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 continues to implement an ongoing program 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 60 percent of our NPR commitment to regulatory reform. At program conclusion, the Department will have eliminated or reinvented 81 percent of its regulatory holdings in the CFR.

Positive changes resulting from proposed and completed regulatory reform actions 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 are in place to ensure efficient and effective program management that makes the best use of taxpayer dollars. Farmers, ranchers, and other USDA customers 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, is being 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 and animal pests or disease. The Department is also improving the regulations that serve rural communities. Several changes are being made in rural housing programs that will facilitate access and simplify the application process. 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 also 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. USDA continues to work toward the goal of reducing burden by an additional 5 percent for fiscal year 2000. Further reductions will result from program changes, improved efficiency in the collection and management of information, and adjustments in the collection 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. The PRIT has developed a USDA Paperwork Reduction Framework—a set of standards and guidelines for the Service Center agencies. USDA agencies will use the framework in the execution of their paperwork reduction initiatives. Simultaneously, the PRIT, working with the Service Center agencies, will continue ongoing initiatives to reduce burden as quickly as possible. Business process reengineering initiatives are addressing customer needs by integrating agency processes to streamline information collected 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.

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

Six agencies are represented in this regulatory plan. They include the Farm Service Agency, the Food and Nutrition Service, the Forest Service, the Food Safety and Inspection Service, the Animal and Plant Health Inspection Service, and the Agricultural Marketing Service. This document represents summary information on prospective significant regulations as called for in Executive Order 12866. A brief comment on each of the six agencies appears below, which summarizes the Agency mission and its key regulatory

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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 and disaster 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 2000 will be to continue to implement these programs with emphasis on enhanced service to our customers. 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 make and guarantee loans to family farmers and ranchers to purchase farm land and finance agricultural production. While the contract commodity 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.

In addition to its normal program operations, FSA is committed to the Paperwork Reduction Act of 1995's goal of reducing the information collection burden on the public. FSA has initiated a business process reengineering project to streamline its farm loan-making and servicing regulations and reduce the information collection burden associated with the programs. FSA plans to reduce the number of CFR parts containing its farm loan program regulations by approximately 70 percent. In addition, FSA hopes to achieve a significant reduction in the total number of CFR pages by removing administrative provisions and internal policy, and eliminating duplicative material. Furthermore, FSA intends to improve the clarity of the farm loan program regulations by following the guidelines established in the President's Plain Language in Government Writing Initiative.

As part of this project, all Farm Loan Program (FLP) regulations and internal Agency directives will be completely rewritten. All application processes and information collections will be reviewed, and unnecessary or redundant requirements will be eliminated. Under one phase of the contract, all forms associated with FLP were reviewed and assigned to one of the following categories:

- prepared by the public
- prepared by the Agency, reviewed by the public, or
- internal agency use only.

FLP will concentrate on streamlining forms assigned to the first category to reduce public burden. In addition, a database was developed listing each field contained on the forms. This information will be used to identify duplicate collections and ensure consistency in terminology.

FLP is completing three regulation packages under the streamlining project. Guaranteed loan program regulations were published in February 1999. The following changes are being implemented to reduce public burden:

- Establish the Certified Lender Program, which reduces documentation and application requirements
- Eliminate requirements that lenders submit copies of leases, contracts, and legal documents
- Reduce the number of years of production and financial records from 5 years to 3 years
- Reduce application requirements for loans under $50,000.

FLP plans to publish regulations for direct loan program and administrative regulations as a proposed rule in March 2000, and as a final rule in September 2001. While rewriting of the regulations has begun, it will be a lengthy process because approximately 37 CFR parts are being consolidated into 3 parts and more than 750 CFR pages must be rewritten. Revised regulations for special loan programs (including Indian land acquisition, boll weevil eradication, drainage and irrigation and grazing association loans) are planned for publication as a proposed rule in August 2001, and as a final rule in April 2002. These programs will be completed last because there are only about 850 borrowers with outstanding special loans in comparison to almost 110,000 borrowers with outstanding direct loans.

In addition to the FLP streamlining initiative, FSA is one of the major participants in USDA's Service Center Implementation Team (SCIT) along with the Natural Resources Conservation Service and the Rural Development mission area. Information collections at the service center level represent most of FSA's total collection burden. FSA believes that SCIT provides a unique opportunity to achieve new levels of information collection efficiency because collections across organizational boundaries can be consolidated as common service center business processes are reengineered. FSA is taking full advantage of this opportunity by sponsoring a companion initiative of the Paperwork Reduction Implementation Team (PRIT) that brings a paperwork reduction focus to the business process reengineering initiative under SCIT. Another focus of PRIT is to develop standard methodologies for information collection management and to standardize burden calculations and reporting processes.

Food and Nutrition Service

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

Priorities: In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS's 2000 regulatory plan supports broad strategic policy goals aimed at improving the nutritional well-being of program participants, and improving stewardship of Federal resources. These goals, included in our strategic plan, are:

- Enhanced food and nutrition security for low-income Americans. This goal reflects the continuation of the Food Stamp Program's traditional role in providing nutrition assistance, as well as improving program administration to meet the future challenges. Our plan supports ongoing implementation of welfare reform legislation that modified the eligibility criteria for food stamp benefits and increased program design options for States, while continuing to meet the overall mission to provide food and nutrition security for low-income Americans participating in the FSP and to enhance program efficiency and integrity.

- 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 responsibilities for school-age children.
- 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 children in day-care settings. This goal reflects our effort to enhance the effectiveness of the Child and Adult Care Food Program (CACFP), by improving the nutritional quality of program meals, improving program access for low-income families and enhanced program integrity.
- Low-income children consume nutritious lunches when school meals are not available. Through its Summer Food Service Program, FNS seeks to extend its commitment to children from low-income households during summer months when school meals are not available.
- Improved quality of food distribution commodities and service. FNS continues its support for agricultural markets with an emphasis on more healthful commodities, as well as improved program efficiency through automation, reduced Federal and State inventories, and timely deliveries of commodity foods.

Forest Service

Mission: The mission of the Forest Service is to sustain the health, productivity, and diversity of the Nation's forest and rangelands to meet the needs of present and future generations. This includes protecting and managing the National Forest and Grasslands; providing technical and financial assistance to States, communities, and private forest landowners; and developing and providing scientific and technical assistance and scientific exchanges in support of international forest and range conservation.

Priorities: On October 13, 1999, the President issued a Memorandum directing the Forest Service to develop, and propose for public comment, regulations to provide appropriate long-term protection for most or all of the currently inventoried ''roadless'' areas and to determine whether such protection is warranted for any smaller ''roadless'' areas not yet inventoried. The President further directed that the final regulations should reflect the best available science and a careful consideration of the full range of ecological, economic, and social values inherent in these lands. A notice of intent to prepare an Environmental Impact Statement to analyze and disclose various alternatives for meeting the President's directive was published in the **Federal Register** on October 19, 1999.

As an adjunct to this roadless policy, another agency priority is to revise its road management rules and policy to reflect reduced funding available for road construction and maintenance, the need to better inventory and analyze the need for existing forest roads, and thus the need to shift the emphasis from building new roads to better maintaining and managing those already in use. A proposal is expected to be published in November. Finally, the President's environmental program also includes incorporation of the principles of ecosystem management in natural resource planning for the National Forest System. In support of that effort, a proposed rule was published in the **Federal Register** of October 5, 1999 (Part II, 64 FR 54074–54112). Guided by recommendations of a Committee of Scientists, the proposed rule provides for science-based planning, ecosystem sustainability, use of ecoregional and watershed-level assessments, and strengthened collaboration with the individuals, organizations, State, local, tribal governments and other Federal agencies.

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 to review its regulations to eliminate duplication of and inconsistency with its own and other agencies' regulations. The Agency's regulatory review efforts are directed, in particular, at improving the consistency of the regulations with the July 25, 1996, final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems.'' HACCP is a science-based process control system for producing safe food products. The final rule requires official meat and poultry establishments to develop and implement 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 their particular needs and processes and to take advantage of the latest technological innovations.

FSIS must revise its numerous ''command-and-control'' regulations, which prescribe the exact means establishments must use to ensure the safety of their products. Some of these regulations specify precise cooking time-and-temperature combinations. Others require prior approval by FSIS of equipment and procedures, in effect assigning to the Agency the 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, 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. Following are some of the Agency's recent and planned initiatives to convert command-and-control regulations to performance standards, to streamline and simplify the regulations and to facilitate the continuing implementation of the pathogen reduction and HACCP systems final rule:

- FSIS has proposed consolidating the sanitation regulations into a single part of the Code of Federal Regulations that would be applicable to both meat and poultry establishments, eliminating unnecessary differences between the meat and poultry sanitation requirements, and converting many of the highly prescriptive requirements to performance standards.
- FSIS will be proposing to remove most requirements pertaining to partial quality control programs. The Agency will also be proposing to consolidate and streamline the regulations governing the importation of meat, meat food and poultry products. This rulemaking also will implement provisions in recent international agreements, notably that on veterinary equivalence between the United States and the European Union.

- FSIS has proposed new regulations limiting the amount of processing water that can be retained by raw, single-ingredient, meat or poultry products requiring labeling to indicate the amount of water retention.
- FSIS has proposed, in coordination with FDA, amending the regulations to harmonize and improve the efficiency of the procedures used for reviewing, approving and listing food or color additives that are used in the preparation of meat, meat food and poultry products.
- FSIS will be proposing generic Escherichia coli process control criteria, based on the sponge method of sampling, for cattle, swine and geese slaughtering establishments, and for turkey slaughtering establishments based on both the sponge and the whole-bird rinse sampling methods. The Agency also will be proposing updated Salmonella performance standards for all market classes of cattle and swine.
- Finally, FSIS will be proposing to require federally inspected egg product establishments to develop and implement HACCP systems and sanitation standards operating procedures. The Agency will be proposing pathogen reduction performance standards for pasteurizing egg products. Further, the Agency will be proposing to remove current requirements for approval by FSIS of egg-product plant drawings, specifications, and equipment prior to use and to end the system for pre-marketing approval of labels for egg products. The Agency also is planning to propose requiring safe-handling labels on shell eggs and egg products.

Animal and Plant Health Inspection Service

Mission: A major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect U.S. animal and plant resources from destructive pests and diseases. APHIS conducts programs to control and eradicate exotic pests and diseases in the United States. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health.

Priority: APHIS is developing a proposal to strengthen restrictions on the importation of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) into the United States. Imported solid wood packing material (SWPM) has been linked to introductions of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle. These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests. SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment.

Agricultural Marketing Service

Mission: The Agricultural Marketing Service (AMS) facilitates the marketing of agricultural products in domestic and international markets, while ensuring fair trading practices, and promoting a competitive and efficient marketplace, to the benefit of producers, traders, and consumers of U.S. food and fiber products.

Priorities: AMS' top regulatory priority is to establish the National Organic Program (NOP). The NOP will establish national standards for the production and handling of organically produced products, including a National List of substances approved and prohibited for use in organic production and handling.

AMS will also publish the procedures for Mandatory Market News Reporting of Livestock and Meat. These regulations will establish a program that will provide livestock producers, packers, and other market participants with information on pricing, contracting for purchase, numbers and quality marketed for cattle, swine, lambs, and production of livestock products.

AMS will publish a regulation to update the Federal Seed Act to incorporate current seed testing and seed certification procedures. This regulation will keep the Federal Seed Act consistent with present technology and prevent conflicts between Federal and State regulations that could inhibit the free movement of seed.

AMS published an interim final rule that established a voluntary, fee-for-service program, under the Agricultural Marketing Act of 1946, under which AMS assesses State and private agencies in the United States to verify compliance with the requirements of the International Organization for Standardization (ISO) Guide 65. This assessment facilitates uninterrupted imports of U.S. organic products to countries in the European Union (EU) by enabling organic certifying agencies to comply with EU requirements. The interim final rule was effective June 10, 1999. A 60-day period was provided for interested persons to comment on the interim rule before the final rule is published in the near future.

AMS will continue to review its regulations to keep them up-to-date and consistent with industry terminology and to eliminate duplication with its own and other agencies' regulations. This includes amending the regulations governing the inspection of eggs to delete regulatory detail not needed by AMS to administer its responsibilities under the Egg Products Inspection Act.

USDA—Agricultural Marketing Service (AMS)

PROPOSED RULE STAGE

1. NATIONAL ORGANIC PROGRAM

Priority:

Economically Significant

Legal Authority:

PL 101-624, sec 2101 to 2123; 7 USC 6501 to 6522

CFR Citation:

7 CFR 205

Legal Deadline:

Other, Statutory, May 28, 1991.

NPRM, Statutory, May 28, 1992.

Final, Statutory, October 1, 1993, The Organic Foods Production Act calls for the Secretary to appoint the National Organic Standards Board 180 days after enactment and convene it within 60 days thereafter.

Abstract:

The program is proposed under the Organic Foods Production Act of 1990 (title XXI of the Food, Agriculture, Conservation and Trade Act, Pub. L. 101-624), as amended (OFPA or Act), which requires the establishment of national standards governing the marketing of certain agricultural products as organically produced to facilitate commerce in fresh and processed food that is organically produced and to assure consumers that such products meet consistent standards. This program would establish national standards for the organic production and handling of agricultural products, which would include a national list of synthetic substances approved for use in the production and handling of organically produced products. It also would establish an accreditation program for State officials and private persons who want to be accredited to certify farms and handling operations that comply with the program's requirements and a

certification program for farms and handling operations that want to be certified as meeting the program's requirements. The program additionally would include labeling requirements for organic products and products containing organic ingredients and enforcement provisions. It further provides for the approval of State organic programs and the importation into the United States of organic agricultural products from foreign programs determined to have equivalent requirements. On December 16, 1997, the proposed rule was published with a public comment period that ended on April 30, 1998. Over 275,000 comments were received and are currently being reviewed with a subsequent revised proposed rule planned for calender year 1999.

Statement of Need:

The purpose of these regulations is to implement the Organic Foods Production Act (OFPA). The Act requires the establishment of consistent national standards for products labeled as organic; mandatory independent, third-party certification of such products; U.S. Department of Agriculture (USDA) oversight of the independent certifiers and their inspectors; and assurance that imported organic food products are produced and processed under practices equivalent to USDA standards. Establishment of the National Organic Program is necessary to eliminate the confusion that exists among consumers because of the variety of standards under which organic foods are currently produced, and the irregular and sometimes unsubstantiated labeling claims. As required by law, the National Organic Standards Board made recommendation on the development of the program. Based on recommendations of the Board, the Agency prepared a proposed rule for the accreditation of State and private persons to carry out the certification procedures and processors of organic foods, and a separate proposed rule for defining standards for the production of organic crops, livestock, and for processing foods to be labeled as organic. The proposed rule for standards will include the national list of prohibited substances and allowed synthetic substances to be used in organic production and processing. The standards will also include the process for the collection of user fees, enforcement provisions, determination of equivalency of foreign certification programs (either national or private certification programs), and the ongoing functions of the Board. The Board submitted recommendations for most of the program to the Secretary.

Summary of Legal Basis:

This regulatory action is authorized by statute. The Organic Foods Production Act of 1990, which is title XXI—Organic Certification—of the 1990 Farm Bill, calls for the Secretary of Agriculture to establish an organic certification program that relies on State and private agencies to verify that agricultural products are produced according to national standards. The Act also authorizes State officials to establish State Organic Certification Programs, provided that the provisions of each program are first submitted to USDA and approved by the Secretary.

Alternatives:

The Board developed recommendations through an open discussion process with the interested parties. The Board formed six subcommittees to draft recommendations for the following subject areas: crop standards; livestock standards; processing, packaging, and labeling standards; materials; accreditation of certifying agents; and, international (import) requirements. The Board held 14 full board meetings and 11 subcommittee meetings, during which the Board accepted public comments. In addition, the Agency held four public hearings on livestock to develop additional input to the development of livestock standards. In reviewing the Organic Foods Production Act, the subcommittees identified about 25 specific topics requiring recommendation development such as an organic plan, pesticide drift, livestock health, and materials review. Draft documents were prepared by the subcommittees in the specific subject areas and circulated initially to known individuals with expertise in these subjects in the organic community for comment. Comments were received and documents revised and sent out to a mailing list exceeding 1,000 names, for additional public comment. Documents were further revised, became committee position papers and were sent out to the mailing list for additional public comment. If the comments were minimal the documents were then approved by the subcommittees and forwarded to the full Board to be approved as draft recommendations. These documents were then further revised with full board-member input and submitted a final time for public comment. Upon receipt of comments, revisions were made, and the document was approved as a recommendation to the Secretary. Approximately 25 of these recommendations were approved at a Board meeting in June 1994 and forwarded to the Secretary (after minor editing in the approval process) in August 1994. In all of the documents, the Board committees considered alternatives and altered positions based on reasoned public comments received. The Board will continue to provide recommendations for modification or additions to program recommendations as the program is implemented and operating. The allowed synthetic substances and prohibited natural substances on the National List are subject to review by the Board and the Secretary every 5 years in order for the National List to be valid according to section 211(e) of the OFPA. The Secretary received the recommendations and used them as the basis for developing proposed rules for implementing the program. The Secretary may not accept recommendations that are deemed to be inconsistent with Department policy or lack a defensible position.

