance. Regulations on participant notice and corporate reporting allow use of information prepared for other purposes. The reportable events regulation waives reporting in many cases to minimize the number of plans affected and uses existing information for reporting thresholds. Both the reportable events and participant notice regulations include optional notice forms. The missing participants regulation ties reporting to forms and deadlines already provided for under the termination regulations.

PBGC also took additional actions to reduce regulatory burden, encourage compliance, and simplify existing regulations by:

- Proposing to extend the time limits for various actions required to terminate a fully funded single-employer plan (''standard termination'')(proposed rule, March 14, 1997).
- Reducing penalties for late premiums that are paid before PBGC notifies the plan of the delinquency (Federal Register Notice, December 2, 1996).

- Reorganizing, renumbering, and ''reinventing'' its regulations to key them to the numbering system of the statutory sections they implement and to reduce the volume of regulations by 20 percent (final rule, July 1, 1996).

PBGC is continuing to review its regulations to look for further simplification opportunities.

The PBGC's regulatory plan for October 1, 1997, to September 30, 1998, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

150. CALCULATION AND PAYMENT OF UNFUNDED NONGUARANTEED BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1322(c)

CFR Citation:

29 CFR 4022 subpart C

Legal Deadline:

None

Abstract:

In the Pension Protection Act, Congress created a scheme by which to channel employer liability recoveries to plan participants and beneficiaries (amended ERISA section 4022(c)). Under section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC's claim covers both its shortfall (unfunded guaranteed benefits) and participants' losses (unfunded nonguaranteed benefits (UNBs)). In turn, the PBGC is to use a portion of its employer liability recovery to pay UNBs to participants and beneficiaries.

Statement of Need:

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work.

Summary of the Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

The statute provides that the amounts of UNBs that the PBGC will pay under terminated plans be based in most cases on the PBGC's recoveries on its statutory claims for employer liability with respect to plans that terminate during a prescribed time period. However, the statute does not prescribe when the PBGC is to determine its recovery experience during the applicable historical period. An earlier determination would mean that fewer recoveries would be included in the historical average. While the historical average could be updated when more recoveries can be included, this would result in differing payments depending on when the PBGC makes benefit determinations for a plan subject to the historical average. A later determination would ensure more complete data for inclusion in the historical average, but may delay benefit determinations.

Anticipated Costs and Benefits:

Because of the complexities involved, it may take a long time for the PBGC to determine what its recovery will be. In addition, it may be difficult to value a recovery in cases where the PBGC receives assets other than cash or readily marketable securities. Thus, the accuracy of the PBGC's computation of the amounts payable to participants would be enhanced by waiting longer to make that computation. However, long delays are not generally in the best interest of plan participants. The regulation will address these concerns in developing rules governing the calculation of the historical average.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	05/00/98	
NPRM Comment Period End	07/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 7708-01-F

RAILROAD RETIREMENT BOARD (RRB)

Statement of Regulatory and Deregulatory Priorities

The Railroad Retirement Board administers a retirement program for railroad workers and their families under the Railroad Retirement Act of 1974 and an unemployment and sickness benefit program for railroad workers under the Railroad Unemployment Insurance Act. Regulations issued by the Railroad Retirement Board under these two statutes and certain Governmentwide statutes are contained in chapter II of title 20 of the Code of Federal Regulations.

The Board has been involved in a multiyear project to review, revise, and update its regulations. During this project, the Board has published final rules amending nearly all of its regulations. In addition, there are several regulations actively under consideration by the Board at this time. The Board's short-term plan is to publish final regulations to complete the total review and revision project undertaken previously. The Agency has also initiated a systematic review of its regulations consistent with the work plan submitted to the Office of Information and Regulatory Affairs.

The regulations issued by the Railroad Retirement Board are designed to be informative and to assist the Agency's constituents in understanding the benefit systems administered by the Board. In promulgating regulations, the Agency is mindful of the burdens that may be imposed on the public and crafts its regulations in such a way as to impose the least possible burden on the public. In addition, through regulation, the Board makes every effort to simplify and streamline administration of the programs it administers. We believe the Board's regulatory review program is consistent with the priorities and objectives of the Administration.

RRB

FINAL RULE STAGE

151. RECOVERY OF OVERPAYMENTS

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:

45 USC 231f(b)(5)

CFR Citation:

20 CFR 255

Legal Deadline:

None

Abstract:

The Board plans to issue a final regulation dealing with collection and waiver of overpayments under the Railroad Retirement Act. This regulation clarifies the agency's policy and practice with respect to debt collection.

Statement of Need:

The agency's policy and practice with respect to recovery and waiver of recovery of overpayments, as established through normal adjudication, has evolved beyond the current regulation and the regulation is being updated to reflect this current policy and practice.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

This regulation should result in savings in administrative costs associated with protests and appeals in debt recovery cases.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/91	56 FR 47426
ANPRM Comment Period End	10/21/91	
NPRM	12/28/95	60 FR 67108
NPRM Comment Period End	01/29/96	
Final Action	10/00/97	

Small Entities Affected:

None

Government Levels Affected:

Federal

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RIN: 3220–AA44

RRB

152. DETERMINING DISABILITY

Priority:

Other Significant

Legal Authority:

45 USC 231f

CFR Citation:

20 CFR 220

Legal Deadline:

None

Abstract:

The Board amends its regulations to update and revise its standards for determining occupational disability under the Railroad Retirement Act.

Statement of Need:

The Agency's regulation needs to be updated to reflect occupational disability standards agreed upon by rail labor and management.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)) and also in section 2(a)(2) (45 USC 231a(a)(2)).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/24/97	62 FR 50056
NPRM Comment Period End	10/24/97	
Final Action	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 7905-01-F

SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

The Small Business Administration (SBA) continues to focus its regulatory efforts towards delivering sound economic development programs to small businesses through streamlined, customer-oriented regulations. SBA began its efforts to streamline SBA regulations in 1994 in response to a Presidential directive to all agencies to review, revise, and eliminate regulations. SBA followed the directive, thoroughly reviewed all regulations, and, by 1996, revised the bulk of SBA's regulations. The revised regulations are less burdensome, more ''user-friendly,'' and provide for more efficient operations. The regulations incorporate SBA's mission to ensure access to capital to our Nation's small businesses.

SBA's 1996 Regulatory Plan

The SBA's 1996 regulatory plan included two initiatives: (i) Plans to revise the last part of SBA regulations—those that govern the Agency's section 8(a) program and (ii) plans to revise, in accordance with anticipated legislation, SBA's regulations governing pledging and securitizing the unguaranteed portions of SBA 7(a) loans. In 1997, SBA, with the approval of the Justice Department, published the proposed revised section 8(a) regulations. The revisions streamlined and clarified the regulations, converted them to plain language, and incorporated substantive changes consistent with Justice Department affirmative action guidance.

In 1997, Congress, as anticipated, enacted legislation that required SBA to issue regulations that permit SBA depository lenders to pledge or securitize the unguaranteed portions of SBA 7(a) loans. SBA promulgated regulations providing guidance to 7(a) program participants on the pledging and securitizing process. The legislation and resulting regulations relieve SBA depository lenders from earlier restrictions on outside funding. The regulations' ultimate effect will be to allow small businesses even greater access to capital.

SBA's 1997 Regulatory Plan

Today, SBA regulations are streamlined and current. The SBA expects Congress to enact legislation in September 1997 that will require some alterations to SBA's lending and investment programs (13 CFR 107 and 120). SBA does not anticipate the need to draft substantive regulations for the Agency's 1997 initiatives and, therefore, submits no new regulations for the 1997 Regulatory Plan.

BILLING CODE 8025-01-F

SOCIAL SECURITY ADMINISTRATION (SSA)

Statement of Regulatory Priorities

The Social Security Administration (SSA) administers the retirement, survivors, and disability insurance programs under title II of the Social Security Act (the Act) and the supplemental security income (SSI) program under title XVI of the Act. For the most part, SSA's regulations do not impose burdens on the private sector or on State or local governments. Our regulations codify the requirements for entitlement to benefits under the programs we administer.

SSA's nine entries for The Regulatory Plan represent areas of major importance in benefit program administration of the retirement, disability, and supplemental security income programs.

In response to the Reinventing Government initiative to create a Federal Government that works better and costs less, SSA lists one regulatory initiative—Permit Department of State and the Immigration and Naturalization Service to Collect Information Needed to Assign Social Security Numbers to Aliens. The goal of this process is to coordinate services to customers who, under current procedures, must deal with multiple Federal agencies to establish their status as alien residents of the United States. The proposed regulatory authority would support a project with INS whereby it would transmit data to SSA electronically so that SSA can issue social security numbers to certain resident aliens.

SSA is currently testing elements of a reengineered disability process that, when fully tested and implemented, will prove that complex Government operations can deliver dramatically better customer service at a lower cost. Successful implementation of the reengineered disability process is one of the highest priorities of the Social Security Administration. Five of SSA's nine regulations on The Regulatory Plan implement parts of the Disability Redesign.

Three entries implement several proposals of the Process Unification Initiative, which is part of the Disability Redesign. The aim of the Process Unification initiative is to foster use of the same adjudicative standards by disability adjudicators at all levels of adjudication. The first, Weight of Disability Determination Service (DDS) Medical Consultant Opinions, will define the specific weight to be given to DDS medical consultant opinions in hearing decisions. The second, Assessment of Residual Functional Capacity, will clarify the guidelines in our regulations used in determining whether an individual lacks the capacity to perform less than a full range of sedentary work. The third, Quality Review of Administrative Appeal-Level Decisions, provides for a preeffectuation review of hearing-level decisions made by Office of Hearings and Appeals (OHA). Favorable decisions that appear to be unsupported by the evidence of record will be forwarded to the OHA Appeals Council for review in accordance with 20 CFR 404.970 or 416.1470.