Anticipated Cost and Benefits:

The calculations and research related to the costs and benefits for the program are still under development. Because information is not collected on organic farmers, as a class, there is a lack of a good database to be used in determining the impacts of the program. Administrative costs would include staff costs for managing the accreditation program, costs for a peer review panel, costs for site visits to observe and review certifier program activities, overhead and/or indirect costs. If it is determined that income from the accreditation program would need to pay for all costs associated with the program, additional costs would include staff and indirect costs for support for the Board, ongoing materials reviews for the National List, enforcement costs, international equivalency costs to determine whether to allow organic imports, collection and management of the user-fee program, and approval of State programs. The program anticipates being funded through user fees. However, we believe that full user-fee support will not be possible for at least 3 years following implementation; appropriated general funds will be necessary to provide support while the organic industry develops a sufficient economic base. It is expected that the industry will soon be able to financially cover program activities related to accreditation if it continues to grow at its current annual rate of 20 percent as reported by a private natural foods magazine;

however, full coverage of costs related to development of State and international programs may not be possible for several years. The tangible benefits of the program are numerous. The benefits will extend to the marketplace, where it is expected that the price of organic food will decrease with increasing volume and availability and benefit current and potential consumers; all products labeled as organic will have been produced from systems certified to a national and consistent standard; truthful market information will be developed; access to international markets with products from certification programs overseen by USDA will be improved; certifying agents will be relieved of the financial costs related to standards development, materials review, and other endeavors that duplicate activities at the Federal level; and manufacturers and processors will be able to buy certified organic products from producers certified by different certifying agents without requiring the paperwork process in use today. Finally, exports will be enhanced by a common natural standard.

Risks:

The program does not purport to directly address either environmental problems or food residue issues. Any reduction in risks to public health, safety, or the environment are indirect benefits of the criteria used by organic producers in choosing materials that serve as an adjunct to the preferred methodology of mechanical and biological control measures. Organic agriculture is based on management practices and materials that enhance ecological activity. Organic producers seek to reduce or eliminate practices and materials that do not enhance ecological activity. Organic producers seek to reduce or eliminate practices and materials that may harm soil life, deplete nonrenewable resources, pose a hazard to water and air quality, or threaten farmworker health. The Act requires the establishment of a ''National List'' of approved synthetic and prohibited natural materials as an integral part of the program. Synthetic materials approved for the National List must have been determined by the USDA, FDA, and EPA to be not harmful to human health or the environment.

Timetable:

Action	Date	FR Cite
Organic Livestock Hearings	12/30/93	58 FR 69315
Notice - Procedure To Submit Names of Substances for National List	03/27/95	60 FR 15744
NPRM	12/16/97	62 FR 65850
NPRM Comment Period End	10/01/98	
Reproposal	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Tribal

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USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

2. IMPORTATION OF SOLID WOOD PACKING MATERIAL

Priority:

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

Legal Authority:

7 USC 150dd to 150ff; 7 USC 151 to 167; 7 USC 450; 7 USC 2803; 7 USC 2809; 21 USC 136; 21 USC 136a

CFR Citation:

7 CFR 319.40

Legal Deadline:

None

Abstract:

APHIS is undertaking rulemaking to strengthen restrictions on the importation of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) into the United States. Imported solid wood packing material (SWPM) has been linked to introductions of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle. These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests. SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment.

Statement of Need:

Unmanufactured wood articles imported into the United States could pose a serious threat of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forests. Regulations in 7 CFR 319.40-1 through 319.40-11 are intended to mitigate this plant pest risk. Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of solid wood packing material (an unmanufactured wood article). Solid wood packing material accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment. For this reason, we are undertaking rulemaking to strengthen the regulations that restrict the importation of solid wood packing material in order to reduce the risk that plant pests will be introduced into the United States.

Summary of Legal Basis:

The Animal and Plant Health Inspection Service (APHIS) is authorized to take action under the Federal Plant Pest Act (7 U.S.C. 150aa-150jj).

Alternatives:

APHIS presented three alternatives in an advance notice of proposed rulemaking. The alternatives were to apply restrictions on the importation of solid wood packing material based on risk assessment of regions, apply restrictions on a general basis regardless of origin, and prohibit importation of any solid wood packing material. We accepted comments on other alternatives to consider. These and other alternatives will be considered in analyses prepared in connection with further rulemaking.

Anticipated Cost and Benefits:

The costs of proposed regulatory changes will be dependent on the option that is chosen. We anticipate that costs will be alleviated by utilization of alternative materials, such as nonwood packing material. The benefits of increased restrictions will be

the reduction in the risk of potentially destructive plant pests being introduced into the United States and the resulting avoidance of economic losses to forest and agricultural resources. For the Asian longhorned beetle alone (a pest detected on solid wood packing material imported from China), we estimate that, if left unchecked, this pest has the potential to cause economic losses of $41 billion, affecting the forest products, commercial fruit, maple syrup, nursery, and tourist industries in the United States.

Risks:

APHIS will conduct a comprehensive pest risk assessment prior to making any regulatory changes.

Timetable:

Action	Date	FR Cite
ANPRM	01/20/99	64 FR 3049
ANPRM Comment Period End	03/22/99	
NPRM	01/00/01	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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USDA—Food and Nutrition Service (FNS)

PROPOSED RULE STAGE

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

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

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

CFR Citation:

7 CFR 226

Legal Deadline:

None

Abstract:

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

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

Statement of Need:

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

Summary of Legal Basis:

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

Alternatives:

In developing the proposal, the agency considered various alternatives to minimize burden on State agencies and institutions while ensuring effective Program operation. Key areas in which alternatives were considered include State agency reviews of institutions and sponsoring organization oversight of day care homes.

Anticipated Cost and Benefits:

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

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

Risks:

Continuing to operate the CACFP under existing provisions of the regulations

that do not sufficiently protect against fraud and abuse in CACFP puts the Program at significant risk. This rule includes changes designed to strengthen current program regulations to reduce the risk associated with the Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	
NPRM Comment Period End	03/00/00	
Final Action	08/00/01	
Final Action Effective	09/00/01	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Organizations

Government Levels Affected:

State, Local

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RIN: 0584–AC24

USDA—FNS

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 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 Cost 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	12/00/99	
NPRM Comment Period End	02/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State, Local

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RIN: 0584–AC39

USDA—FNS

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 273.10(f); 7 CFR 273.11(a) to 273.11(c); 7 CFR 273.11(e); 7 CFR 273.11(j); 7 CFR 273.13; 7 CFR 273.14(b); 7 CFR 273.14(e)

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.

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, 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 P. L. 104-193, P. L. 104-208, P. L. 105-53, and P. L. 105-185.

Summary of 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 P. L. 104-193; section 552 of P. L. 104-208; sections 5302, 5305, 5306, 5562, 5563, 5571, 5572, and 5573 of P. L. 105-53; and section 503 of P. L. 105-185.

Anticipated Cost 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	12/00/99	
NPRM Comment Period End	02/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State, Local

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RIN: 0584–AC40

USDA—FNS

6. 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 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 Cost 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 and 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	12/00/99	
NPRM Comment Period End	02/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local

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RIN: 0584–AC45

USDA—FNS

FINAL RULE STAGE

7. 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:

NPRM, Statutory, March 1, 1999.

Final, Statutory, March 31, 2000.

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 28, 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 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 has issued a second proposed rule addressing WIC food delivery systems and requirements. This second rule addresses many of the provisions contained in the previous rulemaking, and contains 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. See also RIN 0584-AC50 for related provisions that fulfill the statutory deadline.

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 issued a second proposed rule addressing WIC food delivery systems integrity and procedural requirements. This second rule addresses many 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 is intended to provide for more cost effective and efficient management of WIC vendors by State agencies. A 120-day public comment period is provided with this proposed rule. The Department intends to publish a final rule, based on all of the comments received, by the end of fiscal year 2000.

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 Cost 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 88 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	06/16/99	64 FR 32308
NPRM Comment Period End	09/14/99	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal

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RIN: 0584–AA80

USDA—FNS

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

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:

7 USC 2011 to 2032

CFR Citation:

7 CFR 272; 7 CFR 273

Legal Deadline:

None

Abstract:

The Food and Nutrition 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 promote 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.

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 1998 show that overissuances to recipients totaled over $1.3 billion, 7.63 percent of the $16.9 billion in total food stamp issuances that year. 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 Cost and Benefits:

Nationwide, as of October 1, 1998, there was over $1.2 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	05/28/98	63 FR 29303
NPRM Comment Period End	08/26/98	
Final Action	01/00/00	
Final Action Effective	01/00/01	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local

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RIN: 0584–AB88

USDA—FNS

9. 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:

This proposed rule would implement provisions of Public Law 103-225 requiring firms to offer a variety of staple food items for sale or to have more than 50 percent of gross retail sales in staple foods. This rule also addresses the requirement in Public Law 103-225 to provide periodic notices to participating firms, clarifying certain eligibility criteria. (95-003)

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 Cost 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	06/30/99	64 FR 35082
NPRM Comment Period End	08/30/99	
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0584–AB90

USDA—FNS

10. 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; 7 CFR 276.2(e)

Legal Deadline:

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

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 eight provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. These provisions 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 living in another person's house for considering a 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 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 Cost and Benefits:

The provisions of this rule would reduce Food Stamp Program costs for FY 1997-2002 by $11.2 billion.

Timetable:

Action	Date	FR Cite
NPRM	07/12/99	64 FR 37454
NPRM Comment Period End	09/10/99	
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local

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RIN: 0584–AC41

USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

11. • REFORM OF REGULATIONS ON IMPORTED LIVESTOCK AND POULTRY PRODUCTS

Priority:

Other Significant

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 327; 9 CFR 381

Legal Deadline:

None

Abstract:

As part of its continuing regulatory reform effort, FSIS is proposing to consolidate and streamline the regulations governing the importation of livestock and poultry products to make them consistent with the regulatory approach the Agency has taken in its Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations and related rulemakings. FSIS is proposing to eliminate obsolete provisions and, where appropriate, to replace command-and-control provisions with performance standards. The Agency is proposing to require establishments where import inspection is conducted to have documented process controls that parallel in some respects the HACCP and other documented systems that establishments where inspection of domestic products is conducted must have. The rulemaking stems from the Agency's commitment to its regulatory reform, reinventing government, effort to eliminate duplication and inconsistency in the regulations and especially to make the regulations PR/HACCP consistent.

Statement of Need:

The rulemaking stems from the Agency's commitment to its regulatory reform, reinventing government, effort to eliminate duplication and inconsistency in the regulations and especially to make the regulations consistent with PR/HACCP.

Summary of Legal Basis:

This rulemaking is proposed under the authorities of the Federal Meat Inspection Act, as amended (21 U.S.C. 601-695) and the Poultry Products Inspection Act, as amended (21 U.S.C. 451-470).

Alternatives:

FSIS considered the following alternative courses of action with respect to the regulation of imported products: (1) no rulemaking; (2) combining and streamlining the current regulations into a single body of regulations covering imported livestock and poultry products; (3) combining and streamlining the import regulations and requiring establishments to have documented process controls for imported product.

(1) The first alternative would preserve the status quo. Leaving the current regulations unchanged would preserve the inconsistencies between these regulations and the PR/HACCP regulations. Obsolete, duplicative, and command-and-control provisions would not be amended or removed.

(2) The second alternative, to combine and streamline the current regulations, would provide the opportunity for FSIS to remove the obsolete. command-and-control provisions of the current regulations.

(3) The third alternative, combining and streamlining the current regulations and requiring importing establishments to have documented process controls, would provide a more flexible system of imported product controls than that furnished by the current regulations. Both FSIS and the imported products industry would gain with improved flexibility and efficiency. FSIS chose the third alternative.

Anticipated Cost and Benefits:

This proposed rule would affect about 125 import inspection establishments. These would have to develop, maintain, and carry out documented process control systems. These costs would primarily be those associated with system development, i.e., paperwork or information collection costs. FSIS estimates that the development costs to the establishments would be, in the aggregate, about $55,000. The on-going costs would be incidental to the operation of the establishments, a number of which already have documented process control systems.

FSIS is likely to gain some flexibility in its administration of import inspection. The proposed requirement for official import inspection establishments to have documented process control systems will benefit some establishments by introducing more efficient procedures. FSIS would be able to more efficiently assess the establishments and products for compliance because the Agency would be verifying controls managed by the establishments rather than, in effect, carrying out some checks that should be a normal part of establishment operations.

The proposal would potentially have a positive effect on international trade. The listing of additional European Union (E.U.) countries eligible to export product to the United States, with reciprocal actions by those countries in favor of the U.S., would potentially expand trade in livestock products and poultry products. The amount by which such trade would increase would depend, in part, on the number of livestock and poultry products establishments listed respectively by the U.S. or the E.U. as eligible to have their products imported into the U.S. or the E.U.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	07/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

12. ● EGG PRODUCTS INSPECTION REGULATIONS

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:

21 U.S.C. 1031-1056

CFR Citation:

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411;

9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; ...

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require egg products plants to develop and implement Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (SOP's). FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized egg products. Plants would be expected to develop HACCP systems that ensure processed egg products meet the pathogen reduction performance standards. Finally, FSIS is proposing to amend the Federal shell egg and egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products, as well as require safe handling labels on shell eggs and egg products.

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

Statement of Need:

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

Summary of Legal Basis:

This rulemaking is proposed under the authority of the Egg Products Inspection Act, as amended, 21 U.S.C. 1031-1056.

Alternatives:

FSIS is engaged in a thorough review of its current regulations and, where possible, will eliminate overly prescriptive regulations and replace them with regulations that embody performance standards. Performance standards establish requirements in terms of the objective to be achieved. They specify, the ends, but do not detail the means to achieve those ends. Performance standards allow food processing establishments to develop and employ innovative and more effective sanitation or processing procedures customized to the nature and volume of their production.

To address hazards that can be presented by egg products, FSIS now is considering (1) requiring all inspected egg products plants to develop, adopt, and implement written Sanitation SOP's and HACCP plans; and (2) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The implementation of HACCP and Sanitation SOP requirements by egg products plants would reduce the occurrence and numbers of pathogenic microorganisms in egg products. Further, with HACCP and Sanitation SOP's in place, FSIS would be better able to allocate its inspection resources to the areas of greatest risk; FSIS inspection program personnel, therefore, would be better able to ensure that egg products processing would grant plants the flexibility needed to properly implement HACCP and Sanitation SOP's, and encourage innovation in egg products processing. In addition, such a performance standard for egg products processing would provide FSIS inspection program employees an objective measure of performance useful in processing, inspection, and enforcement.

The Agency will also propose to require that egg products plants adopt sanitation SOP and HACCP plans. Plants will have significant latitude in identifying the sanitation SOP and HACCP plan suitable for their process. The egg products industry has indicated its desire to adopt HACCP on an industry-wide basis. About 30 percent of egg products plants have already implemented HACCP or HACCP-like programs. The pathogen reduction performance standard that egg product plants will have to achieve under their HACCP plans would likely have a more economically significant impact than the requirement of Sanitation SOP's or HACCP plans.

Anticipated Cost and Benefits:

Costs

The expected costs of the proposal will depend on a number of factors, including the following:

Required Lethality. The level of lethality required in the pathogen reduction performance standard will have a significant impact on the cost of the proposal. The expected type performance standard may specify a uniform level of pathogen reduction for a target organism. Alternatively, different reduction levels may be specified for white, yolk, and whole egg products, or production processes, reflecting the relative level of risk. As the level of lethality increases, the ability to utilize the egg for different products and formulations is diminished. The Agency will investigate the level of lethality that provides an acceptable balance between risk and egg utilization.

HACCP and Sanitation Standard Operating Procedures. Implementing a HACCP plan and Sanitation SOP's requires the preparation of a plan, employee training, documentation and record keeping, and testing procedures. The costs associated with HACCP implementation are reduced by the extent to which quality assurance or similar programs are utilized by egg products firms and the availability of off-the-shelf HACCP plans. The types of Sanitation SOP's being considered are essentially the same as those for meat and poultry, and costs would be similar.

Plant Compliance/Enforcement. FSIS costs for monitoring and enforcement are expected to be lower than those for current comparable activities as the program moves from continuous inspection (inspector on duty throughout the entire shift) to being monitored on a patrol assignment. We are not aware of any estimates of FSIS costs for verifying process control and pathogen reduction for egg products. They would probably be similar in costs to those for meat and poultry inspection. The monitoring costs for some plants may increase, especially those reliant on the inspector to be the quality control expert.

Benefits

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

Human health benefits are based on changes from a baseline level of illnesses and the health cost per illness. FSIS egg products testing results indicate either some pasteurization processes are inadequate, or that egg products are being contaminated with Salmonella after pasteurization, prior to, or during packaging. The results indicate a very low level of contamination. Pasteurized egg products have not been identified/associated with any known outbreaks; however, unpasteurized egg products have been implicated in foodborne outbreaks. Salmonella would principally be found in unpasteurized product. However, there have been a few instances when SE has been isolated from egg products found to be positive for the presence of Salmonella. In the majority of these cases, the Salmonella contamination can be attributed to post-pasteurization product contamination. Sanitation SOP and HACCP requirements could remedy this problem by enhancing the effectiveness of pasteurization by minimizing microbiological hazards before and after pasteurization.

Two recent studies have raised questions about the efficacy of the current regulatory requirements for egg products pasteurization (9 CFR 590.570). The research suggests that for certain formulations of egg products, the required time/temperature combinations are not sufficient to destroy high numbers of Salmonella (5 log 10), as originally projected by USDA research completed in the 1960s. A pathogen reduction performance standard requiring a specific reduction of Salmonella in egg products would assist plants in ensuring that pasteurization of egg products is effective.

FSIS has established an Egg Products Risk Management Analysis Team to better assess the information available on potential human health risks associated with egg products. The team is comprised of technical personnel from FSIS and other Federal agencies. The primary task is to fully characterize the hazard and identify potential risk mitigation alternatives for further analysis. The USDA Salmonella Enteritidis Risk Assessment and the CDC Salmonella surveillance data provide estimates of the baseline level of risk. The Egg Products component of the risk assessment is being used to identify the expected reduction in illness attributed to the alternative identified in the proposed rule. Any new scientific or epidemiological information will be incorporated into the risk assessment model. The analysis will identify a range of estimated annual illnesses prevented. A standard methodology employed by the Economic Research Service will be used to calculate the health cost per illness, taking into account the severity of the illness.