The fourth regulatory initiative related to Disability Redesign, Prehearing Procedures and Decisions by Adjudication Officers, will provide the authority to establish the position of an adjudication officer who will be the focal point for all prehearing activities when a request for a hearing before an ALJ is filed. These procedures are currently being tested in a number of locations throughout the United States. We plan to implement the procedures nationally only after completion of testing and evaluation of the test procedures.

A fifth regulatory initiative related to Disability Redesign, Disability Determinations by a Single Decisionmaker, will modify the disability determination procedures SSA uses to make determinations of disability under titles II and XVI of the Social Security Act to provide that, after appropriate medical or psychological consultation, a single decisionmaker will make determinations of eligibility for benefits based on disability.

Also included in this year's Plan is a regulation modifying the standard of disability for children under the Supplemental Security Income program (1996 Welfare Reform) and a regulation to modify SSA's acquiescence process. The remaining item is a regulation providing for redeterminations of entitlement when there is reason to believe fraud was involved in the application for benefits. This is the most significant regulatory action we will take in the upcoming 12 months in support of the Agency's goal of ''zero tolerance for fraud.''

We are also giving priority attention to two other regulatory initiatives not included in the Plan—regulations to revise our rules on Plans to Achieve Self-Support and changes to the Representative Payment provisions of the title II and title XVI regulations. We did not include these priority regulations in the 1997 Plan because they may not be ready for publication before the end of this Regulatory Plan year.

Consistent with the President's Regulatory Reinvention Initiative, we are working diligently to improve our program benefit regulations and to develop partnerships with large segments of the community of stakeholders interested in Social Security programs. We expect that the partnerships will contribute to the successful development of our Regulatory Plan entries.

SSA

PROPOSED RULE STAGE

153. PERMIT DEPARTMENT OF STATE AND THE IMMIGRATION AND NATURALIZATION SERVICE TO COLLECT INFORMATION NEEDED TO ASSIGN SOCIAL SECURITY NUMBERS TO ALIENS (569P)

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 405; 42 USC 1383

CFR Citation:

20 CFR 422.103; 20 CFR 422.106; 20 CFR 422.107; 20 CFR 422.110

Legal Deadline:

None

Abstract:

Aliens will apply for social security cards at the same time they complete Immigration and Naturalization (INS) paperwork. Currently, alien applicants are required to furnish almost the same information to both SSA and INS. This one-stop service will reduce the potential for issuing social security cards based on fraudulent INS documents, and will result in efficiencies for the government.

Statement of Need:

This regulation is necessary to implement a Reinventing Government initiative.

Summary of the Legal Basis:

These changes are not required by statute or court order.

Alternatives:

None.

Anticipated Costs and Benefits:

We will need to reimburse INS for the enumeration work they perform. We estimate that there is a 20 percent greater efficiency to the government if INS gathers the information to enumerate these applicants. After reimbursing INS, we expect to save approximately $13 million for the period 1998-2002.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	10/00/97	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

154. ASSESSMENT OF RESIDUAL FUNCTIONAL CAPACITY (599P)

Priority:

Other Significant

Legal Authority:

42 USC 423; 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1500, app 2

Legal Deadline:

None

Abstract:

This rule would make minor clarifications to the Social Security Medical-Vocational guidelines used to evaluate disability in individuals under age 50 who have severe impairments that do not meet or equal the criteria of any listed impairment but have a residual functional capacity for no more than the full range of sedentary work. The guidelines are contained in appendix 2 of subpart P of 20 CFR 404.

Statement of Need:

This regulation is necessary to implement one of several process unification initiatives approved by the Commissioner on July 8, 1996.

Summary of the Legal Basis:

None.

Alternatives:

None.

Anticipated Costs and Benefits:

Since these regulations merely clarify existing policy, they impose no additional program or administrative costs.

Risks:

None--Because the only purpose of these regulations is to clarify existing policy.

Timetable:

Action	Date	FR Cite
NPRM	09/23/97	62 FR 49636
NPRM Comment Period End	11/24/97	
Final Action	06/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

155. IDENTIFICATION AND REFERRAL OF CASES FOR QUALITY REVIEW UNDER THE APPEALS COUNCIL'S AUTHORITY TO REVIEW CASES ON ITS OWN MOTION (623F)

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:

31 USC 3720A; 42 USC 401(j); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 421(d); 42 USC 423(h); 42 USC 425; 42 USC 902(a)(5); PL 96-265, sec 304(g)

CFR Citation:

20 CFR 404.900ff; 20 CFR 416.1400ff

Legal Deadline:

None

Abstract:

These regulations are in furtherance of our published Plan for a New Disability Claim Process and, specifically, the quality assurance aspect of that Plan (59 FR 47918). This initiative provides for a preeffectuation review of decisions made by Office of Hearings and Appeals (OHA) administrative law judges. Decisions that appear to be unsupported by the evidence of record will be forwarded to the OHA Appeals Council for review in accordance with 20 CFR 404.970 or 416.1470. These regulations will set out the procedures by which we will identify and refer these cases to the Appeals Council for quality review under its existing authority to review cases on its own motion.

Statement of Need:

This regulation is necessary to implement one of several process unification initiatives approved by the Commissioner on July 8, 1996.

Summary of the Legal Basis:

None.

Alternatives:

None.

Anticipated Costs and Benefits:

We do not anticipate any additional program or administrative costs.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/25/97	62 FR 50266
NPRM Comment Period End	11/24/97	
Final Action	05/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

156. IMPLEMENTING MODIFICATIONS TO PREHEARING PROCEDURES AND DECISIONS BY ADJUDICATION OFFICERS (616P)

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:

31 USC 3720A; 42 USC 401(j); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 421(d); 42 USC 425; 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.943 (New); 20 CFR 416.1443 (New)

Legal Deadline:

None

Abstract:

We are amending our rules to implement use of an adjudication officer, who, under the Plan for a New Disability Claim Process approved by the Commissioner of Social Security in September 1994 (the disability redesign plan), would be the focal point for all prehearing activities when a request for a hearing before an administrative law judge (ALJ) is filed. The adjudication officer position is an integral part of the disability redesign plan. These proposed rules will add several new sections setting out the responsibilities of the adjudication officer in connection with a claim for Social Security or Supplemental Security Income (SSI) benefits based on disability.

Statement of Need:

These regulations are needed to implement a major initiative discussed in the Plan for a New Disability Claim Process approved by the Commissioner of Social Security in September 1994 (the disability redesign plan).

Summary of the Legal Basis:

None.

Alternatives:

None.

Anticipated Costs and Benefits:

No program costs are expected. There will be some administrative costs as a result of setting up these new positions in the field offices. However we expect these costs to be offset by subsequent processing efficiencies resulting in significant administrative savings.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	02/00/98	
Final Action	05/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

157. WEIGHT OF DISABILITY DETERMINATION SERVICES' MEDICAL AND PSYCHOLOGICAL CONSULTANTS' OPINIONS (624F)

Priority:

Other Significant

Legal Authority:

42 USC 405(a); 42 USC 405(b); 42 USC 902(c)(5); 42 USC 1382C; 42 USC 221

CFR Citation:

20 CFR 404.1502; 20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1519; 20 CFR 404.1527; 20 CFR 416.902; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.919; 20 CFR 416.927

Legal Deadline:

None

Abstract:

We propose to revise our disability regulations to clarify the weight administrative law judges and the Appeals Council are to give to opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts in claims for disability benefits under title II and title XVI of the Social Security Act.

Statement of Need:

This regulation is necessary to implement one of several process unification initiatives approved by the Commissioner on July 8, 1996.

Summary of the Legal Basis:

None.

Alternatives:

None.

Anticipated Costs and Benefits:

We do not anticipate any additional program or administrative costs.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/25/97	62 FR 50270
NPRM Comment Period End	11/24/97	
Final Action	12/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

158. ● DETERMINING DISABILITY AND BLINDNESS; PROVIDING FOR USE OF A SINGLE DECISIONMAKER TO MAKE DETERMINATIONS OF DISABILITY UNDER TITLES II AND XVI OF THE SOCIAL SECURITY ACT

Priority:

Other Significant. Major under 5 USC 801.

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 421; 42 USC 405(a); 42 USC 405(b); 42 USC 902(a); 42 USC 1382c; 42 USC 1383b

CFR Citation:

20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 416.946; 20 CFR 416.1015

Legal Deadline:

None

Abstract:

We propose to amend our rules to provide for a single decisionmaker who will make determinations of disability under title II and title XVI of the act after consultation with a medical or psychological consultant, as appropriate. The decisionmaker would have the authority to request, review, and evaluate evidence and make the disability determination without having the medical consultant sign the disability determination forms.

Statement of Need:

This regulation is necessary to implement one of several proposals of the Disability Redesign.

Summary of the Legal Basis:

None.

Alternatives:

None.

Anticipated Costs and Benefits:

Increased DDS productivity without deterioration of decisional accuracy.

Risks:

At this time we have not identified any risks associated with this proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	
Final Action	03/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

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SSA

159. ● APPLICATION OF CIRCUIT COURT LAW—STRENGTHENING THE ACQUIESCENCE PROCESS AND FURTHERING NATIONAL UNIFORMITY IN PROGRAM ADMINISTRATION

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405; 42 USC 1383

CFR Citation:

20 CFR 404.985; 20 CFR 416.1485

Legal Deadline:

None

Abstract:

This proposed rule would revise our regulations to strengthen SSA's acquiescence process and to ensure to the extent possible national uniformity in the administration of its programs. These rules would apply to circuit court decisions which contain a holding which SSA determines conflicts with its interpretation of a provision of the Social Security Act or regulations.

Statement of Need:

These regulations are needed because we propose to change the process by which we apply holdings of the United States Courts of Appeals that we determine conflict with SSA policy in adjudicating claims under title II and title XVI of the Social Security Act.

Summary of the Legal Basis:

These changes are not required by statute or court order.

Alternatives:

None.

Anticipated Costs and Benefits:

We do not anticipate any significant costs or savings associated with this proposal.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/97	
Final Action	05/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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SSA

160. ● REFLECT A REQUIREMENT OF THE SOCIAL SECURITY ACT THAT THE COMMISSIONER DISREGARD EVIDENCE IN CERTAIN SITUATIONS INVOLVING FRAUD OR SIMILAR FAULT UNDER TITLES II OR XVI OF THE ACT

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405; 42 USC 1383

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

This regulation would reflect amendments to the Social Security Act by P.L. 103-296 concerning program fraud. Those amendments specify that SSA, when redetermining the entitlement, or making an initial determination of entitlement of an individual, will disregard evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence. The regulation will include definitions of key terms to be used by SSA or the State disability determination services in making a fraud or similar fault finding.

Statement of Need:

This regulation is intended to help curb program fraud.

Summary of the Legal Basis:

These regulatory changes would reflect amendments to sections 205 and 1631 of the Act.

Alternatives:

None.

Anticipated Costs and Benefits:

Although there may be additional costs for development and processing of the relatively small number of cases in

which fraud or similar fault is suspected, those costs result from the statute rather than these regulatory amendments. However, these administrative costs will be offset by savings that will result from properly documented denials, cessations, and adverse reopenings which might otherwise have resulted in regular program payments.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	01/00/98	
Final Action	10/00/98	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

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SSA

FINAL RULE STAGE

161. SUPPLEMENTAL SECURITY INCOME; DETERMINING DISABILITY FOR A CHILD UNDER AGE 18 (625F)

Priority:

Economically Significant

Legal Authority:

42 USC 405(a); 42 USC 902(a)(5); PL 104-193

CFR Citation:

20 CFR 404.1500 app 1; 20 CFR 416.901; 20 CFR 416.906; 20 CFR 416.911; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.919a; 20 CFR 416.919n; 20 CFR 416.924; 20 CFR 416.924a to 416.924e; 20 CFR 416.925; 20 CFR 416.926a; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.987 (New); ...

Legal Deadline:

Final, Statutory, November 22, 1996.

90 Days After Enactment--3 months after the effective date of P.L. 104-193, August 22, 1996

Abstract:

These regulations will implement provisions of P.L. 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Welfare Reform), which eliminate the comparable severity standard for children and provides instead that a child under age 18 be considered under a disability if he/she has a medically determinable impairment which results in marked and severe functional limitations and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. These new childhood disability eligibility criteria are applicable to individuals whose claims for child's disability benefits are filed on or after August 22, 1996, and those whose claims were not ''finally adjudicated'' as of August 21, 1996. In addition, these new eligibility criteria will also apply when redetermining a child's continuing eligibility for benefits.

Statement of Need:

This regulation is necessary to implement provision of P.L. 104-193.

Summary of the Legal Basis:

These regulations are required by P.L. 104-193.

Alternatives:

None.

Anticipated Costs and Benefits:

As required by the legislation we will review the claims of certain children currently receiving SSI Disability benefits. Benefits will be terminated for some of these children, and others who file new applications will be denied under the new standard.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/11/97	62 FR 6408
Interim Final Rule Comment Period End	04/14/97	
Final Action	09/00/98	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 4190-29-F

COMMODITY FUTURES TRADING COMMISSION (CFTC)

Statement of Regulatory Priorities

The mission of the Commodity Futures Trading Commission is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity futures and options and to foster open, competitive, and financially sound commodity futures and option markets. The Commission's objectives are to: (1) Foster futures and option markets that accurately reflect the forces of supply and demand for the underlying commodity and are free of disruptive activity; (2) oversee markets which can be used effectively by producers, processors, financial institutions, and other firms for the purposes of price discovery and risk shifting; (3) promote compliance with and deter violations of Federal commodities laws; (4) require commodities professionals to meet high standards; (5) provide a forum for effectively and expeditiously handling customer complaints against persons or firms registered under the Act; (6) ensure sound financial practices of clearing organizations and firms holding customer funds; (7) promote and enhance effective self-regulation of the commodity futures and option markets; (8) facilitate the continued development of an effective, flexible regulatory environment responsive to evolving market conditions; and (9) promote markets free of trade practice abuses.

CFTC

PROPOSED RULE STAGE

162. ● TRADE OPTIONS ON THE AGRICULTURAL COMMODITIES ENUMERATED IN THE COMMODITY EXCHANGE ACT

Priority:

Other Significant

Legal Authority:

7 USC 1a; 7 USC 2; 7 USC 4; 7 USC 6c; 7 USC 12a

CFR Citation:

17 CFR 32

Legal Deadline:

None

Abstract:

In this action, the Commission is considering whether it should propose rules to lift the prohibition on the offer or sale of off-exchange trade options on the agricultural commodities enumerated in the Commodity Exchange Act subject to regulatory conditions and, if so, what conditions would be appropriate. This action is based upon the analysis and recommendations of a May 14, 1997 study prepared by the Commission's Division of Economic Analysis on the prohibition.

Statement of Need:

Agricultural markets in the United States are undergoing profound changes. The changes increase the uncertainty in agricultural markets and expand the need for risk-shifting strategies. The Commission is now considering whether it should propose rules that would create a new risk-shifting strategy by lifting the prohibition.

Alternatives:

The alternative to lifting the ban would be the status quo which prohibits the offer or sale of off-exchange options on the agricultural commodities enumerated in the Commodity Exchange Act.

Risks:

As a financial regulator, the Commission is acutely aware of the costs of regulation. Throughout its history, the Commission has taken into account the costs of its proposed regulations in order to ensure that the benefits of its regulations outweigh the costs.

Timetable:

Action	Date	FR Cite
ANPRM	06/09/97	63 FR 31375
Notice of Public Meetings	06/19/97	62 FR 33379
NPRM	11/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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CFTC

FINAL RULE STAGE

163. PROHIBITION ON VOTING BY INTERESTED MEMBERS

Priority:

Other Significant

Legal Authority:

7 USC 7a(a)(17)

CFR Citation:

17 CFR 1.69

Legal Deadline:

None

Abstract:

The regulation will implement the provisions of section 217 of the Futures Trading Practices Act of 1992, which require contract markets to adopt rules to avoid conflicts of interest in deliberations and voting by members of the governing board and disciplinary and other oversight committees. The rulemaking will define the relationships between a named party in interest and a member of the governing board or committee that would require abstention from deliberations and voting. The rulemaking will also provide guidelines on situations that would require a member to abstain from voting on a significant action because of a substantial financial interest in the outcome of the vote, based on positions held personally or at an affiliated firm, as well as on other matters addressed by the statute. The action potentially impacts the selection and composition of contract market governing boards and committees.

Statement of Need:

This rulemaking will further the regulatory objective of oversight of contract markets so as to assure that the markets remain open, competitive, and efficient.

Alternatives:

These rules are required by statutory mandate set forth in the Futures Trading Practices Act of 1992. The Commission intends to pursue this rulemaking to achieve rules that will fulfill this statutory mandate in a cost-effective manner.

Anticipated Costs and Benefits:

As a financial regulator, the Commission is acutely aware of the costs of regulation. Throughout its

history, the Commission has taken into account the costs of its proposed regulations in order to ensure that the benefits of its regulations outweigh the costs. To date, we know of no Commission regulation that adversely affected small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601-611 (1988).

Timetable:

Action	Date	FR Cite
NPRM	05/03/96	61 FR 19869
NPRM Comment Period End	07/02/96	
Final Action	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 6351-01-F

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, the Commission:

- Participates in the development or revision of voluntary product safety standards;
- Develops mandatory product safety standards or banning rules when other, less restrictive efforts are inadequate to address a safety hazard;
- Obtains repair, replacement, or refund of the purchase price for defective products that present a substantial product hazard; and
- Develops information and education campaigns about the safety of consumer products.

When deciding which of these approaches to take in any specific case, the Commission gathers the best available data about the nature and extent of the hazard presented by the product. The Commission then analyzes this information to determine the best way to reduce the hazard in each case. The Commission's rules require the Commission to consider, among other factors, the following criteria when deciding the level of priority for any particular project:

- Frequency and severity of injury;
- Causality of injury;
- Chronic illness and future injuries;
- Cost and benefit of Commission action;
- Unforeseen nature of the risk;
- Vulnerability of the population at risk; and
- Probability of exposure to the hazard.

Additionally, if the Commission proposes a mandatory safety standard for a particular product, the Commission is generally required to make statutory cost-benefit findings and adopt the least burdensome requirements that adequately protect the public.

The Commission's statutory authority requires it to rely on voluntary standards rather than mandatory standards whenever a voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury and it is likely that there will be substantial compliance with the voluntary standard. As a result, much of the Commission's work involves cooperative efforts with other participants in the voluntary standard-setting process rather than promulgating mandatory standards.

In fiscal year 1998, the Commission's significant rulemaking activities will involve development of options to address risks of fire associated with upholstered furniture; issuance of performance requirements for bicycle helmets as directed by the Children's Bicycle Helmet Safety Act of 1994; and development of a proposed standard for multi-purpose lighters to make those products resist operation by young children. These projects are described in detail below.