Sanitation SOP's would improve the utilization of FSIS inspection program resources by refocusing FSIS sanitation inspection on the oversight of establishment prevention and correction of conditions that cause direct product contamination or adulteration. If Sanitation SOP's are put in place, Agency inspection personnel will spend less time enforcing detailed sanitation requirements and directing the correction of problems after they occur. Instead, FSIS inspection program personnel will focus on oversight of an establishment's implementation of Sanitation SOP's and on taking appropriate regulatory action when an establishment's Sanitation SOP's are not properly executed, or when product contamination or adulteration is imminent, directly observed, or probably had occurred.

Under the current command-and-control based system, the inspector assumes responsibility for ''approving'' production-associated decisions. Under HACCP, industry would assume full responsibility for production decisions and execution. FSIS would monitor establishments' compliance with the pathogen reduction performance standard and HACCP requirements. The number of inspection tasks will be reduced, so inspection program personnel can focus more attention on areas of greatest risk in the production system within each establishment.

Performance standards set forth requirements in terms of what is to be achieved by a given regulatory requirement. They represent a shift in focus from ''command-and-control'' regulations in that they specify the ends to be achieved, but not the means to achieve those ends. The command-and-control provisions in the current regulations prescribe the means for producing safe egg products and do not account for the uniqueness of individual processing procedures and needs within different plants. FSIS command-and-control regulations require all establishments to produce egg products in the same manner. Such prescriptive regulations are burdensome and often conflict with HACCP and the new FSIS food safety strategy.

As a general matter, command-and-control regulations are incompatible with HACCP and the new food safety strategy because they deprive plants of the flexibility to innovate-adopt new, more cost-effective production technologies, or develop new egg products. Potential technical innovations in improving product safety can be expected with the introduction of Sanitation SOP's and HACCP. In addition, with the elimination of prior approval requirements, the industry would be able to utilize computer integrated process controls and other technologies (currently used for other types of food processing). There is potential for the development of shelf-stable product which does not require refrigeration. Similarly, command-and-control regulations are incompatible with the proposed Sanitation SOP requirements because they often prescribe the exact means by which egg product plants must maintain sanitary conditions and do not allow the plant to assume responsibility for sanitation. Command-and-control regulations undercut the clear delineation of responsibility on which the food safety strategy is based. Analysis of the gains in resource productivity, technological change, and consumer choice will be largely qualitative.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

None

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USDA—FSIS

13. ● PATHOGEN REDUCTION; HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS; ADDITIONS TO E. COLI CRITERIA AND SALMONELLA PERFORMANCE STANDARDS

Priority:

Other Significant

Legal Authority:

21 U.S.C. 601 to 695; 21 U.S.C. 451 to 470

CFR Citation:

9 CFR 310; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS is proposing to add generic E. coli criteria and Salmonella performance standards to the regulations. In addition, FSIS is proposing to revise the terms used to identify and define certain classes of product listed in the Salmonella tables.

Statement of Need:

To further enhance its Pathogen Reduction/HACCP implementation, the Agency is proposing to add generic Eschericha coli (E. coli) criteria for cattle, swine, and goose carcasses based on the sponging method of sample collection and for turkey carcasses by the sponging and rinse methods of sample collection. FSIS is also proposing new Salmonella performance standards for cattle, swine, young turkey, and goose carcasses by the sponging method and fresh pork sausage by direct sampling. The new cattle performance standard replaces the existing Salmonella performance standards for steers/heifers and cows/bulls. The new swine standard replaces the existing standard for hogs. These new standards apply to all market classes of cattle and swine, respectively. In addition, FSIS is proposing to revise the terms used to identify and define certain classes of product listed in the Salmonella tables to more accurately reflect the products sampled in the baseline studies that are the basis for the standards. The Agency also intends to correct some errors in the E. coli and Salmonella tables and to change the footnotes to the tables for greater clarity. This rulemaking stems from the Agency's commitment to increase the use of science-based methodology in meat and poultry inspection.

Summary of Legal Basis:

This rulemaking was proposed under the authorities of the Federal Meat Inspection Act, as amended (21 U.S.C. 601-695), and the Poultry Products Inspection Act, as amended (21 U.S.C. 451-470).

Alternatives:

No action.

Anticipated Cost and Benefits:

The Pathogen Reduction/HACCP final rule included a Final Regulatory Impact Assessment (FRIA) (61 FR 38945). Except for the proposed performance standard for goose carcasses, the cost and benefit estimates and impact assessments were already presented in the FRIA. The final rule estimated that a small percentage of firms would have to make process modifications in order to meet the standards based on national prevalence levels. The ongoing compliance-testing program has basically validated the FRIA estimates. Approximately ten percent of establishments must take corrective actions to meet existing standards. The final rule noted that benefits would accrue from reductions in pathogen levels, which, in turn, would lead to reductions in foodborne illness.

In the preamble to the Pathogen Reduction/HACCP final rule, the Agency acknowledged that the initial performance standards were based on the current national prevalence and not on a quantitative assessment of the risk posed by any particular incidences of Salmonella contamination or the determination of a safe incidence level. This policy was based on the public health judgement that reducing the percentage of carcasses with Salmonella will reduce the risk of foodborne illness and on the regulatory judgement that the pathogen reduction performance standards implemented in conjunction with HACCP would lead to significant reductions in contamination rates. Preliminary evidence indicates that these judgements were correct. The revised and new standards proposed now are based on the same original judgements supported by preliminary data showing reductions in both contamination rates and foodborne illness.

Also in the preamble of the Pathogen Reduction/HACCP final rule, FSIS stated that the scientific basis for establishing food safety performance standards needs to be improved. However, as noted in the preamble and it is still true today, there is no scientific basis for setting pathogen standards based on a quantitative assessment of risk.

As noted above, the FRIA prepared for the Pathogen Reduction/HACCP final rule did not address the cost of complying with a performance standard for geese. In Fiscal Year 1998 only 7 federally inspected establishments slaughtered more than 100 geese. Based on past experience it is likely that one or two of these establishments will have to make some process modification to meet the proposed standard. The adjustments could range from having to make minor adjustments to spray nozzles used for the final carcass wash to having to install a trisodium phosphate rinse system (estimated at $40,000 in the FRIA).

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	05/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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USDA—FSIS

FINAL RULE STAGE

14. SUBSTANCES APPROVED FOR USE IN THE PREPARATION OF MEAT 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 601 et seq

CFR Citation:

9 CFR 318; 9 CFR 381

Legal Deadline:

None

Abstract:

This rule will amend the Federal meat and poultry products inspection regulations to simplify the procedures by which FSIS approves food additives and Generally Recognized as Safe substances to be used as ingredients in meat food products and poultry products. The final rule will be developed in cooperation with the Food and Drug Administration to make the Federal regulation of food additives and other substances that may be used as ingredients in meat food and poultry products more efficient and uniform.

Statement of Need:

This rule is a response to longstanding requests by industry representatives for FSIS the procedures for approving and listing in the Agency's regulations food additives and other substances used in the preparation of meat, meat food, and poultry products. The industry representatives have argued that the FSIS rulemakings to permit the use of FDA-approved additives in meat, meat food, and poultry products have been largely duplicative of the FDA procedures.

FSIS adopted a final rule in July 1983 under which the Agency could amend its regulations on a ''fast track'' basis to provide for the use in livestock products or poultry products, at appropriate levels and for appropriate purposes, of FDA-approved substances. The Agency discontinued this procedure in 1988, however, because of concerns it might not satisfy the requirements of the Administrative Procedure Act.

Comments submitted in response to USDA's February 25, 1992, notice requesting public comments on how Department regulations can be improved, updated, or streamlined, supported the Agency's decision to initiate this rulemaking project in coordination with FDA. This rulemaking has been included among the Administration's proposals for reinventing food regulations.

Summary of Legal Basis:

This rulemaking was proposed under the authorities of the Federal Meat Inspection Act, as amended (21 U.S.C. 601-695), and the Poultry Products Inspection Act, as amended (21 U.S.C. 451-470).

Alternatives:

No action.

Anticipated Cost and Benefits:

The public benefits conferred by this rulemaking include, principally, those associated with the more timely regulatory approval of food and color additives added to foods and those associated with having the food and color additives themselves available for use more quickly. The benefits of food and color additives added to meat, meat food, and poultry products include the technical effects on the characteristics of food products, the uses of the food and color additives in food processing, and a greater variety of foods in the marketplace. Public health benefits include the greater availability of food through preservation techniques and improved food safety through, for example, antimicrobial treatments of raw product and the use of curing solutions in processed products. The benefits conferred by the availability of food and color additives and this rulemaking will marginally increase the food and color additives' use.

The public benefits of regulating food and color additives generally will not change. These include, principally, the prevention of adulteration or misbranding of food products. Consumers are provided assurances that the products they buy do not contain food and color additives whose use ought, for various reasons, to be prohibited, and food and color additives that have been approved have not been used improperly in foods. This final rulemaking will not affect such benefits because FDA will continue to conduct safety reviews of food and color additives proposed for use in foods, including—in consultation with FSIS—meat, meat food, and poultry products, and FSIS will continue to exercise its in-plant inspection and other regulatory authorities to prevent the marketing of adulterated or misbranded meat, meat food, and poultry products. Therefore, elimination of the duplicative FSIS rulemaking process involved in listing or approving food and color additives for use in meat, meat food, and poultry products will probably save the regulated industry between $400,000 and $600,000 a year over and above the savings the Government itself will realize in administrative costs. (According to industry representatives, the cost of filing one food or color additive is approximately $100,000. This includes research and administrative costs.)

Other less calculable benefits arise through the removal of a disincentive to innovative. With the potential expansion of uses of approved food additives and other new food and color additives that will result from the easing of the current regulatory burden, new product development and marketing are encouraged.

This final rule will not have a significant economic impact on a substantial number of small entities. Obtaining approval for the use in meat, meat food, and poultry products of new food and color additives or for new uses of previously listed or approved food and color additives will be simpler, faster, and less costly for both industry and the Federal Government than under the current system.

FSIS now may authorize for use in meat, meat food, or poultry products only those food and color additives that have been previously reviewed for safety and approved for such use by FDA. Under the final rule, separate petitions to FSIS will no longer have to be submitted. FSIS will permit food and color additives to be used in products under its jurisdiction based on FDA's title 21 regulations permitting such uses. Those food and color additives not approved for meat, meat food, or poultry product use under current FDA regulations will require only one petition for rulemaking—to FDA.

FSIS currently receives approximately four to six petitions per year for the listing or approval of food and color additives for use in livestock products and poultry products. Approximately 75 percent of these petitions are from large commercial entities.

Risks:

As mentioned, potential public health benefits of this rule include the greater availability of food through preservation techniques and improved food safety through, for example, antimicrobial treatments of raw product and the use of curing solutions in processed products. A more timely and efficient approval process would make these benefits available sooner than

they can be under the current approval process. However, FSIS has no way of forecasting how many food and color additives that yield health and safety benefits will be submitted to FDA in any given future year. The Agency therefore does not have a basis for quantifying the future health and safety benefits of this rule.

Timetable:

Action	Date	FR Cite
NPRM	12/29/95	60 FR 67459
NPRM Comment Period End	05/06/96	
Final Action	01/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

15. ELIMINATION OF REQUIREMENTS FOR PARTIAL QUALITY CONTROL PROGRAMS

Priority:

Other Significant

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 (ANPRM) ''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. The HACCP plans 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 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 Cost 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	05/18/99	64 FR 26892
NPRM Comment Period End	07/19/99	
Final Rule	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

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USDA—Forest Service (FS)

PRERULE STAGE

16. ● NATIONAL FOREST SYSTEM ROADLESS AREAS

Priority:

Other Significant

Legal Authority:

16 USC 472; 16 USC 551; 16 USC 1604; 42 USC 4321

CFR Citation:

36 CFR 294

Legal Deadline:

None

Abstract:

On October 13, 1999, the President directed the Forest Service to begin an open and public dialogue about the future of inventoried roadless areas within the National Forest System. As the first step in carrying out the President's direction, the Forest Service published a Notice of Intent to prepare an environmental impact statement in the Federal Register on October 19, 1999 (64 FR 56306). The Notice of Intent initiates the scoping process, whereby the Forest Service is soliciting public comment on the nature and scope of the environmental, social, and economic issues related to roadless areas. The public has been asked to provide comments by December 20, 1999. Additionally, the agency is holding scoping meetings in every Forest Service Region to facilitate public comment on the scope of an environmental analysis and alternatives. This initiative responds to strong public sentiment for protecting roadless areas and the public benefits those areas provide, including clean water, biological diversity, wildlife habitat, forest health, dispersed recreational opportunities, and other benefits. It also responds to budgetary concerns about the National Forest road system. The public has long questioned the logic of building new roads in roadless areas when the Forest Service receives insufficient funding to maintain its existing road system. To assist in determining the scope and content of a proposed rule, the agency will prepare an environmental impact statement to analyze (1) the effects of eliminating certain activities such as road construction in the remaining unroaded portions of inventoried roadless areas on the National Forest System; and (2) the effects of establishing criteria and procedures to ensure that the social and ecological values are considered and protected through the forest planning process. The draft environmental impact statement (EIS) and a proposed rule that embodies the preferred alternative identified in the draft EIS are expected to be available for public review and comment in the spring of 2000.

Statement of Need:

Areas that are without roads have inherent values that are increasingly scarce and highly desirable. Under present management policies, the maintenance of areas with these values cannot be guaranteed. At the same time, present and foreseeable funding for road maintenance is expected to be only a small fraction of the total needed to meet environmental and safety standards. Therefore, it is necessary for the agency to change its policies and practices for roadless area management to reflect different resource priorities and realistic funding levels.

Summary of Legal Basis:

The Forest Service's proposal to initiate a rulemaking process to protect roadless areas comes under applicable administrative and environmental laws, including the Organic Act, the Multiple-Use Sustained-Yield Act, the National Forest Management Act, and the National Environmental Policy Act.

Alternatives:

The agency could either continue under existing regulations or propose regulations to address the protection of roadless areas.

Anticipated Cost and Benefits:

As part of the development of a proposed rule, the agency will assess the environmental impacts, as well as the costs and benefits of promulgating a rule for the protection of roadless areas. The benefits of publishing the rule are to preserve the value of areas without roads, including biological diversity, clean water, and other social, economic, and ecological values. Without this protection, the cost to the taxpayer in the future may be considerable, in terms of the loss of desirable aesthetic qualities that are becoming increasingly scarce.

Risks:

The planned regulatory action addresses the protection of roadless areas and would not directly cause specific risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
ANPRM	10/19/99	64 FR 56306
ANPRM Comment Period End	12/20/99	
NPRM	04/00/00	
NPRM Comment Period End	06/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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USDA—FS

FINAL RULE STAGE

17. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

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:

16 USC 1600 et seq; 5 USC 301

CFR Citation:

36 CFR 219

Legal Deadline:

None

Abstract:

On October 5, 1999, the Forest Service published a proposed rule to guide land and resource management planning for the National Forest System. The proposed planning framework makes sustainability the foundation for National Forest System planning and management and establishes requirements for implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. The intended effects are to simplify, clarify, and otherwise improve the planning process to reduce burdensome and costly procedural requirements; and to strengthen collaborative relationships with the public and other government entities. The comment period ends on January 4, 2000.

Statement of Need:

The need for the rule arises from having completed the first round of forest plans as required by the National Forest Management Act. The Forest Service contracted with the Conservation Foundation and Purdue University to conduct a comprehensive critique of the planning process and plan decisions. The critique involved both agency employees and external participants—state and local governments, businesses, environmental organizations, and others—and resulted in several volumes of findings and recommendations. Key recommendations were to strengthen the emphasis on ecosystem sustainability and health; to incorporate ecoregional and watershed-level assessments; and to strengthen opportunities for public participation in the planning process and for greater interaction and dialog with Federal, State, local and Indian tribal governments. Building on those recommendations, the agency published an Advance Notice of Proposed Rulemaking and a proposed rule in 1995. The proposed rule was controversial. There was a strong concern that the agency had not chartered a Committee of Scientists as was required by the statute for the initial planning regulations. In response, the Secretary of Agriculture decided to appoint a Committee of Scientists to provide advice in the development of a science-based approach to the planning process. The proposed rule is built on the Committee's recommendations for achieving more collaborative, dynamic, science-based planning that fosters collaboration among Forest Service officials, state, local, and Indian governments, organizations, and the public at large.

Summary of Legal Basis:

The legal basis for the planned regulatory action is the National Forest Management Act, which requires that regulations be promulgated. This final action will revise the existing regulation which was finalized in 1982.

Alternatives:

Alternatives to this rule that were considered include continuing under existing regulations or staying with the concepts in the embodied 1995 rulemaking effort. The agency determined that the Committee's recommendations should be the basis for a new proposed rule.

Anticipated Cost and Benefits:

A cost-benefit analysis has been completed as part of an Environmental Assessment. Based on that analysis, it is anticipated that streamlined planning procedures will result in a reduction in the cost of amending and revising forest plans relative to the same procedures under the existing regulation. Other benefits should include improved communication and coordination with the public and other agencies and governments, better understanding of the planning process, improved procedures for resource decisionmaking, and improved on-the-ground results as those decisions are implemented.

Risks:

The planned regulatory action addresses agency planning procedures and would not directly cause specific risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
ANPRM	02/15/91	56 FR 6508
NPRM	04/13/95	60 FR 18886
NPRM Comment Period End	08/17/95	60 FR 36767
Second NPRM	10/05/99	64 FR 54074
Second NPRM Comment Period End	01/04/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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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 (DOC) 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 this mission statement, 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 DOC 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; and we support environmental and economic health for the communities in which Americans live.

The DOC 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 businesses, 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, while ensuring that they are being delivered in the most cost-effective ways. We seek to function in close concert with other agencies having complementary responsibilities so that our collective impact can be most powerful. We seek to meet the needs of our customers quickly and efficiently, with 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, which have programmatic 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 has 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 four 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 four-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.'' Again, in the 1998 State of the Union message, the President said: ''Rarely have Americans lived through so much change, in so many ways, in so short a time. Quietly, but with gathering force, the ground has shifted beneath our feet as we have moved into an Information Age, a global economy, a truly new world.... As we enter the 21st century, the global economy requires us to seek opportunity not just at home, but in all the markets of the world. We must shape this global economy, not shrink from it..... Today, record high exports account for fully one-third of our economic growth. I want to keep them going, because that's the way to keep America growing and to advance a safer, more stable world.'' President Clinton, in the 1999 State of the Union message, said: ''If we ... invest in our people, our communities, our technology, and lead in the global economy—then we will begin to meet our historic responsibility to build a 21st century prosperity for America.''

These words embody the mission of the DOC: 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 safeguard the public from the adverse impacts of undesirable environmental changes; and to provide information, which is vital to ensuring sound business and policy decisions.

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

Commerce encourages development in every community, 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 its industries and communities, Commerce works as a partner with private entities to build America with an eye on the future. Through technology, research and development, and innovation, we are making sure America continues to prosper in the short-term, while also

helping industries prepare for long-term success.

Commerce's considerable information capacities help businesses understand clearly where our national and world economies are going, and 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 DOC has instituted programs and policies that lead to cutting-edge, competitive, and better paying jobs. We work every day to boost exports, to deregulate business, to help smaller manufacturers battle foreign competition, to advance the technologies critical to our future prosperity, to invest in our communities, and to fuse economic and environmental goals.

The DOC 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. Of the Department's 12 primary operating units, only five—the Bureau of Export Administration (BXA), the International Trade Administration (ITA), the Economic Development Administration, the National Oceanic and Atmospheric Administration (NOAA), and the Patent and Trademark Office—plan significant preregulatory or regulatory actions for this Regulatory Plan year. Only two of these operating units, BXA and NOAA, have 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 DOC 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 DOC 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 seven years we have emphasized, initiated, and expanded programs that work in partnership with the American people to secure the Nation's economic future. At the same time we have downsized, cut regulations, closed offices, and eliminated programs and jobs that are not part of our core mission. The bottom line is that, after much thought and debate, we have made many hard choices needed to make this Department ''state of the art.''

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.

Improving the Regulatory Environment for Small Business

The DOC remains committed to its goal of providing small businesses with the least burdensome regulatory environment possible. While we believe small business should remain free from the constraints of regulation whenever possible, the Department realizes that there are times where these entities must be subject to regulation of some kind. But in all cases where small businesses will be affected by DoC regulations, we make every effort to provide them with all relevant and necessary information at the earliest possible time, while making representatives of the Department available to discuss any problems or questions that may arise in complying with these regulations. Additionally, the Department remains committed to providing small businesses with the greatest amount of warning prior to the issuance of any regulation that could affect them directly or indirectly.

Within the Department, the two agencies that regulate activities of small business are the National Oceanic and Atmospheric Administration (NOAA) and the Bureau of Export Administration (BXA). Both NOAA and BXA have taken numerous actions to comply with the Departmental goal of providing small businesses with the least burdensome regulatory environment, while working with small business to ensure that when regulations are issued, small businesses are informed as early as possible and prepared to meet regulatory requirements.

National Oceanic and Atmospheric Administration

When NOAA issues regulations that impact small business, NOAA Special Agents and officers begin an information outreach campaign to educate the regulated community on the new or amended regulations. This outreach campaign involves boarding vessels and visiting fish dealers to explain the new regulations and answer questions regarding compliance. Special Agents and officers educate the regulated community on the technical aspects of the regulations and the conservation value of the management plan and regulations.

It has long been NOAA's practice to answer inquiries by small entities whenever appropriate in the interest of administering statutes and regulations. Inquiries are received via telephone, mail, and electronic mail; during public hearings, town hall meetings, and workshops held by NOAA throughout the year; and in the day-to-day interactions that small entities have with NOAA personnel. As a result, NOAA answers tens of thousands of inquiries from small entities each year.

NOAA also issues written warnings rather than penalties for many minor violations. Since March 1996, NOAA has issued approximately 1,216 written warnings. In addition, NOAA has a Summary Settlement System that allows violators, including small entities, to choose not to contest an alleged violation and to pay a reduced penalty within a specified time period following receipt of the Summary Settlement Notice. Since March 1996, approximately 708 Summary Settlement offers were extended by NOAA.

NOAA has also established 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 that are of a technical nature and do not have a direct natural resource impact, receive a FIN, which allows the violation to be corrected in lieu of a penalty. The FIN identifies the violation and allows the violator a specified amount of time to fix the violation. At this time, there are over 130 types of violations that have been included in the FIN program. NOAA's Civil Administrative Penalty Schedule has been amended to reflect the FIN program. Since March 1996, approximately 348 Fix-It Notices were issued in lieu of penalties, many to small entities. The FIN program has helped NOAA achieve compliance and has elicited a positive response from the regulated community, which includes small entities.

Bureau of Export Administration

BXA administers a classification and advisory opinion program. Under the Export Administration Regulations (EAR), which set the criteria for export of dual-use items, commercial items with potential military or weapons proliferation applications, an exporter has the responsibility of classifying the item it seeks to export to determine if an export license is required. In light of this responsibility, BXA has established a program whereby an exporter can ask BXA whether the item is subject to the EAR and, if so, the correct classification of that item. Further, for a given end-use, end-user, or destination, BXA will advise an exporter whether an export license is required, or likely to be granted.

BXA has continually used technological advances in order to provide information and customer service to those entities that may be affected by BXA activities. Through its ''Fax-on-Demand'' system, BXA enables exporters to access useful information by facsimile 24 hours a day, and this service has been expanded to provide over 60 documents, including recent regulatory changes, upcoming workshops, useful points of contact, and a wide variety of other competitiveness and trade-related information. BXA also uses its broadcast subscription and broadcast e-mail services, known as netFacts, combined with its longstanding facsimile service, ''First Facts,'' to provide regular and timely updates regarding regulatory and policy changes and other items of interest to exporters.

In addition, BXA spends a great deal of time educating industry about the export control provisions of the EAR. BXA has an extensive outreach program, conducting seminars throughout the United States and overseas. For example, as a standard part of the seminar, BXA provides a set of guidelines, *Export Management System Guidelines*, to assist firms in ensuring that their exports and export decisions are consistent with the EAR. The EAR also contain ''Know Your Customer'' guidelines and ''red flag'' indicators, designed to assist exporters in complying with regulatory requirements.

The BXA Web site offers those with Internet access to a wide range of export control information, including frequently asked questions, free access to the full text of Export Administration Regulations, and links to other government sites. BXA's Simplified Network Application Process (SNAP) allows submission of license applications and classification requests through the Internet.

Description of Agency Regulations

National Oceanic and Atmospheric Administration

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

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

The 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 DOC, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary Federal responsibility for providing sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management 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. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NMFS by 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 address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved 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 sound 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, which accompany 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 a second proposed rule to revise its existing 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 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 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; and

(3) Licensees must notify the U.S. Government of their 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.

On November 3, 1997, NOAA issued a proposed rule to revise its remote-sensing licensing procedures. 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 lead this emerging market.

The November 3, 1997, 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. 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 could not be transferred without a formal amendment to the license. As required by the President's 1994 policy, the rule sought to define what foreign agreements are significant or substantial and must be submitted for review. Agency actions under the regulation would be reviewable by an administrative law judge.

On April 1, 1998, NOAA held a public meeting to listen to public comments on the proposed regulations. The public comment period ended the next day. NOAA received 18 sets of substantive comments on the proposed regulations. As a result of the extensive public comments received on the November 3, 1997, proposed rule and at the April 1, 1998, public hearing, NOAA has determined it appropriate to revise its proposal and seek further public comment.

Bureau of Export Administration

The Bureau of Export Administration (BXA) promotes U.S. national and economic security and foreign policy interests by managing and enforcing the Department's security-related trade and competitiveness programs. BXA plays a key role in challenging issues involving national security and nonproliferation, export growth, and high technology. The Bureau's continuing major challenge is combating the proliferation of weapons of mass destruction while furthering the growth of U.S. exports, which are critical to maintaining our leadership in an increasingly competitive global economy. BXA strives to be the leading innovator in transforming U.S. strategic trade policy and programs to adapt to the changing world.

Major Programs and Activities

The Export Administration Regulations (EAR) provide for export controls on dual use goods and technology (primarily commercial goods that have potential military applications) not only to fight proliferation, but also to pursue other national security, short supply, and foreign policy goals (such as combating terrorism). Simplifying and updating these controls in light of the end of the Cold War has been a major accomplishment of BXA.

BXA is also responsible for:

- Enforcing the export control and antiboycott provisions of the Export Administration Act (EAA), as well as other statutes such as the Fastener Quality Act. The EAA is enforced through a variety of administrative, civil, and criminal sanctions.

- Analyzing and protecting the defense industrial and technology base, pursuant to the Defense Production Act and other laws. As the Defense Department increases its reliance on dual-use high technology goods as part of its cost-cutting efforts, ensuring that we remain competitive in those sectors and sub-sectors is critical to our national security.
- Helping Ukraine, Kazakstan, Belarus, Russia, and other newly emerging countries develop effective export control systems. The effectiveness of U.S. export controls can be severely undercut if ''rogue states'' or terrorists gain access to sensitive goods and technology from other supplier countries.
- Working with former defense plants in the Newly Independent States to help make a successful transition to profitable and peaceful civilian endeavors. This involves helping remove unnecessary obstacles to trade and investment and identifying opportunities for joint ventures with U.S. companies.
- Assisting U.S. defense enterprises to meet the challenge of the reduction in defense spending by converting to civilian production and by developing export markets. This work assists in maintaining our defense industrial base as well as preserving jobs for U.S. workers.

BXA's two principal operating units, Export Administration and Export Enforcement, as well as its Office of Administration, have undergone significant reorganization and downsizing in recent years in order to meet the goals of reforming and streamlining the export control system, as recommended by the National Performance Review (NPR) and the Trade Promotion Coordinating Committee. BXA is also an NPR Reinvention Laboratory.

Chemical Weapons Convention

BXA plans to issue a final rule that will make effective the proposed rule published July 21, 1999. The purpose of the regulation is to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998, requiring private facilities to submit information on certain activities involving toxic chemicals, and to make certain private facilities subject to periodic inspection by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to administer the Convention and to monitor compliance by States Parties.

On April 25, 1997, the United States ratified the Chemical Weapons Convention, just prior to the entry into force of the Convention on April 29, 1997. The Convention bans the development, production, stockpiling, or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and facilities. To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process, or consume certain lists or ''Scheduled'' chemicals, some of which have significant commercial applications. The United States has declared its chemical weapons and chemical weapons production and storage facilities to the OPCW, and is in the process of destroying its chemical weapons stockpiles. In order to be in compliance with its obligations as a State Party to the Convention, the United States also must establish the declaration and inspection program for private facilities engaged in activities involving ''Scheduled'' chemicals.

The Chemical Weapons Convention Implementation Act of 1998, enacted on October 21, 1998, authorized the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications, and other reports and also to provide access for on-site inspections, in order that the United States may comply with its obligations under the Convention. On June 25, 1999, the President issued Executive Order 13128, which directs the Commerce Department to issue regulations.

The BXA's discretion in drafting the declaration forms and formulating the reporting requirements is limited by the Convention requirements. The OPCW issued forms for States Parties to use in submitting declarations.

In drafting the declaration forms and the CWCR, BXA has consistently made the reporting requirements as narrow as possible to ensure that only information required to be declared to the OPCW or necessary to ensure that U.S. aggregate Schedule 1 activities are below the one metric ton limit set forth in the Convention is to be reported to BXA. For certain reporting requirements that are currently subject to national discretion, BXA has adopted the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

DOC—Bureau of Export Administration (BXA)

FINAL RULE STAGE

18. CHEMICAL WEAPONS CONVENTION REGULATIONS

Priority:

Other Significant

Legal Authority:

22 USC 6701 et seq; EO 13128

CFR Citation:

15 CFR 710 et seq

Legal Deadline:

None

Abstract:

The final rule will make effective the proposed rule published July 21, 1999. The purpose of the regulation is to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998, requiring private facilities to submit information on certain activities involving toxic chemicals, and to make certain private facilities subject to periodic inspection by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to administer the Convention and to monitor compliance by States Parties.

Statement of Need:

On April 25, 1997, the United States ratified the Chemical Weapons Convention, just prior to the entry into force of the Convention on April 29, 1997. The Convention bans the development, production, stockpiling, or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and chemical weapons production facilities, and oversees the destruction

of such weapons and facilities. To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process, or consume certain lists or ''Schedules'' chemicals, some of which have significant commercial applications. The United States has declared its chemical weapons and chemical weapons production and storage facilities to the OPCW, and is in the process of destroying its chemical weapons stockpiles. In order to be in compliance with its obligations as a State Party to the Convention, the United States also must establish the declaration and inspection program for private facilities engaged in activities involving ''Scheduled'' chemicals.

Summary of Legal Basis:

The Chemical Weapons Convention Implementation Act of 1998, enacted on October 21, 1998, authorized the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections, in order that the United States may comply with its obligations under the Convention. On June 25, 1999, the President issued Executive Order 13128, which directs the Commerce Department to issue regulations.

Alternatives:

The Bureau of Export Administration's (BXA) discretion in drafting the declaration forms and formulating the reporting requirements is limited by the Convention requirements. The OPCW has issued forms for States Parties to use in submitting declarations.

In drafting the declaration forms and the CWCR, BXA has consistently made the reporting requirements as narrow as possible to ensure that only information required to be declared to the OPCW or necessary to ensure that U.S. aggregate Schedule 1 activities are below the one metric ton limit set forth in the Convention is to be reported to BXA. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining the information that must be forwarded to the OPCW.

In addition, there are certain declaration requirements of the Convention that are subject to interpretation. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their national discretion to implement them. National discretion generally means a reasonable interpretation of the requirement. For such reporting requirements currently subject to national discretion, BXA has adopted the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

Anticipated Cost and Benefits:

Benefits from the regulation include increased national security and economic growth and stability in a safe and secure environment. State Party obligations under the Convention include imposition of restrictions on trade with non-States Parties. Over 120 countries, including the United States' major trading partners accounting for most of U.S. chemical exports, are States Parties to the Convention. The U.S. chemical industry, therefore, will also benefit from the United States' ratification of the Convention and compliance with its requirements because its trade with other States Parties will not be subject to CWC trade restrictions. The costs of the regulation will include: (1) the cost to industry of preparing data declarations and reports and preparing for and receiving inspections; and (2) the cost to government of processing the declarations and reports, assisting industry to prepare for inspections, and escorting OPCW inspection teams.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/21/99	64 FR 39193
Final Rule	10/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal

Agency Contact:

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DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

19. LICENSING OF PRIVATE REMOTE-SENSING SATELLITE SYSTEMS

Priority:

Other Significant

Legal Authority:

15 USC 5601 et seq

CFR Citation:

15 CFR 960.1 et seq

Legal Deadline:

None

Abstract:

The proposed regulations would update the 1987 regulations to reflect the intervening events and information gathered through the public process, as well as the experience gained during recent licensing procedures. The intent of the regulations is to facilitate the development of the U.S. commercial remote-sensing industry and thus promote the collection and widespread availability of Earth remote-sensing data, while preserving essential U.S. national security interests and international obligations. 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 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.

On November 3, 1997, NOAA issued a Notice of Proposed Rulemaking (NPRM) 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). On April 1, 1998, NOAA held a public meeting to listen to public comments on the proposed regulations. The public comment period ended the next day.

NOAA received 24 sets of public comments to the November 3, 1997, NPRM from a wide range of interests in industry, the media, academia, government, and the foreign policy community. The major substantive issues raised can be summarized under the following categories: (1) control, ownership, and investment; (2) national security concerns and international obligations concerns; (3) review of foreign agreements; (4) confidentiality of information; and (5) the interagency memorandum of understanding.

As a result of the extensive public comments received on the November 3, 1997, proposed rule and at the April 1, 1998, public hearing, NOAA has determined it appropriate to revise its proposal and seek further public comment. This revised NPRM incorporates changes in each of the areas addressed by the comments, with the most significant changes in the area of foreign ownership, control, and investment. Specifically, the revised rule focuses more closely on ''control'' over the operations of the system. The revised rule has also been harmonized with existing regulations addressing foreign ownership and control. This revised NPRM also incorporates and facilitates NOAA's enforcement program, which will be key to protecting vital national security interests once the high-resolution systems become operational.

Summary of 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 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 November 3, 1997, 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. The fundamental goal of the proposed rule was 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 are those necessary to protect U.S. interests. The alternatives 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. The final regulations will achieve this goal.

Anticipated Cost and Benefits:

The intent of the regulations is 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 that 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
Notice of Inquiry	12/04/95	60 FR 62054
Notice of Public Meeting	05/14/96	61 FR 24480
NPRM	11/03/97	62 FR 59317
Notice of Public Meeting	03/05/98	63 FR 10785
Revised NPRM	11/00/99	
Final Rule	04/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Agency Contact:

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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 3 military departments (Army, Navy, and Air Force), 9 unified combatant commands, 14 Defense agencies, and 7 DoD field activities. It has over 1,360,000 military personnel and 700,000 civilians assigned as of May 31, 1999, 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 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 Executive Order 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 straightforward, yet a 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 the regulating agencies, can be significant as defined in Executive Order 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 Executive Order 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 Executive Order 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 a 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 Executive Order 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

Since DoD does not plan to issue any significant regulations this year, 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 outside 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 which 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 which 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.

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.

Minimize 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 private sector.

The Department of Defense has made a commitment to the Vice President, as a high impact agency under the National Partnership for Reinventing Government, to reduce paper transactions by 50 percent by the year 2000. The composite of all paperless contracting transactions must be increased to 64 percent in Fiscal Year 2000 in order to meet the 50 percent reduction goal. As of August 1999, DoD's composite of all paperless contracting is 67 percent.