All of the rulemaking proceedings in the Commission's 1998 regulatory plan are related to protection of vulnerable populations. Upholstered furniture fires kill and injure children, the elderly, and families and individuals with lower incomes disproportionately to the representation of these persons in the population. With regard to issuance of a standard for bicycle helmets, children are more likely than older riders to suffer head injuries in accidents associated with bicycles. The Commission's proposed standard for bicycle helmets, which Congress directed the Commission to develop, includes a requirement to help prevent the helmet from coming off the rider's head in an accident and other provisions that are applicable to the safety of helmets intended for children. Finally, with regard to multi-purpose lighters, children younger than 5 years of age usually are incapable of dealing with a fire once it has started. Consequently, they and their families are at special risk of injury from fires started by children playing with multi-purpose lighters. Most fatalities from the fires resulting from children playing with multi-purpose lighters reported to the Commission were the children who started the fires.

The emphasis on these rulemaking activities in the Commission's 1997 regulatory plan is consistent with the Commission's statutory mandate and its criteria for setting priorities. Additionally, the Commission's 1997 regulatory plan supports the President's goal to reduce costs of health care by preventing injuries to individuals who are among the most likely to be injured in accidents associated with the use of consumer products.

CPSC

PROPOSED RULE STAGE

164. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Priority:

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

Legal Authority:

15 USC 1193 Flammable Fabrics Act

CFR Citation:

16 CFR 1640

Legal Deadline:

None

Abstract:

On June 15, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard to address risks of death, injury, and property damage from fires associated with ignition of upholstered furniture by small open-flame sources, such as matches, lighters, or candles. This ANPRM was issued after the Commission granted part of a petition requesting development of a mandatory flammability standard to address risks of injury from ignition of upholstered furniture by (1) small open-flame sources; (2) large open-flame sources; and (3) cigarettes. The Commission voted to deny that part of the petition requesting development of a mandatory standard to address hazards associated with ignition of upholstered furniture by large open-flame sources. The Commission also voted to defer a decision on that part of the petition requesting development of a standard to address cigarette ignition, and directed the staff to report to the Commission on the effectiveness of, and the extent of industry compliance with, a voluntary program to reduce risks of ignition of upholstered furniture by cigarettes. The Commission staff is now conducting technical research to develop a draft standard to address ignition of upholstered furniture by small open-flame sources. In 1997, the staff is scheduled to brief the Commission on its findings and will present alternatives for future action by the Commission.

Statement of Need:

In 1994, approximately 680 deaths, more than 1,780 injuries, and $240

million in property damage resulted from all residential fires in the United States in which upholstered furniture was the first item to ignite.

The total societal cost attributable to upholstered furniture fires was approximately $3.9 billion in 1994. A significant portion of that total -- $1 billion was associated with upholstered furniture fires ignited by open-flame sources. Most of the losses from upholstered furniture fires ignited by open-flame sources involved fires started by small open-flame sources, such as matches, lighters, or candles. These fires are not addressed by any national standard or voluntary program.

Summary of the Legal Basis:

Section 4 of the Flammable Fabrics Act (FFA) (15 USC 1193) authorizes the Commission to issue a flammability standard or other regulation for a product of interior furnishing if the Commission determines that such a standard is ''needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage.'' No aspect of the Commission's regulatory proceeding is required by statute or court order.

The Commission's regulatory proceeding could lead to several results, one of which could be a mandatory standard requiring that upholstered furniture sold in the United States meet mandatory labeling requirements, or resist ignition from open-flame sources, or meet other performance criteria under test conditions specified in the standard.

Alternatives:

The ANPRM stated that the Commission was considering the following alternatives: (1) The Commission could issue a mandatory flammability standard if the Commission finds that a standard is needed to address an unreasonable risk of the occurrence of fire from ignition of upholstered furniture by small open-flame sources. (2) The Commission could issue mandatory requirements for labeling of upholstered furniture, in addition to, or as an alternative, to the requirements of a mandatory flammability standard. (3) The Commission could terminate the proceeding for development of a flammability standard and rely on a voluntary standard if a voluntary standard could adequately address the risk of fire and substantial compliance with such a standard is likely to result. (4) The Commission could terminate the proceeding and withdraw the ANPRM.

Anticipated Costs and Benefits:

The estimated annual cost of imposing a mandatory standard to address ignition of upholstered furniture by small open-flame sources will depend upon the test requirements imposed by the standard and the steps manufacturers take to meet those requirements. The average annual societal cost of fires involving upholstered furniture ignited by small open-flame sources since 1990 is more than $600 million. For this reason, the potential benefits of a mandatory standard to address the risk of ignition of upholstered furniture by small open-flame sources could be significant, even if the standard did not prevent all such fires started by open-flame sources.

Risks:

The estimated total cost to society from all residential fires associated with upholstered furniture was $3.9 billion in 1994. Societal costs associated with upholstered furniture fires are among the highest associated with any product subject to the Commission's authority. A voluntary or mandatory standard may have the potential to reduce significantly that portion of societal costs resulting from upholstered furniture fires ignited by small open-flame sources.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
ANPRM Comment Period End	08/15/94	
Staff Briefing of Commission on NPRM	10/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

165. REQUIREMENTS FOR CHILD-RESISTANCE OF MULTI-PURPOSE LIGHTERS

Priority:

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

Legal Authority:

5 USC 553 Administrative Procedure Act; 15 USC 2051 Consumer Product Safety Act

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

On January 16, 1997, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding which may result in a mandatory rule requiring multi-purpose lighters to resist operation by children. The Commission began this proceeding after granting a petition from Judy L. Carr. A mandatory product safety rule for multi-purpose lighters could take the form of an amendment of the Safety Standard for Cigarette Lighters (16 CFR part 1210) to bring multi-purpose lighters within its scope, or could be issued as a separate safety standard for multi-purpose lighters. The cigarette lighter standard requires lighters subject to its provisions to have a child-resistant mechanism to prevent operation by most children younger than five years of age. At this time, that standard applies to disposable and novelty lighters used to ignite cigarettes, cigars, and pipes, but not to multi-purpose lighters used to ignite fuel for fireplaces or charcoal or gas-fueled grills. The staff is preparing a briefing package for consideration by the Commission when deciding whether to continue this proceeding by publication of a notice of proposed rulemaking (NPRM). That briefing package will include a discussion of comments received in response to the ANPRM; the staff's analysis of issues raised by those comments; and other information developed by the staff. The staff is scheduled to transmit a briefing package to the Commission in February 1998.

Statement of Need:

When the safety standard for cigarette lighters was issued in 1993, multi-purpose lighters were excluded from its requirements because the Commission lacked information to establish that

multi-purpose lighters were associated with an unreasonable risk of injury from fires set by children playing with such lighters. However, since issuance of the cigarette lighter standard, the Commission staff has obtained information about 53 incidents occurring between January 1988 through October 1996 in which children younger than five years of age started fires using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. Children younger than five years of age usually are incapable of dealing with a fire once it has started. Consequently, they and their families are at special risk of injury from fires started by child-play. Almost all of the fatalities in the fires resulting from children playing with multi-purpose lighters were the children who started the fires. At least three of the 24 persons injured in fires started by children with multi-purpose lighters were hospitalized for treatment. One 15-month-old infant was treated for second and third degree burns over 80 percent of his body after his three-year-old brother used a multi-purpose lighter to ignite the playpen in which the infant was sleeping. Fires started by young children playing with multi-purpose lighters are not addressed by any voluntary standard or other voluntary program.

Summary of the Legal Basis:

Sections 7 and 9 of the Consumer Product Safety Act (CPSA) authorize the Commission to issue a consumer product safety standard to eliminate or reduce an unreasonable risk of injury associated with a consumer product. No aspect of this proceeding is required by statute or court order.

Alternatives:

This proceeding could result in the establishment of requirements for multi-purpose lighters to reduce risks of death and injury associated with fires ignited by multi-purpose lighters operated by young children. The ANPRM discussed the following alternatives: (1) Establishment of a mandatory standard with performance requirements for multi-purpose lighters to reduce risks of death and injury from fires ignited by multi-purpose lighters operated by young children; (2) Establishment of mandatory labeling requirements to warn of the risks of death and injury associated with fires ignited by multi-purpose lighters operated by young children, either instead of, or in addition to, a mandatory standard with performance requirements. (3) Development of a voluntary standard containing performance, labeling, or other requirements to address risks of death and injury associated with fires ignited by multi-purpose lighters operated by young children. (4) The Commission could terminate the proceeding and and withdraw the ANPRM.

Anticipated Costs and Benefits:

The estimated cost to society in 1995 of fires started by children playing with multi-purpose lighters was approximately $10.3 million. The staff is developing additional data needed to estimate the potential benefits of a mandatory standard to require multi-purpose lighters to be child-resistant. The Commission staff plans to test multi-purpose lighters currently on the market using the protocol in the Safety Standard for Cigarette Lighters. The results of this testing will establish the extent to which those lighters are child-resistant. This information is needed to estimate the potential benefits of any standard. The estimated costs of a mandatory standard for multi-purpose lighters will depend on the requirements imposed by the standard and the steps manufacturers take to meet those requirements.

Risks:

The Commission has information indicating that from January 1988 through October 1996, children younger than five years of age started about 53 fires using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. Based on information about fires started in 1995 by children playing with multi-purpose lighters, the Commission staff estimates that the total cost to society of those fires was about $10.3 million. The estimated societal costs of fires resulting from children playing with multi-purpose lighters during 1996 and 1997 is expected to be greater because of an apparent increase in the number of incidents. This increase may be related, in part, to increased sales of multi-purpose lighters, which are expected to continue. A voluntary or mandatory standard for multi-purpose lighters may have the potential to reduce these societal costs.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/97	62 FR 2327
ANPRM Comment Period End	03/17/97	
Staff Briefing Package on NPRM	02/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

FINAL RULE STAGE

166. SAFETY STANDARD FOR BICYCLE HELMETS

Priority:

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

Legal Authority:

5 USC 553 Administrative Procedure Act; 15 USC 6004 Children's Bicycle Helmet Safety Act of 1994

CFR Citation:

16 CFR 1203

Legal Deadline:

NPRM, Statutory, August 15, 1994.