DoD implemented a multi-year strategy for reducing the paperwork burden imposed on the public. This plan shows that DoD has met and will exceed the goals set forth in the Paperwork Reduction Act. One significant reduction in the burden imposed on the public is planned as a result of the review of the information collection requirement in support of the solicitation phase of the Department of Defense acquisition process. The information collection requirement pertains to information that an offeror must submit to DoD in response to DoD solicitations, not covered by another Office of Management and Budget (OMB) clearance. DoD reviewed the information being collected under this requirement and reduced the number of respondents, as well as the number of actions, to reflect fiscal year 1998 data available in the DoD database. As a result of these reviews, DoD plans to reduce the burden hours imposed on the public under this information collection requirement by an estimated 18.4 million hours per year.

Another significant decrease is planned for the Department's largest information collection and will result from a reduction in contractor data requirements. This program change will decrease the burden in excess of 7.3 million hours. The combined total burden reduction in the Department's two largest information collections will decrease DoD's burden on the public by 21 percent from the actual FY 1998 year end total. This is the first time that the Department's total burden has dropped below 100 million hours. It is the goal of the Department of Defense to impose upon the public the smallest burden viable, as infrequently as possible, and for no longer than absolutely necessary.

Plain Language

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 Language rules thereby improving compliance and reducing litigation. The Department will adhere to the timetable established in the President's memorandum of June 1, 1998, regarding Plain Language in Government Writing, for incorporation of plain writing techniques in official documents.

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 Executive Order 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 three specific DoD priorities, all of which reflect the established regulatory principles. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulation which incorporate not only the provisions of the President's priorities and objectives under the Executive order but also 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 three 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 wetlands, acquisition, and health care delivery.

Preserve Quality and Quantity of Wetlands

During FY 2000, the U.S. Army Corps of Engineers is not proposing any significant regulations as defined by Executive Order 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 2000, the Corps will propose and finalize two 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 will establish an administrative appeal process whereby permit applicants and landowners can appeal Corps jurisdiction determination decisions. This regulation was proposed on July 19, 1995, with a similar regulation on permit denials and declined permits. The permit denial appeal regulation was finalized on March 9, 1999, and became effective on August 6, 1999. The administrative appeal process will increase fairness to applicants and landowners in the permitting process by establishing a recourse to Corps permit denials, declined permits, and jurisdiction determined decisions without pursuing litigation. The process will also provide for interested party involvement when the Corps reconsiders a previous denial or declined permit.

The second regulation will be to clarify the scope of analysis that the Corps has responsibility for under the Endangered Species Act (ESA). The Corps scope of analysis for the National Environmental Policy Act and the National Historic Preservation Act is established in 33 CFR part 325, appendices B and C, respectively. This regulation will adopt the Corps ESA scope of analysis consistent with the ESA, the ESA regulations, and the Corps authorities.

Reform Defense Acquisition

The Department continues its efforts to reengineer its acquisition system to achieve its vision of an acquisition system which is recognized as being the smartest, most efficient, most responsive buyer of best value goods and services which 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 which 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 Executive Order 12866. DoD is leading the following initiatives to reform the acquisition process, which include, integrating commercial and military facilities, and expanding the ability to buy commercial products and expanding the use of commercial procedures.

Integration of commercial and military facilities is critical to enable the Department to capitalize on and access commercial technology, and generate funds for modernization, all within a balanced-budget environment. In addition to the need to integrate commercial and military facilities, the Department must expand the use of commercial procedures. Acquisition Reform's Commercial Practices Initiative is geared to providing learning opportunities on key techniques, strategies and negotiating/pricing tools used in the commercial business environment. Modern, technology-based learning methods and enterprise models of change management are available to meet the needs for both individual and team training. Based on the knowledge gained, the workforce will be enabled to adopt best practices, implement reforms, and understand better how to work with commercial businesses, including ones that are not themselves accustomed to doing business with DoD.

DoD continuously reviews its supplement to the Federal Acquisition Regulation (FAR) and continues to lead Governmentwide efforts to simplify the following acquisition processes:

- 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; to eliminate requirements to track, report, and inventory property valued at $5,000 or less during contract performance; to eliminate oversight for items valued under $1,000,000 where the contractor assumes liability for loss, damage, or destruction of property; to replace five inventory schedules with a single inventory disposal schedule; and to shorten screening times prior to disposal. The FAR part 45 rewrite also encourages the dual use of Government property introducing commercial rental practices and reducing property rental costs.
- Rewrite of various FAR cost principles. The goal of this initiative is to determine whether certain FAR cost principles are still relevant in today's business environment, whether they place an unnecessary administrative burden on contractors and the Government, and whether they can be streamlined or simplified.
- Review of FAR guidance pertaining to progress payments and other related financing policies. The goal of this initiative is to simplify the progress payments process; to minimize the burdens imposed on contractors and

contracting officers; and to expand the use of performance-based payments or commercial financing payments.

- Rewrite FAR part 25, International Acquisition. The goal of this initiative is to clarify and simplify the complex, interrelated laws and agreements which govern international trade.
- Revise policy on the applicability of cost accounting standards. The goal of this initiative is to modify and streamline the applicability of the Federal cost accounting standards.
- Revise policy on the use of the Governmentwide commercial purchase card. The goal of this initiative is to increase the use of the purchase card for small dollar purchases.
- Revise policy to expand the use of the procedures in FAR part 12, Acquisition of Commercial Items. The goal of this initiative is to expand the use of streamlined procedures for the acquisition of commercial items.
- Develop FAR and DFARS guidance on the use of price based acquisition. The goal of this initiative is to move away from the use of cost as a basis for contracting to acquisition on the basis of price, to the maximum extent practicable. The use of price will reduce the administrative burden for both Government and industry and result in lower overhead rates.

Improve Health Care Delivery in the Defense Department

The Department of Defense is able to meet its dual mission of wartime readiness and peacetime health care by operating an extensive network of medical treatment facilities. This network includes DoD's own military treatment facilities supplemented by civilian health care providers, facilities, and services under contract to DoD through the TRICARE program. TRICARE is a major health care initiative designed to improve the management and integration of DoD's health care delivery system. The program's goal is to increase access to health care services, improve health care quality, and control health care costs. TRICARE builds upon the original CHAMPUS program by offering two additional options, Prime and Extra. The Prime enrollment offers an HMO-like option; and two options that do not require enrollment: Extra is a preferred provider-like option while Standard is a fee for service option (formally known as CHAMPUS). Like the old CHAMPUS program, under TRICARE, DoD continues to share the cost of civilian health care with its eligible beneficiaries when services are not available in the military medical treatment facility.

DoD will be testing a variety of alternative health care delivery approaches to providing care for our over-65 beneficiaries. In addition to the ongoing TRICARE Senior Prime demonstration project allowing beneficiaries over the age of 65 the ability to enroll in the TRICARE HMO option, the Department plans to test additional approaches including a limited pharmacy demonstration, a Federal Employees Health Benefits Program (FEHBP) demonstration, and a TRICARE Senior Supplement demonstration. These demonstration projects are conducted under the authority of title 10, chapter 55, section 1092.

The principal health-related regulatory publications of the Department are based on CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services (32 CFR part 199). CHAMPUS regulations are comprehensive and address issues such as: eligibility, benefits, authorized providers, claims payment, appeals procedures, and the health care delivery options available under TRICARE.

DoD coordinates changes to CHAMPUS regulations with the Departments of Transportation (U. S. Coast Guard), Health and Human Services (Public Health Service), and Commerce (National Oceanic and Atmospheric Administration) whose beneficiaries are also eligible for CHAMPUS. Revisions in the TRICARE/CHAMPUS Program's statutory base or DoD initiatives to improve the program may result in amendments to the regulation. DoD's regulatory priorities for the upcoming year include: promulgation of regulations governing TRICARE Prime enrollment for families of E–4 and below; modifications to reimbursement for beneficiaries who have other health insurance that is primary to TRICARE; implementing a TRICARE incentive payment program modeled after the Medicare Incentive payment program; and modifying payment rates for providers who practice in remote locations in Alaska.

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory and Deregulatory Priorities

The Department supports States, local communities, and 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. In response to this initiative, the Department has eliminated or simplified most of its regulations—including the elimination of 2/3 of the regulations applicable to elementary and secondary education programs. The Department has accomplished these results 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 and in response to the President's memorandum of June 1, 1998, on ''Plain Language in Government Writing,'' 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. Internet address:

http://www.ed.gov.

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 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. ED has reduced the information collection burden imposed on the public by 14.7 percent in fiscal year (FY) 1996, by 11 percent in FY 1997, and by more than 5 percent in FY 1998. Our goal for FY 1999 is a further 5 percent reduction.

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

Higher Education Amendments of 1998

Legislation reauthorizing the Higher Education Act has been a Department priority in 1999. To the extent regulations were determined to be necessary, they were developed through regulatory negotiation with the participation of interested parties. Three of the most significant regulations

needed to implement the new legislation are listed as the Department's priorities in the 1999 Regulatory Plan.

The State Vocational Rehabilitation Services Program

The State Vocational Rehabilitation (VR) Services Program is a $2.5 billion program that provides funds to State VR agencies to assist individuals with disabilities to achieve employment. These regulations would amend the existing program regulations in 34 CFR part 361 to implement various changes in recently enacted statutes.

ED—Office of Postsecondary Education (OPE)

PROPOSED RULE STAGE

20. ● GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

Priority:

Other Significant

Legal Authority:

20 USC 1070a-21 et seq

CFR Citation:

34 CFR 694

Legal Deadline:

None

Abstract:

These regulations are needed to implement section 403 of the Higher Education Amendments of 1998 (Pub. L. 105-244, enacted October 7, 1998), establishing GEAR UP, a program designed to give more low-income students the skills, encouragement, and preparation needed to pursue postsecondary education, and to strengthen academic programs and student services at participating schools.

Statement of Need:

These regulations are necessary to implement new legislation. In developing the regulations, the Department will seek to minimize regulatory burden and maximize flexibility.

Summary of Legal Basis:

Pub. L. 105-244, enacted October 7, 1998.

Alternatives:

In implementing the legislation, the Department will consider whether there are any appropriate alternatives.

Anticipated Cost and Benefits:

The Department will consider anticipated costs and benefits in developing these regulations.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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Department of Education
Office of Postsecondary Education
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Washington, DC 20202
Phone: 202 502-7676

RIN: 1840–AC82

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

PROPOSED RULE STAGE

21. ● THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

29 USC 711(C)

CFR Citation:

34 CFR 361

Legal Deadline:

None

Abstract:

These regulations are needed to implement changes made by the Rehabilitation Act Amendments of 1998, the Reading Excellence Act, and the Carl D. Perkins Vocational and applied Technology Education Act Amendments of 1998.

Statement of Need:

These regulations are necessary to implement new legislation. The Department is also completing its review of these regulations under section 610(c) of the Regulatory Flexibility Act. In developing the regulations, the Department will seek to reduce regulatory burden and increase flexibility to the extent possible.

Summary of Legal Basis:

Pub. L. 105-220, enacted August 7, 1998.

Alternatives:

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

Anticipated Cost and Benefits:

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

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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BILLING CODE 4000–01–F

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory Priorities

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. The Department's mission is to:

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

The Department of Energy's 1999 regulatory plan reflects the Department's continuing commitment to enhance safety, cut costs, reduce regulatory burden, and increase responsiveness to the public. While not primarily a major Federal regulatory agency, the Department's regulatory activities are essential to achieving its critical mission.

Energy Efficiency Program for Consumer Products and Commercial Equipment

During fiscal year 1999, the Department made substantial progress with the high priority standards rulemakings (i.e., clothes washers, fluorescent lamp ballasts, water heaters, and residential central air conditioning and central air conditioning heat pumps). In November 1998, the Department published a supplemental advance notice of proposed rulemaking for clothes washers. A proposed rule for distribution transformer test procedures was published in November 1998.

The Department's rulemaking activities related to energy efficiency standards and determinations have been categorized as high, medium, or low priority. 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. The standards rulemakings incorporate the process improvements established in July 1996, including more workshops to collect public input and new, more transparent forecasting models developed with the help of industry experts, including manufacturers.

During fiscal year 2000, the Department expects to publish final rules for clothes washer, fluorescent lamp ballast, and residential water heater efficiency standards, and to propose efficiency standards for residential central air conditioners and residential heat pumps. The Department expects to begin preparation of efficiency standards for commercial air conditioners and commercial heat pumps, furnaces and boilers, and commercial water heaters. Proposed rules for test procedures for these commercial products should be published by the early part of fiscal year 2000. Additional information and timetables for these actions are presented below. Information concerning the medium priority and low priority standards rulemakings and the test procedures rulemakings can be found in the Department's regulatory agenda, which appears elsewhere in this issue of the **Federal Register**.

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 activities. A key element in the management of these risks is to establish the Department's expectations and requirements relative to nuclear safety and to hold its contractors accountable for safety performance. The 1988 Price-Anderson Amendments Act revisions to the Atomic Energy Act of 1954 (AEA) provide for the imposition of civil and criminal penalties for violations of DOE nuclear safety requirements. As a result, new nuclear safety requirements were initiated with the publication of four notices of proposed rulemaking for review and comment in 1991. The Department's nuclear safety procedural regulations (10CFR Part 820) were published as a final rule in 1993. Substantive DOE nuclear safety requirements were issued as 10 CFR Parts 830 and 835 (Parts 830 and 835) in 1994 and 1993, respectively. On November 4, 1998, DOE published an amendment to 10 CFR Part 835 to revise Part 835 based on a comprehensive evaluation of the Department's radiation protection program.

In August 1995, the Department published a notice of limited reopening of the comment period to request public comments on the remaining Part 830 and 10 CFR Part 834 (Part 834) rulemakings. The Department has substantially completed the comment resolution process and has addressed the major issues raised by the Defense Nuclear Facilities Safety Board and is engaged in a dialog with the Environmental Protection Agency concerning its comments on Part 834.

The Department recently established 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 ensures that environment, safety and health are integrated into all phases of work. The Department intends to ensure that its nuclear safety regulations (1) are consistent with the integrated safety management process and (2) avoid duplication and counterproductive efforts. The Department expects to complete an interim final rulemaking to accomplish this goal on Parts 830 and 834 by January 1, 2000.

Chronic Beryllium Disease Protection Program

The AEA gives the Department the authority to prescribe regulations as it deems necessary to govern any activity authorized by the AEA, specifically including standards to protect health and minimize danger to life or property (42 U.S.C. 2201(i)(3) and (p)). In addition, section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668) and Executive Order 12196, ''Occupational Safety and Health Programs for Federal Employees,'' (5 U.S.C. 7902 note), require Federal agencies to establish comprehensive occupational safety and health programs for their employees.

The Department has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons, as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. Inhalation of beryllium dust or particles may cause chronic beryllium disease (CBD) and beryllium sensitization. CBD is a chronic, often debilitating, and potentially fatal lung condition. Beryllium sensitization is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body.

Based on the number of confirmed cases of CBD and the expected future increase in the number of workers potentially exposed to beryllium during decontamination and decommissioning activities, the Department has concluded that there is a compelling need for a chronic beryllium disease prevention program rule to meet its obligation to establish and maintain an effective occupational safety and health program to protect its employees and other workers at DOE facilities.

In 1996, the Department surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, the estimated number of workers exposed during each task, and the estimated exposure levels associated with each task. To supplement the data obtained from the survey, the Department published a **Federal Register** notice on December 30, 1996, requesting scientific data, information, and views relevant to a new Departmental beryllium health standard (61 FR 68725). This was followed by two Beryllium Public Forums held in Albuquerque, New Mexico and Oak Ridge, Tennessee in January 1997.

The Department established the Beryllium Rule Advisory Committee (BRAC) in June 1997, to advise the DOE on issues pertinent to the proposed rulemaking. The BRAC, which consisted of a diverse set of stakeholders and recognized experts from DOE, other Federal agencies, industry, labor, medicine, and academia, explored issues and generated recommendations for consideration in the development of a chronic beryllium disease prevention rule. As an interim measure to protect workers from the hazards of beryllium, the Department issued an administrative directive in July 1997, to establish a chronic beryllium disease prevention program (CBDPP) that enhances the existing worker protection program.

On December 3, 1998, the Department published a notice of proposed rulemaking (NPRM) for public comment in the **Federal Register** (63 FR 66940) proposing regulations for a CBDPP, at10 CFR Part 850. This proposed regulation is expected to reduce the number of workers at DOE facilities exposed to beryllium, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. The Department is now considering the comments and data from interested parties submitted to the beryllium docket and other information relevant to the development of the final CBDPP rule. The Department expects to complete final action on Part 850 rulemaking by December 1999.

Polygraph Examination Program

In Presidential Decision Directive (PDD) 61, *Department of Energy Counterintelligence Program*, dated February 11, 1998, the President instructed DOE to develop and implement specific measures to enhance protection of the highly sensitive and classified information at its facilities, including implementation of a polygraph program.

A counterintelligence-scope polygraph examination both serves as a means to deter unauthorized disclosures of classified information and provides a means for possible early detection of disclosures to enable DOE to take steps promptly to prevent further harm to the national security. Although the Employee Polygraph Protection Act (EPPA) generally prohibits the use of polygraph examinations in private employment settings, it specifically allows for DOE, in the performance of its counterintelligence function, to administer polygraph examinations to expert, consultant or contractor employees of DOE in connection with atomic energy defense activities.

As an initial step toward developing and implementing a polygraph examination program, the Department issued an internal directive, DOE Notice 472.2, *Use of Polygraph Examinations*, that establishes a polygraph requirement for Federal employees who occupy or seek to occupy certain sensitive positions at DOE. As a second step, the Department issued a notice of proposed rulemaking on August 18, 1999, (64 FR 45062) to expand the polygraph examination program to cover all employees, contractors as well as Federal employees, who are in positions with access to the most sensitive categories of classified information and materials. Applicants for such positions would be covered as well. The Department expects to issue a final rule this November.

Regulatory Reform

In June 1998, the President directed agencies to use plain language in regulations issued after January 1, 1999. In response to this initiative, the Department has conducted training on the elements of plain language to its major regulatory offices. The Department's rule that protects whistleblowers at our facilities was rewritten in plain language and published on March 15, 1999 (64 FR 12861, Contractor Employee Protection Program, 10 CFR Part 708). The Department is also using plain language in drafting new rules and major revisions to existing rules.

DOE—Energy Efficiency and Renewable Energy (EE)

PROPOSED RULE STAGE

22. 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 and water heaters).

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

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

Abstract:

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

This is the initial review of the statutory standards for fluorescent lamp ballasts, water heaters and central air conditioners and heat pumps. This is

the second review of the standard for clothes washers.

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 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 Cost 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 of $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 of 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 11/14/1994 (59 FR 56423)
- Supplemental ANPRM 11/18/1998 (63 FR 64343)
- Workshop 12/15/1998
- NPRM 12/00/1999
- Final Action 07/00/2000

1904-AA75 (Fluorescent Lamp Ballasts)
- ANPRM 09/28/1990 (55 FR 39624)
- NPRM 03/04/1994 (59 FR 10464)
- Impact Workshop 03/18/1997
- Reissue NPRM 11/00/1999
- Final Action 06/00/2000

1904-AA76 (Water Heaters)
- ANPRM 09/28/1990 (55 FR 39624)
- NPRM 03/03/1994 (59 FR 10464)
- Workshop 07/23/1999
- Reissue NPRM 12/00/1999
- Final Action 07/00/2000

1904-AA77 (Central Air Conditioners and Heat Pumps)
- ANPRM 09/08/1993 (58 FR 47326)
- Screening Workshop 06/30/1998
- Supplemental ANPRM 11/00/1999
- NPRM 04/00/2000
- Final Action 12/00/2000

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local

Additional Information:

Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority, and the Department is working actively on this action.

Agency Contact:

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RIN: 1904–AA67

DOE—Defense and Security Affairs (DSA)

FINAL RULE STAGE

23. • POLYGRAPH EXAMINATION PROGRAM

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7254

CFR Citation:

10 CFR 709; 10 CFR 710; 10 CFR 711

Legal Deadline:

None

Abstract:

This action would establish regulations for the use of polygraph examinations for certain DOE and contractor employees, applicants for employment, and other individuals assigned or detailed to Federal positions at DOE. The regulations would describe the categories of individuals who would be eligible for polygraph testing and controls for the use of such testing and for the prevention of unwarranted intrusion into the privacy of individuals.

Statement of Need:

The Department has broad responsibilities to direct the development, use, and control of atomic energy. This includes the responsibility to protect sensitive and classified information and materials involved in the design, production, and maintenance of nuclear weapons. A counterintelligence-scope polygraph examination program would deter unauthorized disclosure of classified information. It would also provide a means for early detection of disclosures allowing the Department to act promptly to prevent further harm to the national security.

Summary of Legal Basis:

The Atomic Energy Act of 1954 (AEA), as amended, assigns to DOE certain atomic energy defense production and clean-up obligations that are discharged at various DOE-owned, contractor-operated installations around the country. Section 161 of the AEA authorizes DOE to adopt rules necessary to carry out those functions.

Alternatives:

The Department could continue to rely on purely subjective evaluations of random interviews.

Anticipated Cost and Benefits:

It is estimated that the polygraph examination program would cost approximately one million dollars annually. The use of polygraph testing would strengthen the Department's ability to protect against the disclosure of information and materials that could harm national defense and security.

Risks:

By acting as a deterrent, this program would reduce the risk of unauthorized disclosure of information that could harm national security.

Timetable:

Action	Date	FR Cite
NPRM	08/18/99	64 FR 45062
Final Action	11/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 1992–AA24

DOE—Departmental and Others (ENDEP)

FINAL RULE STAGE

24. 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. Quality assurance requirements were issued in 1994. Additional nuclear safety management requirements are expected to be issued by January 1, 2000.

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 imposition 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 nuclear safety requirements using notice and comment rulemaking.

Summary of 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 Cost 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	12/01/91	56 FR 64316
Second NPRM	08/31/95	60 FR 45381
Final Action	01/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1901–AA34

DOE—ENDEP

25. 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 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 imposition 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 nuclear safety requirements using notice and comment rulemaking.

Summary of 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 Cost 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
Second NPRM	08/31/95	60 FR 45381
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Agency Contact:

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RIN: 1901–AA38

DOE—ENDEP

26. CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 850

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 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 Cost 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 would reduce the risk of an occupational hazard by clarifying worker protection program requirements applicable to DOE contractors.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66940
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1901–AA75

BILLING CODE 6450–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory and Deregulatory Priorities

The Department of Health and Human Services is the United States Government's principal agency for protecting the health of all Americans and for providing essential human services, especially for those who are least able to help themselves. To carry out its multiple responsibilities, the Department works through ten major operating divisions which manage over 300 programs. This spectrum of activities includes:

- Medicare (health insurance for elderly and disabled Americans)
- Medicaid (health insurance for low-income people)
- Medical and social science research
- Preventing outbreaks of infectious disease, including immunization services
- Assuring food and drug safety
- Financial assistance for low-income families
- Child support enforcement
- Improving maternal and infant health
- Head Start (pre-school education and services)
- Preventing child abuse and domestic violence
- Substance abuse treatment and prevention
- Services for older Americans, including home-delivered meals
- Comprehensive health services delivery for American Indians and Alaska Natives

HHS is the largest grant-making agency in the Federal Government, providing some 60,000 grants per year. The Medicare program is the nation's largest health insuror, handling more than 900 million claims per year. The Department works closely with State and local governments, and many HHS-funded services are provided by State- or local-government agencies, or through private-sector grantees. HHS programs, in addition to the services they deliver, provide for equitable treatment of beneficiaries nationwide, and they enable the collection of national health and other data.

For the foreseeable future, the Department's regulatory priorities, as reflected in the specific Plan entries that follow, involve: Continuing implementation of Medicare-restructuring provisions of the Balanced Budget Act of 1997; new measures reflecting the President's food-safety initiative; several undertakings to assure the safety and efficacy of prescription drugs, biologics and medical devices; and persisting efforts to assure an equitable organ-donation system in the Nation.

Underlying the Department's efforts to move forward in these areas in FY 2000 and beyond, there endures the policy framework instituted by the President's Executive Order 12866, Regulatory Planning and Review. Under the principles set out in this Order, and in the context of the Administration's subsequent regulatory reform initiatives, the Department assures that its rulemakings emphasize performance standards and market incentives over prescriptive, command-and-control requirements; reflect the use of benefit-cost and risk assessment analyses, to achieve policy objectives in the most efficient manner possible; are developed in consultation with those most affected, especially our partners in the Federal system at the State and local levels; and focus specifically on clearly identified problems, avoiding overly broad, one-size-fits-all approaches to these problems. Efforts to comply with these principles have been a continuing HHS priority since 1993.

The bulk of HHS's regulatory activity emanates from programs of the Food and Drug Administration and the Health Care Financing Administration. There follow statements of regulatory priorities pertaining to these two HHS components, followed by their Regulatory Plan entries.

Food and Drug Administration

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

On November 6, 1998, FDA published a final rule amending its regulations pursuant to an international agreement between the United States and the European Community. Under the terms of that agreement, the importing country authority may normally endorse good manufacturing practice (GMP) inspection reports for pharmaceuticals provided by the exporting authority determined by the importing authority to have an equivalent regulatory system. Likewise, the importing country authority may normally endorse medical device quality system evaluation reports and certain medical device product evaluation reports provided by conformity assessment bodies determined by the importing country authority to have equivalent assessment procedures. The Agency took this action to enhance its ability to ensure the safety and effectiveness of pharmaceuticals and medical devices through more efficient and effective utilization of its regulatory resources.

On December 1, 1998, FDA issued regulations establishing requirements for the distribution of patient labeling for selected prescription human drug and biological products used primarily on an outpatient basis. The agency is requiring the distribution of patient labeling, called Medication Guides, for certain products that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information. The intent of this action is to improve public health by providing information necessary for patients to use their medications safely and effectively. FDA believes that this program will result in direct improvements in the safe and effective use of prescription medications.

FDA promulgated new regulations on December 2, 1998, requiring pediatric studies of certain new and marketed drug and biological products. Most drugs and biologics have not been adequately tested in the pediatric subpopulation. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. This rule will partially address the lack of pediatric use information by requiring that manufacturers of certain products provide sufficient data and information to support directions for pediatric use for the claimed indications.

In a January 21, 1999 publication, the Agency proposed to permit the use on dietary supplements of health claims based on authoritative statements under the notification procedures in the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and dietary supplements.

In another rulemaking, the Agency has proposed to require safe handling statements on labels of shell eggs that have not been treated to destroy Salmonella microorganisms (July 6, 1999). FDA has also proposed to require that, when held by retail establishments,

shell eggs be stored and displayed under refrigeration at a temperature of 7.2 degrees C (45 degrees F) or less. FDA is taking these actions because of the number of outbreaks of foodborne illnesses and deaths caused by Salmonella Enteritidis that are associated with the consumption of shell eggs that have not been treated to destroy this pathogen.

FDA, as directed by the Animal Drug Availability Act of 1996, has amended its new animal drug regulations to further define the term ''substantial evidence'' (July 28, 1999). The purpose of this final rule is to encourage the submission of new animal drug applications (NADAs) and supplemental NADAs for single ingredient and combination new animal drugs. The final rule also encourages dose range labeling.

In multiple rulemakings on August 19, 1999, FDA proposed to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood and blood derivatives to be more consistent with current practices and to remove unnecessary or outdated requirements. These actions are part of FDA's ''Blood Initiative,'' in which FDA is reviewing and when appropriate revising its regulations, policies, guidances, and procedures related to blood and blood products, including blood derivatives.

Health Care Financing Administration

The Health Care Financing Administration (HCFA) has worked, and continues to work diligently, to provide guidance on the many provisions of the Balanced Budget Act legislation. We are developing additional appropriate regulations to address provisions that have not yet been implemented in their entirety. HCFA's focus during this coming fiscal year is diverse, encompassing payment issues, program integrity, the children's health insurance program, and managed care.

Payment Issues

Ambulance Fee Schedule

The Balanced Budget Act of 1997 (BBA) requires the establishment of a fee schedule for ambulance services under the Medicare program. Policies are being developed through negotiated rulemaking. The negotiated rulemaking committee, representing varied public and private interests related to ambulance services, is scheduled to conclude in February 2000, after taking into account such factors as cost control, geographic and operational differences. We anticipate publication of the proposed rule as soon as practical thereafter.

Prospective Payment Systems

Home Health Agencies are currently being paid under an interim payment system in accordance with requirements of the BBA. As also required by the BBA, HCFA is in the process of developing a final rule to establish requirements for the new Home Health prospective payment system. The same legislation requires that we develop a prospective payment system for rehabilitation facilities, now being formulated as a proposed rule. We published a notice of proposed rulemaking on September 8, 1998 for a hospital outpatient prospective payment system, and are in the process of drafting a final rule that takes into consideration the comments that we received on the September 1998 document.

Program Integrity

Surety Bonds

In addressing BBA requirements for certain providers and suppliers to furnish surety bonds in order to participate in the Medicare and Medicaid programs, we issued several **Federal Register** documents. Some dealt with surety bond submissions for home health agencies, and a notice of proposed rulemaking considered requirements for suppliers of durable medical equipment. Based on public response, we have decided to propose new, less burdensome regulations, and we are developing notices of proposed rulemaking to address the related issues. Plans include finalizing these rules during the fiscal year.

Qualifications for Establishing and Maintaining Medicare Billing Privileges

BBA and other laws require the furnishing of information and the identification of individuals or entities who furnish medical services to beneficiaries before payment can be made. We are particularly interested in ensuring that those who provide services to our beneficiaries are qualified to do so. In addition, we are responsible for protecting the Trust Funds by ensuring that any duplicate or overpayments are recouped. Through the gathering of information, and the use of unique identifiers for those that furnish services for which Medicare payment may be made, we can better protect our beneficiaries and public funds. We are developing a notice of proposed rulemaking to address the use of an information collection instrument that would provide to us the necessary information before we make a determination of whether a provider or supplier should be granted billing privileges.

Children's Health Insurance Program (CHIP)

Under this optional program, created as title XXI of the Social Security Act, under BBA, States may initiate and expand child health assistance to uninsured, low-income children. Because of the short timeframe between the enactment of the BBA and the effective date of the legislation, and our interest in ensuring that States could take advantage of the opportunity to better serve their vulnerable youthful populations, we developed guidance that permitted 54 States and territories to have approved CHIP plans. Thus, operation of the CHIP program has begun, prior to the completion of regulations, which are now nearing publication.

Managed Care

Medicare+Choice

We published an interim final regulation implementing the Medicare+Choice program on June 26, 1998, and a final rule on February 17, 1999, addressing selected issues raised by commenters on the June regulation. The next final rule under development will be more comprehensive and will respond to all comments and implement other necessary changes.

Medicaid Managed Care

We published a notice of proposed rulemaking on September 29, 1998, addressing the BBA modifications of the Medicaid managed care programs. The publication proposed enhanced enrollee protections and emphasized the quality of health care delivered to Medicaid enrollees. The final rule, under development, will respond to public comments and make any appropriate revisions necessary to finalize the Medicaid Managed Care programs.

Additional Regulations

We continue to focus on the importance of updating physician payments. We published a final rule on November 2, 1999, addressing the updating of physician payments by Medicare, including a provision to change the method of determining malpractice insurance relative value units (RVUs) from the current charge-based system to a resource-based system. The rule continues the refinement of the practice expense RVUs that are transitioning from charge-based to resource-based, and addresses

new and revised procedure codes for the year 2000.

HHS—Office of the Secretary (OS)

FINAL RULE STAGE

27. ● STANDARDS FOR PRIVACY OF INDIVIDUALLY INDENTIFIABLE HEALTH INFORMATION

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:

42 USC 1320d-2; 42 USC 1320d-4; PL 104-191, sec 264

CFR Citation:

45 CFR 160; 45 CFR 164

Legal Deadline:

Final, Statutory, February 21, 2000.

Abstract:

The proposed rule would implement part of the Administrative Simplification requirements of Public Law 104-191 by establishing standards for health plans, health care clearinghouses and certain health care providers to protect the privacy of individually identifiable health information.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (PL 104-191) requires the Department to issue final standards for the privacy of individually identifiable health information by February 21, 2000. The confidentiality of such information is currently unprotected. The standards will establish protections applicable to medical records created by health care providers, hospitals, health plans and health care clearinghouses that are either transmitted or maintained electronically, and the paper printouts created from these records.

Summary of Legal Basis:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (PL 104-191) directed the Department to issue several standards to facilitate the electronic exchange of information with respect to financial and administrative transactions. It also directed the Department to develop and submit to the Congress recommendations for privacy legislation. In addition, if Congress did not enact legislation governing privacy standards with respect to individually identifiable health information by August 21, 1999, HIPAA directed the Department to promulgate final regulations containing such standards by February 21, 2000. This proposed rule will enable the Department to solicit public comment and issue final regulations in order to satisfy the statutory requirement.

Alternatives:

The Department is required by statute to issue final regulations by February 21, 2000. Therefore, no alternatives to regulatory action have been considered.

Anticipated Cost and Benefits:

Estimates of the economic impact that will stem from this rule will be made available after all public commentary has been received and analyzed.

Risks:

This proposed rule provides an important opportunity for interested parties to comment on many complex privacy policies prior to implementation of a significant new set of regulatory requirements. Failure to publish this proposed rule would jeopardize the Department's ability to meet the statutory deadline.

Timetable:

Action	Date	FR Cite
NPRM	11/03/99	64 FR 59967
Final Action	02/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

28. 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.

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. Today, medical and/or surgical intervention will correct hearing loss in only 5 to 10 percent of the cases. Therefore, there may be less of a need for medical evaluation. FDA believes, however, that patients should receive proper testing in order for a hearing aid to be effective.

Summary of 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 Cost 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	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

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

29. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

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 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e

CFR Citation:

21 CFR 201

Legal Deadline:

None

Abstract:

The proposed regulation would amend the regulations governing the format and content of professional labeling for human prescription drug and biologic products, 21 CFR 201.56 and 201.57. The proposal would require that professional labeling include a section containing highlights of prescribing information and a section containing an index to prescribing information, reorder currently required information and make minor changes to its content, and establish minimum graphical requirements for professional labeling. The proposal would also eliminate certain unnecessary statements that are currently required to appear on prescription drug labels and move certain information to patient labeling.

Statement of Need:

The current format and content requirements in sections 201.56 and 201.57 were established to help ensure that labeling includes adequate information to enable health care practitioners to prescribe drugs safely and effectively. However, various developments in recent years, such as technological advances in drug product development, have contributed to an increase in the amount, detail, and complexity of labeling information. This has made it harder for practitioners to find specific information and to discern the most critical information in product labeling.

FDA took numerous steps to evaluate the usefulness of prescription drug labeling for its principal audience and to determine whether, and how, its format and content can be improved. The agency conducted focus groups and a national survey of office-based physicians to ascertain how prescription drug labeling is used by health care practitioners, what labeling information is most important to practitioners, and how professional labeling should be revised to improve its usefulness to prescribing practitioners.

Based on the concerns cited by practitioners in the focus groups and physician survey, FDA developed and tested two prototypes of revised labeling formats designed to facilitate access to important labeling information. Based on this testing, FDA developed a third revised prototype that it made available to the public for comment. Ten written comments were received on the prototype. FDA also presented the revised prototype at an informal public meeting held on October 30, 1995. At the public meeting, the agency also presented the background research and provided a forum for oral feedback from invited panelists and members of the audience. The panelists generally supported the prototype.

The proposed rule attempts to establish format and content requirements for prescription drug labeling that incorporate information and ideas gathered during this process.