Abstract:

The Children's Bicycle Helmet Safety Act of 1994 directs the Commission to begin a proceeding to issue a safety standard for bicycle helmets. That legislation also directs the Commission to designate appropriate existing standards for bicycle helmets as interim safety standards.

On August 15, 1994, the Commission published a notice of proposed rulemaking (NPRM) to begin a proceeding for issuance of safety standard for bicycle helmets. The proposed standard included impact-attenuation requirements, and other requirements derived from existing voluntary standards for bicycle helmets. The proposed standard also contained requirements to help prevent helmets from coming off the rider's head during an accident, and other provisions specifically applicable to helmets intended for children.

In March 1995, the Commission designated the following standards as interim safety standards for bicycle

helmets: (1) American National Standards Institute (ANSI) standard Z90.4-1984, Protective Headgear for Bicyclists; (2) ASTM (The American Society for Testing and Materials) standards F 1447-93 or F 1447-94, Standard Specification for Protective Headgear Used in Bicycling, incorporating relevant provisions of ASTM F 1446-93 or F 1446-94, Standard Test Methods for Evaluating the Performance Characteristics of Protective Headgear; (3) Canadian Standard Association standard for Cycling Helmets, CAN/CSA- D113.2-M89; (4) Snell Memorial Foundation (Snell) 1990 Standard for Protective Headgear for Use in Bicycling (designated B-90); (5) Snell 1990 Standard for Protective Headgear for Use in Bicycling, including March 9, 1994 Supplement (designated B-90S); (6) Snell 1994 Standard for Protective Headgear for Use in Non-Motorized Sports (designated N-94); (7) Snell 1995 Standard for Protective Headgear for Use With Bicycles (designated B-95). Bicycle helmets manufactured after March 16, 1995, must conform with the requirements of one of these interim standards until the Commission issues a final standard for bicycle helmets.

After the staff evaluated public comments on the proposed standard and conducted additional research, the Commission revised the proposed safety standard for bicycle helmets. The Commission published the revised proposal for public comment on December 6, 1995. The staff has considered comments on the revised proposed standard and is completing the work needed to issue final standard. In November 1997 the staff is scheduled to transmit a briefing package to the Commission concerning issuance of final standard.

Statement of Need:

The Commission estimates that on average, one-half million injuries associated with bicycles are treated in hospital emergency rooms each year in the United States. Additionally, an average of about 1,000 fatalities associated with bicycles occur each year according to the National Safety Council. A study of bicycle use and hazard patterns conducted by the Commission in 1993 indicated that almost one-third of the injuries associated with bicycles involved the head. Information available to the Commission indicated that in recent years, almost two-thirds of all deaths associated with bicycles involved head injuries. Younger children are particularly at risk of head injury. The Commission's study showed that one-half of the bicycle-related injuries to children younger than 10 years of age involved the head, whereas the head was involved in only about one-fifth of the bicycle-related injuries to older children.

Summary of the Legal Basis:

The Children's Bicycle Helmet Safety Act of 1994 (section 205 of P. L. 103-267, 108 Stat. 722, June 16, 1994) directs the Commission to begin a proceeding under provisions of section 553 of the Administrative Procedure Act (5 USC 553) to develop a standard for bicycle helmets. That legislation provides further that the standard shall include a provision to protect against the risk of a helmet coming off a rider's head and provisions to address risks of bicycle-related injuries to children.

The bicycle-helmet legislation also requires that bicycle helmets manufactured after March 15, 1995, must conform to one of three voluntary standards specified by that legislation or to ''any other standard that the Commission determines is appropriate'' until the Commission issues a final safety standard for bicycle helmets. On March 23, 1995, the Commission published a notice in the Federal Register to designate and codify seven existing standards as interim safety standards for bicycle helmets. Those standards are listed above in the Abstract.

Alternatives:

The Children's Bicycle Helmet Safety Act requires the Commission to review the requirements of the interim standards and to establish a final mandatory standard based on those requirements. Accordingly, the Commission cannot consider deferring to an existing voluntary standard or developing a new voluntary standard.

In the Federal Register of August 15, 1994, the Commission published a proposed safety standard for bicycle helmets. The proposed standard included an impact protection test, chin strap strength and effectiveness tests, and construction and labeling requirements. In the Federal Register of December 6, 1995, the Commission published a revised proposed safety standard for bicycle helmets to solicit written comments on the revised proposal.

Anticipated Costs and Benefits:

After the final standard becomes effective, helmet manufacturers may incur costs to redesign helmets to meet the requirements of the standard. However, costs of redesign would be amortized over the course of production and are expected to be small on a per-unit basis. Costs of testing to support certificates of compliance with the final standard are not expected to increase because the vast majority of helmet manufacturers now use third-party certification programs for conformance to one of the interim standards. Similarly, most helmet manufacturers currently label their products. If manufacturers are given sufficient lead time for any changes to labels required by the final standard, any additional costs associated with labeling required by the final standard are expected to be minimal.

The anticipated benefits of the standard are helmets, which if worn properly are less likely to come off the head in an accident; helmets which provide adequate coverage of critical areas of the head; and helmets which provide protection more suitable to younger children. These benefits could lead to a reduction in the number of deaths and serious head injuries from accidents associated with bicycles. Consumer confusion over differing standards would also be reduced by the creation of a single, uniform standard for bicycle helmets.

Risks:

Information available to the Commission indicates that almost 200,000 head injuries each year are associated with bicycles, and that 500 to 600 deaths each year result from those head injuries. Many of those deaths and injuries are to children younger than 10 years of age. The standard could prevent a portion of those deaths and injuries.

Timetable:

Action	Date	FR Cite
NPRM	08/15/94	59 FR 41719
NPRM Comment Period End	10/31/94	
Designation of Interim Standards	03/23/95	60 FR 15231
Revised NPRM	12/06/95	60 FR 62662
NPRM Comment Period End	02/20/96	60 FR 62662
Staff Sends Briefing Package to Commission	11/00/97	
Commission Decision	12/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 6355-01-F

FEDERAL HOUSING FINANCE BOARD (FHFB)

Statement of Regulatory and Deregulatory Priorities

The Federal Housing Finance Board (Finance Board) is an independent agency that is statutorily charged with supervising and regulating the Nation's Federal Home Loan Bank (FHLBank) System. The FHLBank System consists of 12 regional FHLBanks that are each owned by their member financial institutions and that provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related activities. The FHLBank System also includes the Office of Finance, which issues FHLBank System consolidated obligations. The Finance Board is required to prepare the following regulatory plan pursuant to section 4 of Executive Order 12866.

As always, the Finance Board's highest regulatory priorities during the coming year are to ensure the safety and soundness of the FHLBank System and to ensure that the FHLBanks fulfill their housing finance and community development mission. In addition, during 1997-98 the Finance Board plans to continue its ''Governance Project,'' whereby the Agency has been devolving to the FHLBanks authority over matters of corporate governance, to the extent that such devolution is permitted by statute and does not impair the ability of the Finance Board to carry out its regulatory responsibilities. To further these priorities, the Agency plans two significant regulatory actions in the coming year: One involving the Financial Management Policy for the FHLBanks (FMP) and the other involving the election of FHLBank directors. These prospective regulatory actions are in harmony with the regulatory philosophy and principles set forth by the President in Executive Order 12866 in that they are either necessary for the Agency to carry out effectively its statutory role as safety and soundness regulator of the FHLBank System or are intended to establish guidelines under which certain authorities may be devolved from the Agency to the FHLBanks.

During 1997-98, the Finance Board plans to revise its FMP, which governs the FHLBanks' investments and other aspects of their financial management, and to codify its contents into one or more regulations (RIN 3069-AA50). As part of its safety and soundness responsibilities, the Finance Board intends to address control of interest rate risk assumed by the FHLBanks in the regulation. As part of its effort to ensure that the FHLBanks fulfill their statutory mission, the Finance Board also plans to structure the regulation to encourage the FHLBanks to focus their balance sheets away from investments that are not related to housing finance and community development to a combination of advances and other assets that are mission-related.

As part of the Finance Board's Governance Project, the Agency intends to transfer to the FHLBanks the authority to determine the eligibility of prospective and incumbent directors and to administer the process through which FHLBank directors are elected (RIN 3069-AA55). The Finance Board will retain its responsibility to select all appointive FHLBank directors. The Agency hopes to complete its Governance Project during the coming year by devolving several remaining ''second tier'' governance authorities through a series of smaller regulatory initiatives.

In addition to these regulatory initiatives, the Finance Board has been working and will continue to work with members of Congress and their staffs to refine and promote pending FHLBank System reform legislation. This legislation, if enacted, would allow the Finance Board to devolve further governance authorities to the FHLBanks, would correct several technical and structural anomalies in the Bank Act, and would position the FHLBank System to operate at maximum efficiency and effectiveness in the financial world of the 21st century.

FHFB

PROPOSED RULE STAGE

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167. FEDERAL HOME LOAN BANK FINANCIAL MANAGEMENT

Priority:

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

Legal Authority:

12 USC 1422b(a); 12 USC 1431; 12 USC 1436(a)

CFR Citation:

12 CFR Not yet determined

Legal Deadline:

None

Abstract:

The Finance Board will revise its Financial Management Policy (FMP) for the Federal Home Loan Bank System and will codify it as a regulation.