Summary of Legal Basis:

The agency has broad authority under sections 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act)(21 USC 352, 355, 371) and section 351 of the Public Health Service Act (42 USC 262) to regulate the content and format of prescription drug labeling to help ensure that products are safe and effective for their intended uses. A major part of FDA's efforts regarding the safe and effective use of drug products involves FDA's review, approval, and monitoring of drug labeling. Under section 502(f)(1) of the act, a drug is misbranded unless its labeling bears ''adequate directions for use'' or it is exempted from this requirement by regulation. Under section 201.100 (21 CFR 201.100), a prescription drug is exempted from the requirement in section 502(f)(1) only if, among other things, it contains the information required, in the format specified, by sections 201.56 and 201.57.

Under section 502(a) of the act, a drug product is misbranded if its labeling is false or misleading in any particular. Under section 505(d) and 505(e) of the act, FDA must refuse to approve an application and may withdraw the approval of an application if the labeling for the drug is false or misleading in any particular. Section 201(n) of the act provides that in determining whether the labeling of a drug is misleading, there shall be taken into account not only representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal facts that are material in light of such representations or material with respect to the consequences which may result from use of the drug product under the conditions of use prescribed in the labeling or under customary usual conditions of use.

These statutory provisions, combined with section 701(a) of the act and section 351 of the Public Health Service Act, clearly authorize FDA to promulgate a regulation designed to help ensure that practitioners prescribing drugs (including biological products) will receive information essential to their safe and effective use in a format that makes the information easier to access, read, and use.

Alternatives:

The alternatives to the proposal include not amending the content and format requirements in sections 201.56 and 201.57 at all, or amending them to a lesser extent. The agency has determined that although drug product labeling, as currently designed, is useful to physicians, many find it difficult to locate specific information in labeling, and some of the most frequently consulted and most important information is obscured by other information. In addition, the agency's research showed that physicians strongly support the concept of including a summary of the most important prescribing information, an index and numbering system that permits specific information to be easily located, and other proposed requirements, such as the requirement for a minimum type size. Thus, the agency believes that the proposed requirements will greatly facilitate health care practitioners' access and use of prescription drug and biological labeling information.

Anticipated Cost and Benefits:

The expected benefits from the proposed rule include reduced time needed for health care professionals to read or review labeling for desired information, increased effectiveness of treatment, and a decrease in adverse events resulting from avoidable drug-related errors. For example, the proposed revised format is expected to significantly reduce the time spent on reading labeling by highlighting often used information at the beginning of labeling and facilitating access to detailed information.

The potential costs associated with the proposed rule include the cost of redesigning labeling for previously approved products to which the proposed rule would apply and submitting the new labeling to FDA for approval. In addition, one-time and ongoing incremental costs would be associated with printing the longer labeling that would result from additional required sections. These costs would be minimized by applying the amended requirements only to newer products and by staggering the implementation date for previously approved products.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/00/00	
NPRM Comment Period End	04/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Additional Information:

Legal Authority continued: 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

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RIN: 0910–AA94

HHS—FDA

30. PHARMACY AND PHYSICIAN COMPOUNDING OF DRUG PRODUCTS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 331; 21 USC 351; 21 USC 352; 21 USC 353a; 21 USC 355; 21 USC 360; 21 USC 371

CFR Citation:

21 CFR 216

Legal Deadline:

None

Abstract:

Section 503A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a) describes the circumstances under which compounded drugs may qualify for exemption from three requirements of the act: (1) That a drug be manufactured according to current good manufacturing practice, (2) that a drug have adequate directions for use, and (3) that a marketing application be approved by FDA before a new drug product is introduced for sale (i.e., sections 501(a)(2)(B), 502(f)(1), and 505 of the act (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355)).

To qualify for the exemption, a pharmacist or physician must meet the following statutory conditions for compounding: (1) There usually must be a prescription for an identified individual patient before compounding. (2) Compounding before receiving a prescription is allowed only under limited circumstances. (3) Prescriptions may not be solicited and certain types of advertising are not permitted. (4) The quantity of drugs that may be shipped out of state is limited and may vary depending on whether the compounder is located in a state that has entered into a memorandum of understanding (MOU) with FDA. (5) Drug products may only be compounded using a bulk drug substance (which is essentially the active ingredient) that is listed in the United States Pharmacopoeia (USP) or National Formulary (NF); or a bulk drug substance that is a component of an FDA-approved drug product; or a bulk drug substance that is listed in the regulation as one that FDA has found to be suitable for compounding. (6) The bulk drug substance must be made in a facility registered with FDA and the bulk drug substance must be accompanied by a certificate of analysis. (7) Limited quantities of copies of commercially manufactured drug products may be compounded in special circumstances. (8) Drug products may not be compounded if they are listed in a regulation as having been removed from the market or had their FDA-approval withdrawn because they were found to be not safe or not effective. (9) Drug products that are listed in the regulations as ''demonstrably difficult to compound'' may not be compounded.

The regulations will amplify and explain the statutory requirements as well as execute tasks Congress assigned FDA in section 503A.

This proposed rule will be one of several rulemakings implementing section 503A. Related regulatory initiatives are described below:

FDA has issued a final rule listing drug products that may not be compounded because they were found to be not safe or not effective and were removed from the market or had their FDA approval withdrawn.

FDA has also issued a proposed rule and is preparing a final rule listing drugs that are not the subject of a USP or NF monograph, and are not components of an FDA-approved drug product but are suitable for compounding.

FDA is currently preparing a proposed rule listing those drugs that are demonstrably difficult to compound and are not allowed to be compounded.

FDA has published a Federal Register notice announcing the availability of a draft MOU between FDA and state boards of pharmacy.

Statement of Need:

Pharmacy compounding can provide substantial benefits to the public health. It can give to patients, who are allergic to inactive ingredients found in commercially available drug products, versions of those drug products from which the allergenic ingredient has been omitted. Patients who have difficulty taking a commercially available drug product may obtain a compounded version of the drug product in a different dosage form. Pharmacy compounding can also enable physicians to access certain drugs that are not commercially available.

Just as compounded drugs may present significant benefits to health, they can also present significant risks. Compounded drugs are generally not evaluated by FDA for safety or effectiveness. They are not made according to current good manufacturing practices and have generally not been tested for strength, quality, or purity. Stability testing, to establish the useful shelf life of the products, has generally not been performed on compounded drug products. Compounders have made illicit copies of FDA-approved drug products, threatening the integrity of the drug approval process. FDA is attempting to maximize the public health benefits of pharmacy compounding, while minimizing the potential threat to the public health.

Summary of Legal Basis:

Section 127 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) adds section 503A to the act. Sections 503A(b)(1)(A)(i)(III) and (d)(2) direct FDA to publish regulations establishing a list of drugs that are suitable for compounding. Section 503A(b)(1)(C) directs FDA to publish in the Federal Register a list of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. Section 503A(b)(1)(D) directs FDA to define the term ''compound regularly or in inordinate amounts'' relating to compounding drug products that are essentially copies of a commercially available drug product. Section 503A(b)(3)(A) directs FDA to develop a list of drug products that may not be compounded because they are demonstrably difficult to compound. Efficient enforcement of section 503A would benefit from publication of a substantive rule that interprets and applies the statutory language.

Alternatives:

Section 127 of FDAMA directs FDA to develop regulations, so no alternatives to regulations have been considered. FDA has considered a wide range of options and approaches within the framework of a regulation. FDA has convened and consulted the Pharmacy Compounding Advisory Committee, which consists of representatives of the United States Pharmacopoeia, the National Association of Boards of Pharmacy, and a consumer organization, as well as members of the pharmacy and pharmaceutical manufacturing industries, physicians and academics.

Anticipated Cost and Benefits:

FDA has not yet quantified the costs and benefits of any regulatory approach. FDA has not been significantly involved in the regulation of pharmacy compounding, and does not have any economic data on the industry at this time. Responses to the NPRM will be important in determining the costs and benefits of any regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Additional Information:

See RINs 0910-AB57, 0910-AB5

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HHS—FDA

31. CGMPS FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV INFECTION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264; 42 USC 300aa-25

CFR Citation:

21 CFR 606; 21 CFR 610

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to amend the biologics regulations to remove, revise, or update the regulations applicable to blood, blood components, and blood derivatives. These actions are based on a comprehensive review of the regulations performed by FDA, and are also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on House Resources and Intergovernmental Relations, the General Accounting Office, and the Institute of Medicine, as well as public comments. In this rulemaking, FDA will propose to amend the biologics regulations to require that blood establishments prepare and follow written procedures for appropriate action when it is determined that blood and blood components pose an increased risk for transmitting hepatitis C virus (HCV) infection because they have been collected from a donor who, at a later date, tested repeatedly reactive for evidence of HCV.

Statement of Need:

In the Federal Register of October 23, 1998 (63 FR 56198), FDA announced the availability of guidance, which updated previous guidance, providing recommendations for donor screening and further testing for antibodies to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with blood components at increased risk for transmitting HCV (often called ''lookback''). While available evidence indicates that blood establishments are following these recommendations, FDA believes that regulations should be codified, consistent with the previous recommendations, to assure there is clear enforcement authority in case deficiencies in an establishment's lookback program are found and to provide clear instructions for continuing lookback activities.

Summary of Legal Basis:

The Public Health Service Act (21 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 to prevent the spread of communicable diseases. These regulations would assure that appropriate action is taken when blood components have been transfused which may potentially be capable of transmitting HCV, that persons who have been transfused with such blood components are notified so that they receive proper counseling and treatment, and to help prevent the further transmission of HCV.

Alternatives:

FDA has considered permitting the continued voluntary compliance with the recommendations that have already issued. However, the ability of FDA to enforce appropriate lookback procedures would be unclear. In addition, because lookback will remain appropriate for the foreseeable future, FDA believes that the procedures should be clearly established in the regulations.

Anticipated Cost and Benefits:

FDA is in the process of analyzing the costs related to the rulemaking. Monetary burdens will be associated to the tracing of previous donations of donors, identifying the recipients of these previous blood donations, and notifying these recipients, as appropriate. FDA believes these costs will be more than compensated by the public health benefits, including benefits related to the notification of past transfusion recipients who may be unaware that they may be infected with HCV.

Risks:

FDA believes there are minimum risks posed by requiring that appropriate lookback procedures for HCV be prepared and followed.

Timetable:

Action	Date	FR Cite
NPRM	02/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

See RIN 0910-AB26.

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RIN: 0910–AB76

HHS—FDA

32. ● CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY SUPPLEMENTS

Priority:

Other Significant

Legal Authority:

21 USC 342; 21 USC 371; 21 USC 374; 42 USC 264

CFR Citation:

21 CFR 111

Legal Deadline:

None

Abstract:

The Food and Drug Administration (FDA) announced in an advance notice of proposed rulemaking (ANPRM) of February 6, 1997, its plans to consider developing regulations establishing current good manufacturing practice (CGMP) for dietary supplements and dietary supplement ingredients. The ANPRM was published in order for FDA to solicit comments on whether it should initiate action to establish CGMP regulations and if so, what constitutes CGMP for these products. FDA announced that this effort was in response to the section of the Federal Food, Drug, and Cosmetic Act (the act) that provides authority to the Secretary of Health and Human Services to promulgate CGMP regulations and to a submission from the dietary supplement industry asking that FDA consider an industry-proposed CGMP framework as a basis for CGMP regulations. The ANPRM also responds to concerns that such regulations are necessary to ensure that consumers are provided with dietary supplement products which are not adulterated or misbranded, which have the identity and provide the quantity of dietary ingredients declared in labeling, and which meet the quality specifications that the supplements are represented to meet.

Statement of Need:

FDA is considering whether to develop regulations establishing current good manufacturing practice (CGMP) for dietary supplements and dietary supplement ingredients for several reasons. First, FDA is concerned that some firms may not be taking appropriate steps during the manufacture of supplement products to ensure that products are properly formulated and not adulterated. There have been cases of misidentified ingredients harming consumers using dietary supplements. FDA is also aware of products or ingredients that contain potentially harmful contaminants or ingredients because of apparently inadequate manufacturing controls and quality control procedures. The agency believes that a system of CGMP or other preventive manufacturing controls may be the most effective and efficient way to ensure that these products will not be adulterated during the manufacturing process.

Summary of Legal Basis:

If CGMP regulations were adopted by FDA, failure of a manufacturer to implement and follow CGMP would render the dietary supplement or dietary supplement ingredients of that manufacturer adulterated under section 402(g) of the act.

Alternatives:

The two principal alternatives to comprehensive CGMP are end-product testing and Hazard Analysis Critical Control Points (HACCP). In the ANPRM, FDA asked for public comment on approaches to ensuring that dietary supplements and dietary supplement ingredients are not adulterated during the manufacturing process. The agency asked whether HACCP may be a more effective approach than a comprehensive CGMP, and whether different approaches may be better able to address the needs of the broad spectrum of firms that conduct one or more distinct operations, such as the manufacture of finished products, or solely the distribution and sale of finished products at the wholesale or retail level. FDA will consider the information it received in response to the ANPRM and from other sources, such as public meetings and small business outreach meetings, in its consideration of whether CGMP or other approaches are most appropriate.

Anticipated Cost and Benefits:

A comprehensive CGMP (or other system of ensuring the safety of dietary supplements and dietary supplement ingredients) would permit more effective and efficient oversight by Federal, State, and local governments. It would place primary responsibility for ensuring that these products are not adulterated on the manufacturer/distributor by requiring that they develop and implement a rational, scientific-based system to control their manufacturing process. FDA anticipates that costs to industry generated by implementing a comprehensive manufacturing process, whether CGMP or other plan, would be offset in four ways: (1) by reducing the amount of supplement-associated illnesses or adverse events; (2) by increasing public confidence in dietary supplements marketed in the United States; (3) by enabling U.S. supplements companies to compete more effectively in the world market; and (4) by decreasing the number of future product recalls.

Risks:

Any potential for consumers to be provided adulterated (contaminated with industrial chemicals, pesticides, microbial pathogens, or dangerous misidentified ingredients or toxic components of ingredients) products must be considered a very serious risk because of the possibility that such contamination could be widespread, affecting whole segments of the population, causing some severe long-term effects and even loss of life. Dietary supplements are used by a large segment of the American public. Moreover they are often used by segments of the population that are particularly vulnerable to adulterated products, such as the elderly, young children, pregnant and nursing women, and persons who may have serious illnesses or are taking medications that may adversely interact with dietary supplement components. FDA has adopted or proposed manufacturing controls for a number of foods and commodities that present potential health hazards to consumers if not processed properly, including seafood, juice products, and fruits and vegetables and it is appropriate that FDA consider whether manufacturing controls are necessary to assure consumers that dietary supplements are not adulterated during the manufacturing process.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/97	62 FR 5700
ANPRM Comment Period End	06/06/97	
NPRM	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 0910–AB88

HHS—FDA

FINAL RULE STAGE

33. FRUIT AND VEGETABLE JUICES: DEVELOPMENT OF HACCP AND LABEL WARNING STATEMENTS FOR 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:

The Food and Drug Administration (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 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 state-of-the-art HACCP 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. FDA proposed on April 24, 1998 to adopt a HACCP regulation for the processing of juice. The agency simultaneously proposed to require a warning statement on the labels or in labeling for juice products that have not been processed to reduce, control, or eliminate the presence of harmful bacteria. Such labeling would serve to reduce the risk of food-borne illness, pending development of a final HACCP rule for juice. As part of the development of the HACCP proposal, FDA considered 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. On July 8, 1998, the agency finalized the warning statement requirement. FDA held two technical scientific workshops, one November 12, 1998, in Lake Alfred, Florida and the other November 29, 1998, in Irvine, California, to discuss and clarify issues related to the implementation of the agency's rule requiring a warning statement for certain juice products. The workshops addressed citrus juice production and the methods for measuring and validating such systems. On December 8 and 9, 1998, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) met to consider performance criteria for fresh juice. FDA specifically requested the NACMCF to make recommendations about the efficacy of surface treatments in ensuring the safety of citrus juices.

Statement of Need:

FDA is adopting regulations that would establish requirements for a new comprehensive food safety assurance program for both domestically produced and imported fruit and vegetable juices that would be based on the principles of Hazard Analysis Critical Control Points (HACCP). FDA intends to adopt 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 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 information available 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 Cost 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 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 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 very serious risk because of the possibility that such contamination could 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 regulate seafood, based on a considerable body of literature and expertise in this area. Likewise, FDA has reviewed current information on hazards associated with unprocessed 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	
Economic Analysis for Juice HACCP and Labeling		
PRIA 05/01/1998 (63 FR 24254)		
PRIA Comment Period End 06/22/1998		
HACCP for Juice		
NPRM 04/24/1998 (63 FR 20450)		
NPRM Comment Period End 08/07/1998		
NPRM Comment Period Reopened 12/17/1998 (63 FR 69579)		
NPRM Reopened Comment Period End 01/19/1999		
Final Action 04/00/2000		
Label Warning Statements for Juice		
Notice of Intent 08/28/1997 (62 FR 45593)		
NPRM 04/24/1998 (63 FR 20496)		
NPRM Comment Period End 06/21/1998		
Final Action 07/08/1998 (63 FR 37029)		

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

Previously reported under RIN 0905-AE60.

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RIN: 0910–AA43

HHS—FDA

34. SHELL EGGS: WARNING, NOTICE AND SAFE HANDLING LABELING STATEMENTS AND REFRIGERATION REQUIREMENTS

Priority:

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

Legal Authority:

21 USC 321; 42 USC 264

CFR Citation:

21 CFR 101.17(g); 21 CFR 115.50; 21 CFR 16.5

Legal Deadline:

None

Abstract:

There have been numerous foodborne outbreaks of salmonellosis, principally due to Salmonella Enteritidis (SE), that have been traced to the consumption of temperature abused and/or undercooked shell eggs. The Food and Drug Administration has received petitions from Rose Acres Farm, Inc., and the Center for Science in the Public Interest that request, in part, that FDA establish safe handling statements for shell eggs. FDA intends to propose to require safe handling statements on labeling of shell eggs that have not been treated to destroy Salmonella microorganisms that may be present. In accordance with amendments to the Egg Products Inspection Act, USDA published on August 27, 1998, a final rule to require that shell eggs be stored at an ambient temperature of 7.2 degrees Celsius (45 degrees Fahrenheit). However, the USDA rulemaking does not include refrigeration at retail. FDA intends to propose regulations to mandate that shell eggs be stored for retail sale at 7.2 degrees Celsius (45 degrees Fahrenheit) or less. FDA is proposing this measure to ensure that shell eggs are handled in a manner to decrease the possible growth of any SE that may be present in shell eggs. All of these actions are intended to reduce the occurrence of illnesses and deaths associated with the consumption of improperly cooked shell eggs.