Statement of Need:

In December 1993, the Finance Board adopted the FMP to provide guidance to and establish limits for the FHLBanks in their implementation of financial programs and strategies. The Finance Board will be amending the policy to more thoroughly address FHLBanks' assumption of interest rate risk and to direct FHLBank funds toward investments that are more closely related to their housing finance mission. For the first time, the Finance Board will be promulgating the FMP as a regulation.

Summary of the Legal Basis:

Sections 11(h) and 16(a) of the Federal Home Loan Bank Act (Bank Act) authorize the FHLBanks to make certain types of investments. Section 11 generally authorizes the FHLBanks to seek various sources of funding for their operations. Section 2B(a) of the Bank Act authorizes the Finance Board to supervise the FHLBanks and to promulgate such regulations as are necessary to carry out the provisions of the Act.

Alternatives:

The Finance Board is considering various alternative methods for controlling FHLBank interest rate risk and encouraging investment in mission-related assets. In addition, the agency will consider all alternatives suggested by the public during the notice and comment process.

Anticipated Costs and Benefits:

The Finance Board anticipates that the new FMP provisions may result in slightly lower investment income for the FHLBanks to the extent that the interest rate risk controls and mission-related investment requirements may narrow the range of high-income assets in which the FHLBanks may invest. However, these costs will be counterbalanced by FHLBanks' assumption of less interest rate risk and by the FHLBanks' greater support for the mortgage markets. The regulation would not otherwise impose any direct financial costs upon the FHLBanks or their member institutions.

Risks:

Although FHLBank interest rate risk is already well-managed under the current FMP, the proposed regulation will

attempt to further minimize such risk by incorporating state-of-the-art models and methods for monitoring and controlling the risk. The Finance Board is considering whether there are any circumstances under which there should be reserve requirements against interest rate risk exposure. Because the regulation is in its preliminary stages of preparation, the agency cannot now quantify the amount by which such risk will be reduced.

Timetable:

Action	Date	FR Cite
Proposed Statement of Policy	03/19/97	62 FR 13146
Comment Period End	04/18/97	
NPRM	02/00/98	
NPRM Comment Period End	04/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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FHFB

168. ELECTION OF FEDERAL HOME LOAN BANK DIRECTORS

Priority:

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

Legal Authority:

12 USC 1422b(a); 12 USC 1427

CFR Citation:

12 CFR 932

Legal Deadline:

None

Abstract:

The Finance Board is considering amending its regulation on the election and appointment of FHLBank directors to address procedural issues that have arisen since the adoption of the regulation and to set guidelines for the operation of the election process by the FHLBanks themselves.

Statement of Need:

Since its inception in 1989, the Finance Board has determined the eligibility of prospective and incumbent elective and appointive FHLBank directors and has administered the FHLBank director election and appointment processes. The Finance Board believes that the FHLBanks should have broad discretion to manage their affairs, including the election of FHLBank directors. Accordingly, as part of the Agency's continuing effort to devolve corporate management and governance responsibilities to the FHLBanks, the Agency intends to transfer to the FHLBanks the authority to determine the eligibility of prospective and incumbent directors and to administer the director election process. The Finance Board will retain the authority to select all appointive FHLBank directors.

Summary of the Legal Basis:

Section 2B(a)(1) of the Federal Home Loan Bank Act (Bank Act) authorizes the Finance Board to promulgate regulations necessary to carry out the provisions of the Act. Section 7 of the Bank Act sets forth the eligibility criteria for FHLBank directors and governs the director election process.

Alternatives:

In deciding whether to publish proposed amendments to the regulations governing the election of FHLBank directors, the Finance Board considered and rejected the possibility of retaining responsibility for the determination of director eligibility and the administration of the election process. In addition, the Finance Board will consider all alternatives suggested by the public during the notice-and-comment process.

Anticipated Costs and Benefits:

At this time it is not possible to quantify the expected costs and benefits of the amendments to the regulations governing the election of FHLBank directors. In general, the Finance Board expects the amendments to increase slightly the operating costs of the FHLBanks, who will now have the responsibility for the administration of their own director election processes. However, the Agency expects that the amendments will result in greater efficiency in each FHLBank's election process.

Risks:

The amendments to the regulations governing the election of FHLBank directors do not address issues of financial or other risk to the FHLBanks.

Timetable:

Action	Date	FR Cite
NPRM	12/00/97	
NPRM Comment Period End	02/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 6725-01-F

FEDERAL MARITIME COMMISSION (FMC)

Statement of Regulatory and Deregulatory Priorities

The Federal Maritime Commission's (Commission) regulatory objectives are guided by the agency's basic mission. The Commission's mission is to administer the shipping statutes as effectively as possible to provide an efficient, economic, and nondiscriminatory ocean transportation system in an environment free of unfair foreign maritime trade practices. Commission regulations are designed to implement each of the various statutes the agency administers in a manner consistent with this mission and in a way that minimizes regulatory costs, fosters economic efficiencies, and promotes international harmony.

Proposed legislation pending in Congress could alter significantly the regulatory scheme regarding ocean commerce. This same legislation could also affect the continued existence of the Commission. The Commission will be monitoring this legislation closely as it obviously would affect the Agency's regulatory planning and priorities, and depending on the effective date(s) of its provisions, could require regulatory action during the coming year. If enacted in its current proposed version, this legislation will require review and rewrite of many of the Commission's substantive regulations. Until any such legislation is enacted and an implementation schedule is determinable, the principal objective or priority of the Agency's current regulatory plan will be to continue to assess its major existing regulations for continuing need, effectiveness, burden on the regulated industry, fairness, and clarity.

The Commission continues to have under review, inter alia, regulations regarding passenger vessel operator financial responsibility and co-loading arrangements between non-vessel-operating common carriers. The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute ''significant regulatory actions'' under the definition in Executive Order 12866.

BILLING CODE 6730-01-F

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

Regulatory Priorities

Background

The Federal Trade Commission (FTC or Commission) is an independent agency charged with protecting American consumers from ''unfair methods of competition'' and ''unfair or deceptive acts or practices'' in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that free markets work—that competition among producers and information in the hands of consumers brings the best products at the lowest prices for consumers, spurs efficiency and innovation, and strengthens the economy. The Commission is, first and foremost, a law enforcement agency.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. First, for competition to thrive, curbing deception and fraud is critical. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, not false or misleading, information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without interfering with the legitimate activities of businesses. These two complementary parts of its mission make the Commission the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. The Commission, however, is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. In addition, under the FTC Act, the Commission currently has in place 15 trade regulation rules. The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters, and are generally intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Ten-Year Review Program

In 1992, the Commission implemented a 10-year review program to review its rules and guides. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act. Under the Commission's program, however, rules are reviewed at least every 10 years, not just once as usually required by section 610 of the Regulatory Flexibility Act. 5 U.S.C. 601 et seq. Thus, this program provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a ''significant economic impact upon a substantial number of small entities.''

As part of the 10-year plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews often lead to the reform of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary or in the public interest. As a result of the review program, the Commission has repealed 42 percent of its trade regulation rules and 42 percent of its guides since 1992. The Commission accelerated the process in 1995, and as a result, repealed more than 28 percent of its industry guides and more than 38 percent of its trade regulation rules since 1995. The Commission believes that its systematic review program will ensure that all of its rules and guides remain necessary and in the public interest.

Calendar Year 1997 Reviews

CY 1997 reviews, discussed below, are part of the Commission's 10-year plan to review and seek information about all of its regulations and guides, their costs and benefits, and their regulatory and economic impact. These reviews may also address other matters or issues, such as review of the impact of a rule on small businesses, as required by the Regulatory Flexibility Act.

In 1997, the Commission initiated reviews of four trade regulation and three statutory rules: (1) Dry Cell Batteries Rule, 16 CFR part 403; (2) Negative Option Plans Rule, 16 CFR part 425; (3) Power Output Claims for Amplifiers Rule, 16 CFR part 432; (4) Ophthalmic Practices Rules, 16 CFR part 456; (5) Informal Dispute Settlement Procedures under Magnuson-Moss Warranty Act, 16 CFR part 703; (6) Hobby Protection Act Rules, 16 CFR part 304; and (7) 900-Number Rule, 16 CFR part 308. See 61 FR 68173 (December 27, 1996). The 900-Number Rule has been included in the 1997 review schedule because the terms of the Rule itself require the Commission to begin its review during 1997. See 16 CFR 308.9.

All of these rules pertain to consumer protection matters and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. For example, the Ophthalmic Practices Rule requires that optometrists and ophthalmologists provide their patients with a copy of the patients' eyeglass prescriptions immediately after an eye exam is completed and at no extra cost. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye exam on a requirement that patients agree to buy their ophthalmic goods from the optometrist or ophthalmologist. The Rule further prohibits optometrists or ophthalmologists from giving patients certain disclaimers or waivers of liability. See 62 FR 15865 (April 3, 1997).

The Commission reviews its rules to determine, among other things, the continuing need for each rule, possible conflicts between each rule and State, local, and other Federal laws, and the effect on each rule of any technological, economic, or other industry changes. For example, the Commission has proposed the repeal of one trade regulation rule, the Dry Cell Battery Rule, as no longer being necessary due to established industry practices and the existence of a national industry standard which contains notification requirements regarding dry cell batteries. See 62 FR 14049 (March 25, 1997).

In two other instances, the Commission is considering whether rules should be expanded to protect consumer interests. In the 900-Number Rule review, the Commission has requested comments on whether the Rule should cover audio information or audio entertainment services provided through dialing patterns other than 900 numbers. See 62 FR 11750 (March 12, 1997). In reviewing the Amplifier Rule,

the Commission noted a tentative determination that the Rule applies to self-powered speakers for use with home computers and home sound systems, as well as other amplification equipment for home computers, but asked for comments on whether such products should be outside the Rule's scope. The Commission also requested comments from the public on whether the Rule's provision should be extended to automobile sound systems and whether existing testing and disclosure requirements need to be modified for use with automotive sound amplification. See 62 FR 16500 (April 7, 1997).

NAFTA Related Reviews

Where possible, the Commission also is attempting to harmonize various regulations among the United States, Canada, and Mexico, the North American Free Trade Agreement (NAFTA) countries. For example, the Commission is currently reviewing the Wool Products Rule, 16 CFR part 300; the Fur Products Rule, 16 CFR part 301; and the Textile Identification Rule, 16 CFR part 303, in part to determine the feasibility of a system of shared information for manufacturer, importer, or other responsible company identification among the NAFTA countries that would streamline and promote harmonization of labeling requirements.

In connection with its review of the Care Labeling Rule, 16 CFR part 423, the Commission published a Conditional Exemption with request for public comments. See 62 FR 5724 (February 6, 1997). The Conditional Exemption, which became effective on July 1, 1997, allows the use of the symbol system developed by the American Society for Testing and Materials on care labels. The symbols, which show consumers how to safely launder or clean their clothing, will be permitted on care labels so long as the manufacturers include with the garments a written explanation of what the symbols mean for the first 18 months they are in use. In granting the industry permission to use symbols on care labels instead of written words, the FTC pledged to coordinate a national campaign to help consumers in the transition to symbols by making sure they have easy access to additional descriptive information regarding how to care for their clothing.

Ongoing Reviews

The Commission began a number of reviews in 1996, some of which have been partially completed. For example, in 1996 the Commission completed the regulatory review of the R-Value Rule, 16 CFR part 460. See 61 FR 13659 (March 28, 1996). The Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products. In response to a request for comments, staff received strong support for retaining the Rule; 30 of 31 commenters expressing a continuing need for the regulation. Staff is now preparing a report on whether the Commission should propose substantive changes, such as whether the Rule should impose additional requirements on manufacturers or installers to help ensure that the R-Values disclosed to consumers are accurate and based on uniform standards.

The Commission is hosting six public workshops in five cities during CY 1997 to promote its review of the Franchise Rule, 16 CFR part 436. The Commission will provide additional information and seek additional comments on issues relating to how prospective franchisees can evaluate their investment decisions. Specifically, the Commission has requested comments on whether it should revise the Rule to more closely align Federal and State disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. See 62 FR 9115 (February 28, 1997).

The Commission continues its review of two warranty-related rules and one warranty-related interpretation. The Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR part 701, establishes requirements disclosing the terms and conditions of written warranties on certain consumer products. The Rule Governing the Pre-Sale Availability of Written Warranty Terms, 16 CFR part 702, establishes certain requirements for sellers and warrantors for making the terms of a written warranty available to the consumer prior to sale. At the same time, the Commission also sought comments on Interpretations of the Magnuson-Moss Warranty Act, 16 CFR part 700, See 61 FR 14688 (April 3, 1996). In 1997, the Commission began review of another warranty-related rule, the Informal Dispute Settlement Procedures Rule, 16 CFR part 703, which sets out requirements governing informal dispute settlement mechanisms established by manufacturers to resolve disputes between warrantors and consumers. See 62 FR 15636 (April 2, 1997).

Rescissions of Rules and Guides and Amendments to Guides

The Commission has recently repealed two rules, finding that both were no longer necessary or in the public interest. In October 1996, the Commission repealed the Used Oil Rule, noting that the Recycled Oil Rule, 16 CFR part 311, preempted certain provisions of the Used Oil Rule and that repeal of the Rule wold eliminate unnecessary duplication and any inconsistency with the goals of the Energy Policy and Conservation Act (EPCA), which required promulgation of the Recycled Oil Rule. See 61 FR 55095 (October 24, 1996). In December 1996, the Commission rescinded the Games of Chance Rule, noting that the abuses that prompted adoption of the Rule have largely disappeared and that changes in industry practice have made the Rule outdated. See 61 FR 68143 (December 27, 1996).

In connection with its review of industry guides, the Commission has repealed the Mirror Guides, 16 CFR part 21, and has revised both the Jewelry Guides, 16 CFR part 23, and the Environmental Guides, 16 CFR part 260. In connection with the Environmental Guides, the Commission also has requested additional comments.

The Commission repealed the Mirror Guides in 1996, stating that the mirror industry has undergone significant technological changes and industry standards have been promulgated that govern the quality and durability of glass suitable in mirrors. See 61 FR 59181 (November 21, 1996). The Commission revised section 7 of the Jewelry Guides regarding platinum products to simplify that section and to bring its guidance into closer accord with international standards. See 62 FR 16669 (April 8, 1997). The Commission also modified the Environmental Guides to ensure that the guides continue to reflect current technology and changing consumer perception, and to address newer environmental claims in the marketplace.

In each case that the Commission has decided to retain a guide, industry members and other members of the public have expressed a continuing need for the guide. For example, in the review of the Environmental Guides, the general consensus among commenters was that the guides benefit both consumers and industry. Also, many industry members commented generally on the dificulties that differing State standards for environmental marketing claims can pose to marketers and voiced strong opposition to changing the guides

in any way that would undermine the important State support the guides are now receiving. The few commenters who dissented indicated that they would prefer an environmental trade regulation rule instead of a guide because a rule would have the force of law and preempt State laws regulating the use of environmental advertising claims. See 61 FR 53311 (October 11, 1996).

The Commission also received broad support for retaining its Vocational Schools Guides, 16 CFR part 254, which provide guidance about acceptable or unacceptable claims in advertisements or promotional materials for resident or correspondence courses or training or instruction programs by private career or vocational schools. The Commission has preliminarily determined to retain the Guides to prohibit deceptive claims about future employment or job placement success. See 61 FR 14685 (April 3, 1996); 62 FR 19703 (April 23, 1997).

CY 1998

The Commission expects to initiate review of two rules, one exemption, and two industry guides in 1998. The rules presently scheduled for review in 1998 are the Hart-Scott-Rodino Coverage Rules and the Hart-Scott-Rodino Transmittal Rules, 16 CFR parts 801 and 802. The Commission will also review the Hart-Scott-Rodino Exemption Rules, 16 CFR part 802. The guides scheduled for review in 1998 are the Used Auto Parts Industry Guides, 16 CFR part 20, and the Decorative Wall Paneling Guides, 16 CFR part 243.

Summary

With regard to both content and process, the FTC's ongoing and proposed regulatory actions are compatible with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burden on business. The Commission will continue working toward these goals. The Commission's efforts in 1997 also share to promote environmental protection, conserve energy resources, and foster a system of shared information consistent with NAFTA. The Commission's 10-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's 10-year program also is consistent with President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. The program corresponds as well to section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations.

As set forth in Executive Order 12866, the Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions and receive the broadest practicable array of comments from affected consumers, businesses, and the public at large. As stated above, since August 1995 the Commission has repealed more than 28 percent of its industry guides and more than 38 percent of its trade regulation rules that were in existence in 1992 because they had ceased to serve a useful purpose. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of ''private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' Executive Order 12866, section 1.

II. Regulatory Actions

The Commission has no actions that constitute ''significant regulatory actions'' under the definition in Executive Order 12866.

BILLING CODE 6750-01-F

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or the Commission). The stated purpose of the Commission is to regulate the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. It is the Commission's intention to provide regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.

The NIGC's regulatory priorities for the next fiscal year are to:

1. Use the rulemaking process to consider amending the National Indian Gaming Commission's definition regulations located at 25 CFR 500-599. These regulations define key terms in the Indian Gaming Regulatory Act of 1988. The regulations are intended to provide guidance to tribes, their attorneys, enforcement personnel, and others interested in Indian gaming. The Commission will invite the public to comment and assist the NIGC in determining the need, if any, for additional rules governing this area.

2. Amend the schedule of annual fees to be paid to the Commission by gaming operations. The NIGC is attempting to lift the current statutory fee cap in order to effectively meet its regulatory obligations. If the statutory fee cap is lifted, it will be necessary to amend the fee schedule regulations to be consistent with the statute.

3. Develop regulations to establish processes for the classification review and approval of games and devices used in tribal gaming.

NIGC

PRERULE STAGE

169. ● DEFINITIONS OF ELECTRONIC AID AND ELECTRONIC FACSIMILE

Priority:

Other Significant

Legal Authority:

25 USC 2706

CFR Citation:

25 CFR 502 (Revision)

Legal Deadline:

None

Abstract:

The Commission will use the rulemaking process to request public comment designed to assist the NIGC in its evaluation of the decision to amend its current definition of electronic aid and electronic facsimile. Specifically, the Commission seeks input on the effectiveness of the current regulations in distinguishing between a Class II aid and a Class III facsimile, as well as suggestions for amendments.

Statement of Need:

After consideration of this issue, the NIGC has determined that the appropriate course of action is to publish an Advance Notice of Proposed Rulemaking to collect further information. Concurrently with the collection of this information, the Agency will enforce existing regulations. The issue of how best to amend the current definition regulations, if at all, is a question with implications for tribal governments, State governments, and other Federal officials. Before the Commission proceeds in this area, it intends to have the benefit of a full airing of the issues through the public comment process.

Summary of the Legal Basis:

The IGRA expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this (Act)''(25 USC section 2706(b)(10)).'' On April 9, 1992, the Commission published final rules (57 FR 12392) defining key statutory terms, including ''electronic, computer or other technologic aid'' and ''electronic or electromechanical facsimile.'' These current definitions can be found at 25 CFR sections 502.7 and 25 CFR 502.8. Because of confusion arising within the regulated community, the Commission is considering amending its regulations to provide better guidance regarding the distinction between a Class II ''aid'' and a Class III ''facsimile.''

IGRA was enacted to establish a comprehensive system for regulating gambling activities on Indian lands. IGRA divides gaming into three categories or classes. Class I gaming consists of social gaming for minimal prizes and traditional gaming and is regulated exclusively by the tribes (25 USC sections 2703(6) and 2710(a)(1)). Class II gaming consists of bingo, pull-tabs, bingo-like games, and non-banking card games (i.e., games such as poker that are played against other players, rather than against the house)(25 USC 2703(7)(A)). A tribe may conduct, license, and regulate Class II gaming if: (1) the State in which the tribe is located permits such gaming for any purpose by any person, organization, or entity and (2) the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission (25 USC 2710(a)(2) and (b)).

All forms of gaming not included in either Class I or Class II, such as banking card games (e.g., blackjack), casino games, slot machines, and electronic facsimiles of any game of chance are designated as Class III gaming under the IGRA (25 USC 2703(8)). Class III gaming may lawfully be conducted by an Indian tribe if: (1) the State in which the tribe is located permits such gaming for any purpose by any person, organization, or entity; (2) the tribe and the State have negotiated a tribal-State compact which has been approved by the Secretary of the Interior; and (3) the tribe has adopted a gaming ordinance which has been approved by the Chairman of the Commission (25 USC 2710(d)(1)).

Alternatives:

The Commission could choose not to amend the current definition regulations and continue to use the existing ones. The Commission is keeping this option available by using an Advance Notice of Proposed Rulemaking to seek comment on whether the existing regulations are sufficient.

Anticipated Costs and Benefits:

The anticipated costs of implementing this regulatory action are minimal. The potential benefits are to gain a better understanding of the classification of games under IGRA and the jurisdictional roles of Federal, State, and tribal governments.

Risks:

There are no determined risks to this regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	09/02/97	62 FR 46227

Action	Date	FR Cite
ANPRM Comment Period End	11/03/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Tribal

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NIGC

PROPOSED RULE STAGE

170. GAME CLASSIFICATION

Priority:

Other Significant

Legal Authority:

25 USC 2703; 25 USC 2706

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

This rule will establish processes for the classification, review, and approval of games and devices used in tribal gaming.

Statement of Need:

Over the course of the past couple of years, the NIGC has received numerous requests for advisory opinions on the classification of a particular game or device. The Commission has through an informal process issued several advisory opinions. However, given the growing number of requests and the need for some degree of predictability and certainty in the industry regarding the classification of games or devices, the Commission believes it is necessary to develop a formal process. Consequently, the Commission will use the rulemaking process to promulgate regulations in this area.

Summary of the Legal Basis:

The Indian Gaming Regulatory Act specifically defines both Class II and Class III gaming (25 USC section 2703). The Act also expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act (25 USC section 2706 (b)(10)).'' The Commission relies on these sections of the statute to authorize the development by regulation of a process of formal classification of particular games and devices.

Alternatives:

At this time, the only identified alternative is to continue with the informal process of issuing advisory opinions regarding particular games.

Anticipated Costs and Benefits:

The potential benefits to this regulatory action are to bring more clarity and predictability to the industry regarding classification. Those engaged in Indian gaming need to have some degree of certainty regarding the legal consequences of playing a particular game. For those tribes without tribal-State compacts, the need is even greater to know with as much certainty as possible the classification of a particular game or device. The anticipated costs of implementing a classification system are unknown at this time.

Risks:

The only identifiable risk at this time is the ability to pay for a formal classification process. The Commission is trying to expand its budget by lifting the statutory fee cap. These actions may be connected because without an increase in funding, it is highly unlikely that the Commission could afford to develop a formal classification system.

Timetable:

Action	Date	FR Cite
NPRM	07/00/98	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Tribal

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NIGC

171. ● ANNUAL FEES

Priority:

Other Significant

Legal Authority:

25 USC 2706; 25 USC 2708; 25 USC 2710; 25 USC 2717; 25 USC 2717(a)

CFR Citation:

25 CFR 514 (Revision)

Legal Deadline:

None

Abstract:

The NIGC is attempting to lift the current statutory fee cap in order to effectively meet its regulatory obligations. If the statutory fee cap is lifted, it will be necessary to amend the fee schedule regulations to be consistent with the statute.

Statement of Need:

In order to effectively meet the Commission's regulatory obligations it is necessary to increase the Commission's budget. The Commission has legislation pending, which if passed by Congress will allow the Commission to collect fees from Class II and Class III gaming operations.

Summary of the Legal Basis:

Included in the Commission's jurisdiction is regulating Class II gaming on Indian lands. The current annual fee regulations of the Commission are located at 25 CFR 514.1 and provide for a system of fee assessment and payment that is self-administered by the Class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates. The gaming operations are then required to apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis. The current regulations mirror the statute and place a limit of $1,500,000. The Commission is attempting to amend the statute to lift the current fee cap in order to effectively meet its regulatory commitments. If the statutory fee cap is lifted during this session of Congress, it will be necessary to immediately amend the regulations to make them consistent with the statute.

Alternatives:

The alternative is to leave the annual fees regulations unchanged. If Congress does not pass legislation to lift the

statutory fee cap, then this alternative will be utilized.

Anticipated Costs and Benefits:

The benefits of this regulatory action will be the much needed increase of the Commission's current budget. This increase will allow the Commission to more effectively regulate Indian gaming. The anticipated costs to the agency are minimal because the fees are self-administered and the infrastructure needed to process the receipt of fees already exists.

Risks:

No risks have been identified at this time.

Timetable:

Action	Date	FR Cite
NPRM	01/00/98	

Small Entities Affected:

None

Government Levels Affected:

Tribal

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BILLING CODE 7565-01-F

NUCLEAR REGULATORY COMMISSION (NRC)

Statement of Regulatory Priorities

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. The NRC's regulatory mission is to ensure that civilian uses of nuclear materials and facilities are carried out in a manner that will protect public health and safety and the environment and that will not be inimical to the common defense and security of the United States. The NRC regulates the operation of nuclear power plants and fuel cycle plants; the safeguarding of nuclear materials from theft and sabotage; the safe transportation of nuclear materials; the decommissioning and return to safe use of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material.

The NRC's regulatory priority for the next fiscal year is to ensure that nuclear power plants and other licensed facilities are operated safely and that nuclear materials are possessed and used in a manner that will adequately protect public health and safety.

The NRC is addressing its regulatory initiatives in a manner that is consistent with the President's regulatory philosophy. The NRC routinely conducts comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations as part of its regulatory process. The NRC has been aggressive and innovative in expanding the scope of public and industry participation in its most significant rulemakings. For example, the NRC has conducted several public workshops and established an electronic bulletin board to facilitate participation in the rulemaking to establish radiological criteria for decommissioning. The NRC has also developed internal procedures and programs to ensure that only necessary requirements are imposed on its licensees and to review existing regulations to determine whether the requirements imposed are still necessary.

NRC

PROPOSED RULE STAGE

172. ● REVISION OF FEE SCHEDULES; 100% FEE RECOVERY, FY 1998

Priority:

Economically Significant. Major under 5 USC 801.

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 2201; 42 USC 5841

CFR Citation:

10 CFR 170; 10 CFR 171

Legal Deadline:

Other, Statutory, September 30, 1998.

Omnibus Budget Reconciliation Act of 1990

Abstract:

The proposed rule would amend the licensing, inspection and annual fees charged to NRC licensees and applicants for an NRC license. The amendments are necessary to recover approximately 100 percent of the NRC budget authority for Fiscal Year 1998 less the amounts appropriated from the Nuclear Waste Fund and the General Fund. The Omnibus Budget Reconciliation Act of 1990, as amended,(OBRA-90) requires that the NRC accomplish the 100 percent recovery through the assessment of fees. The dollar amount is not yet determined but is expected to be in a range close to $462 million. The Act requires that the fees for FY 1998 must be collected by September 30, 1998. Therefore, the final rule is to become effective by June 30, 1998.

Statement of Need:

This rulemaking would amend the licensing, inspection, and annual fees charged to NRC licensees and applicants for an NRC license. The amendments are necessary to recover approximately 100 percent of the NRC budget authority for Fiscal Year 1998 less the amounts appropriated from the Nuclear Waste Fund and the General Fund. The OBRA-90 requires that the NRC accomplish the 100 percent recovery through the assessment of fees. The NRC assesses two types of fees to recover its budget authority. License and inspection fees are assessed under the authority of the Independent Offices Appropriation Act to recover the costs of providing individually identifiable services to specific applicants and licensees (10 CFR part 170). OBRA-90 requires that the NRC recover the full cost to the NRC of all identifiable regulatory services that each applicant or licensee receives. The NRC recovers generic and other regulatory costs not recovered from fees imposed under 10 CFR part 170 through the assessment of annual fees under the authority of OBRA-90 (10 CFR part 171). Annual fee charges are consistent with the guidance in the Conference Committee Report on OBRA-90 that the NRC assess the annual charge under the principle that licensees who require the greatest expenditure of the agency's resources should pay the greatest annual fee.

Summary of the Legal Basis:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund, for Fiscal Years 1991 through 1998. The Act requires that the fees for FY 1998 must be collected by September 30, 1998. Therefore, the final rule is to become effective by June 30, 1998.

Alternatives:

Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

Anticipated Costs and Benefits:

The cost to NRC licensees is the NRC FY 1998 budget authority less the amount appropriated from the Nuclear Waste Fund. The dollar amount is not yet determined but is expected to be in a range close to $462 million.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	02/00/98	
Final Action	04/00/98	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

None

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BILLING CODE 7590-01-F