Statement of Need:

FDA is adopting regulations as part of the farm-to-table food safety system for shell eggs that would establish refrigeration requirements for shell eggs held at retail and labeling requirements instructing egg preparers and consumers on safe handling of shell eggs. FDA intends to adopt these regulations because of the continued reports of outbreaks of foodborne illness and death caused by SE that are associated with the consumption of shell eggs, and because the agency believes that these measures can have an immediate effect in significantly reducing the risk of foodborne illness due to consumption of SE contaminated shell eggs. Further, these measures can be implemented while FDA and FSIS continue to develop their comprehensive farm-to-table food safety system.

Summary of Legal Basis:

FDA's legal basis to require refrigeration of shell eggs derives from sections 402(a)(4), and 701(a) of the Federal Food, Drug and Cosmetic Act (FDCA) (21 U.S.C.342(a)(4) and 371(a)) and sections 311, 361, and 368 of the Public Health Service Act (PHSA) (42 U.S.C. 243, 264, and 271) that relate to communicable disease. Under section 402(a)(4) of the act, a food is adulterated if it is prepared, packed, or held in insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health. Numerous scientific reports describe how refrigeration helps to maintain the egg's natural defenses against degradation and slows the growth of any SE present. Under section 701(a) of the act, FDA is authorized to issue regulations for the efficient enforcement of the act. Thus, a regulation that prohibits food from being held under insanitary conditions would provide for efficient enforcement. FDA's legal authority to require label statements on food products derives from sections 201(n), 403(a)(1), and 701(a) of the FDCA (21 U.S.C. 321(n), 343(a)(1), and 371(a)), and sections 311, 361, and 368 of the Public Health Service Act (PHSA) (42 U.S.C. 243, 264, and 271) that relate to communicable disease. Under section 403(a)(1) of the FDCA, a food is misbranded if its labeling is false or

misleading in any particular. Section 201(n) of the FDCA provides that in determining whether labeling is misleading, the agency shall take into account the extent to which the labeling fails to reveal facts that are material with respect to consequences that may result from use of the product under conditions of use prescribed in the labeling or under customary or usual conditions. The fact that shell eggs may contain illness causing bacteria and that there are measures that consumers can take to protect themselves from illness is material information and, therefore, must be provided in labeling to ensure that the product is not misbranded.

Alternatives:

There are several alternatives to requiring refrigeration and safe handling instructions for shell eggs. The five principal alternatives include: (1) No new regulatory action, (2) labeling only, (3) refrigeration only, (4) Hazard Analysis Critical Control Point (HACCP) for shell eggs, and (5) in-shell pasteurization. FDA had concluded, based on information available at this time, that relying on current safeguards (option 1) would not greatly reduce the number of illnesses from SE in shell eggs. Even though the benefits from either labeling alone or refrigeration alone (options 2 and 3) exceed the costs, the combined benefits of refrigeration and labeling are much greater than either taken separately. FDA believes that a HACCP-like program (option 4) is currently not feasible. However, FDA is evaluating whether in the future, a HACCP-like program including possibly in-shell pasteurization, may be necessary to further ensure the safety of shell eggs. In-shell pasteurization (option 5) would greatly reduce SE, but FDA believes other interventions between farm-to-table could reduce SE at lower cost.

Anticipated Cost and Benefits:

The benefits from requiring safe handling labeling and the refrigeration of shell eggs at 7.2 degrees C (45 degrees F) come from reducing SE-related illness. FDA used the results of the USDA SE risk assessment for one estimate of the baseline risk and the CDC Salmonella surveillance data for another estimate of the baseline. FDA also used the risk assessment model to estimate the expected reduction in illnesses attributed to the requirements. The range (5th to 95th percentile) of estimated annual benefits for the USDA SE risk assessment baseline was $87 million to $6.6 billion, with a median of $700 million. The range (5th to 95th percentile) of estimated annual benefits for the CDC surveillance baseline was $50 million to $1.7 billion, with a median of $300 million. The benefits are large, although FDA estimates that 95 percent of shell eggs are already held at ambient temperatures of 7.2 degrees C (45 degrees F) or less. The costs of the proposed rule are the sum of the costs of changes in manufacturing practices—labeling and refrigeration—and changes in consumer practices—egg preparation and consumption. The costs of labeling are the sum of administrative compliance, inventory disposal, and label redesign costs. FDA anticipates that the total labeling cost for a 6-month compliance period to be a one-time cost of approximately $18 million. The total cost included administrative costs of $280,000, inventory disposal costs of $3 million, and label redesign costs of $15 million. The refrigeration costs will be the cost of the additional equipment required for all establishments to maintain an ambient temperature of 7.2 degrees C (45 degrees F). The anticipated costs per establishment range from close to zero for small equipment upgrades to $6,000 for a large new refrigerator. For all establishments, the range (5th to 95th percentile) of anticipated one-time refrigeration costs was $7 million to $228 million, with a median of $31 million. FDA also considered as a part of the cost the change in consumer behaviors. The anticipated annual costs to consumers to change the way eggs are prepared and consumed ranged (5th to 95th percentile) from $2 million to $20 million, with a median of $10 million. The median total costs of the proposed rule—the sum of the costs of labeling, refrigeration, and changes in consumer practices—are about $60 million in the first year and $10 million per year thereafter.

Risks:

Any potential for growth of SE in shell eggs must be considered a very serious risk because of the possibility that such growth could 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 refrigeration and labeling requirements for shell eggs based on a considerable body of evidence, literature, and expertise in this area. This decision was also based on the USDA Risk Assessment and the identified effects associated with refrigeration and labeling.

Timetable:

Action	Date	FR Cite
ANPRM	05/19/98	63 FR 27502
ANPRM Comment Period End	08/17/98	

Economic Analysis for Refrigeration and Labeling of Shell Eggs
NPRM 07/06/1999 (64 FR 36492)
NPRM Comment Period End 09/20/1999 (64 FR 36492)
Final Action 04/00/2000

Refrigeration and Labeling of Shell Eggs
NPRM 07/06/1999 (64 FR 36492)
NPRM Comment Period End 09/20/1999 (64 FR 36492)
Final Action 04/00/2000

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

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RIN: 0910–AB30

HHS—Health Care Financing Administration (HCFA)

PROPOSED RULE STAGE

35. MEDICARE PROGRAM; QUALIFICATIONS FOR ESTABLISHING AND MAINTAINING MEDICARE BILLING PRIVILEGES (HCFA-6002-P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 1302; 42 USC 1395hh

CFR Citation:

42 CFR 424; 42 CFR 489

Legal Deadline:

None

Abstract:

This proposed rule would establish a requirement that all providers and suppliers (other than physicians who have entered into a private contract with a beneficiary) complete an enrollment form and submit specified information to us and to periodically revalidate the enrollment information to receive and maintain billing privileges in the Medicare program. The information must clearly identify the provider or supplier and its place of business, provide documentation that it is qualified to perform the services for which it is billing, and assure that it is not currently excluded from the Medicare program. If we determine the information submitted is incomplete, invalid, or insufficient to meet Medicare requirements, we would reject, deny, inactivate, or revoke billing privileges. Any deliberate concealment or misrepresentation of material information would subject the provider or supplier to liability under civil and criminal laws.

Statement of Need:

The Medicare program is currently the principal payer for health care for 39.2 million enrolled beneficiaries. Under section 1802 of the Act, a beneficiary may obtain health services from any institution, agency, or person qualified to participate in Medicare. Some qualifications to participate are specified in statute, such as in sections 1819, 1834, 1861, 1866, and 1891 of the Act. Many more are in our regulations, especially at 42 CFR subchapter E, which concerns standards and certification requirements.

Summary of Legal Basis:

Because we are intending to use the form HCFA 855 as the principal information collection instrument, we provide the following information about the data request on the forms. In addition to the legal authority cited, the following additional cites grant us the authority to collect the information required to complete the form HCFA 855:

Section 1814(a) of the Act states that payment for services furnished to an individual may only be made to providers and only if a written request is filled in such a form and manner as the Secretary may prescribe.

Sections 1815 and 1833(e) of the Act authorize the Secretary to withhold Medicare payments until the provider or supplier furnishes such information as may be necessary to determine amounts due.

Section 1866(a)(1) of the Act establishes provider agreement requirements, including a requirement not to charge the beneficiary if the provider would have been entitled to Medicare payment had the provider compiled with procedural requirements.

Alternatives:

If this rule is not published, we would weaken our authority to prevent fraudulent or abusive providers and suppliers from billing the Medicare program.

Anticipated Cost and Benefits:

This is an administrative initiative that may result in Medicare program saving but at this time those savings are inestimable. We believe the probable costs providers or suppliers would incur as a result of this rule would be negligible.

Risks:

This rule will potentially improve the information and documentation collection used to determine if a provider or supplier should be granted billing privileges. This rule will promote compliance with Medicare requirements, and also prevent abuse of the Medicare program and inappropriate uses of Medicare funds by ensuring that payment is made only for services furnished by qualified individuals or entities by requiring that the providers and suppliers of those services prove their qualifications and identity. If the provider or supplier failed to meet the requirements or submit the required information, we would not enroll them in the Medicare program or we would remove them if they were currently in the program.

Timetable:

Action	Date	FR Cite
NPRM	02/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

Formerly known as HCFA-1023

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HHS—HCFA

36. PROSPECTIVE FEE SCHEDULE FOR AMBULANCE SERVICES (HCFA-1002-NR)

Priority:

Other Significant

Unfunded Mandates:

This action may affect the public sector under PL 104–4.

Legal Authority:

PL 105-33, sec 4531(b)

CFR Citation:

42 CFR 410

Legal Deadline:

Final, Statutory, January 1, 2000.

Abstract:

The Balanced Budget Act of 1997 requires that the Secretary establish a fee schedule for ambulance services through negotiated rulemaking. The fee schedule is to be effective beginning with services furnished on or after January 1, 2000. In addition to setting the payment rates, the Secretary is to ensure that the aggregate amount of payment made for ambulance services in 2000 may not exceed the amount of payment that would have been made absent the fee schedule. This is a cap on payment, not a budget neutrality adjustment. The Secretary is to consult with national organizations representing individuals and entities that furnish and regulate ambulance services and share relevant data with these organizations. This provision will be met through the negotiated rulemaking process.

Statement of Need:

The establishment of this fee schedule is required by section 4531 of the BBA. In so doing through the negotiated rulemaking process, a fairer payment system will be implemented that is consistent with the services furnished and that takes into account the variations caused by regional and operational differences among ambulance companies.

Summary of Legal Basis:

Section 4531 of the BBA requires the establishment of this fee schedule.

Alternatives:

Because section 4531 of the BBA requires the establishment of this fee schedule, no alternatives to this regulation exist.

Anticipated Cost and Benefits:

There is an anticipated savings of $65 million that will be attributed to the savings that would have occurred if the HCFA proposed regulation published on June 17, 1997 at 62 FR 32715 had been implemented in final. This savings derived from the proposal to pay for ambulance services furnished, rather than paying for the more expensive advanced life support (ALS) level of service solely because an ALS vehicle was used even if no ALS service was furnished.

Benefits include establishing a fee schedule that will be commensurate with the services furnished, and that will take into account the regional and operational variations in providing ambulance services. The current reasonable charge/reasonable cost systems do not result in a fair geographic variation in payment allowances, since some areas receive 2 to 3 times the payment of other areas for the same services.

Risks:

Failing to implement the Medicare ambulance fee schedule would perpetuate an inequitable payment system that sometimes overpays and other times underpays for this critical aspect of medical care. The current system also has unintentional incentives to provide inefficient ambulance services in some areas, and inadequate ambulance services in areas of low population.

Timetable:

Action	Date	FR Cite
Notice of Intent To Negotiate	01/22/99	64 FR 3474
NPRM	05/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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HHS—HCFA

37. ● MEDICARE PROGRAM: PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITAL SERVICES (HCFA-1069-P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 105-33, sec 4421

CFR Citation:

None

Legal Deadline:

NPRM, Statutory, October 1, 2000.

Abstract:

This proposed rule will estalish requirements for the new prospective payment system for rehabilitation facilities as mandated by section 4421 of the BBA.

Statement of Need:

The BBA significantly changed the way we will pay for Medicare covered services furnished to a Medicare inpatient in a rehabilitation facility. The BBA requires payments to be based on the inpatient operating and capital costs of rehabilitation facilities and adjusted for: (1) Case mix using patient classification groups; (2) Area wages; (3) Inflation; (4) Outlier and special payments; and (5) Other factors necessary to reflect variations in costs of treatment. Total payments made under the system to rehabilitation facilities during fiscal years 2001 and 2002 are required to be equal to 98 percent of estimated payments that would have been made under the current TEFRA payment system. Outlier payments in a fiscal year may not exceed 5 percent of the total projected payments for the fiscal year.

The BBA gives us considerable discretion in designing the prospective payment system. Payment rates are required to be based on payment units which may be defined as a discharge, a day of inpatient services, or another unit of payment defined by the Secretary. The case mix classification groups may be based on such factors as the Secretary deems appropriate such as impairment, age, related prior hospitalization, co-morbidities, and functional capability of the patient.

The BBA mandates implementation of the prospective payment system on October 1, 2000. We thus plan on publishing a Notice of Proposed Rulemaking (NPRM) in February 2000. We are currently funding research on various aspects of the prospective payment system that will be thoroughly discussed in the NPRM.

Summary of Legal Basis:

Section 4421 of the BBA mandates the phase-in of a case mix prospective payment system for inpatient rehabilitation facilities (freestanding and units) for cost reporting periods beginning on or after October 1, 2000, with full implementation by October 1, 2002.

Alternatives:

None.

Anticipated Cost and Benefits:

Based on the results of implementation of other Medicare prospective payment systems, HCFA believes that the implementation of a prospective payment system, as the method to pay for the services furnished to Medicare beneficiaries who are inpatients in rehabilitation facilities, will yield significant savings to the Medicare program. However, we have not completed our analysis so we can't be more specific about the expected costs and benefits.

Risks:

Altering the method that we pay rehabilitation facilities for the services they furnish to Medicare inpatients has the potential to affect a beneficiary's access to care and the quality of care furnished to a beneficiary. Therefore, we will be implementing methods to monitor the effect of the prospective payment system on these two associated patient care concerns.

Timetable:

Action	Date	FR Cite
NPRM	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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RIN: 0938–AJ55

HHS—HCFA

38. ● DME SURETY BONDS (HCFA-6006-P)

Priority:

Economically Significant

Unfunded Mandates:

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

Legal Authority:

PL 105-33, sec 4312(a)

CFR Citation:

42 CFR 424.57

Legal Deadline:

NPRM, Statutory, January 1, 1998.

Abstract:

This proposed rule would implement the provision of the Balanced Budget Act of 1997 that requires a Medicare supplier of durable medical equipment (DME) to furnish HCFA with a surety bond.

Statement of Need:

Section 4312(a) of the BBA '97 requires all suppliers of DME to obtain a surety bond for a minimum of $50,000. Drawing on our experience with the surety bond requirement for home health agencies, we have made extensive changes to an initial proposal published in the Federal Register in January 1998. Because of these changes, we decided to reissue this requirement as another notice of proposed rulemaking in order to give the public opportunity to comment.

Summary of Legal Basis:

Section 4312(1) of the BBA '97 amended section 1834(a) of the Social Security Act by adding a new paragraph (16). This new paragraph requires a DME supplier to provide the Secretary, on a continuing basis, with a surety bond of at least $50,000, as a condition of being issued or renewing a provider number. Section 1834(a)(16), as amended by section 4312(c) of the BBA '97, further provides that the Secretary may, at the Secretary's discretion, impose a surety bond on some or all providers or suppliers who furnish items or services under Medicare Part B other than physicians or other practitioners.

We are adding to the current supplier standards set forth at 42 CFR 424.57 a stipulation that for every tax identification number for which a supplier billing number is issued, a DME supplier must obtain a surety bond. The surety bond must be in a form specified by the Secretary and in an amount of $50,000.

Alternatives:

If this rule is not published, we would not implement a provision of the BBA '97 related to surety bonds.

Anticipated Cost and Benefits:

Estimates of the economic impact (if any) that will stem from these rules have not yet been determined.

Risks:

This rule will potentially improve HCFA's ability to protect the Medicare Part B Trust Fund from losses resulting from unrecovered Medicare debts by durable medical equipment (DME) suppliers. Failure to publish this rule would deprive HCFA of a valuable tool in screening applications from potential DME suppliers.

Timetable:

Action	Date	FR Cite
NPRM	03/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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RIN: 0938–AJ64

HHS—HCFA

39. ● HHA SURETY BOND (HCFA-6001-P)

Priority:

Economically Significant

Unfunded Mandates:

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

Legal Authority:

PL 105-33, sec 431ff; PL 105-33, sec 4724ff; PL 105-33, sec 1861(o)(8); PL 105-33, sec 1861(v)(1); PL 105-33, sec 1866(b)(2); PL 105-33, sec 1891(b); PL 105-33, sec 1902(a)(10)(D); PL 105-33, sec 1903(I); PL 105-33, sec 1905(a)(7)

CFR Citation:

42 CFR parts 413, 440, 441, 489

Legal Deadline:

NPRM, Statutory, June 15, 2000.

Abstract:

This proposed rule would amend our regulations to require an HHA surety bond of $50,000. We would remove the 15 percent provision based on concerns expressed by the Congress, the home health industry, surety association representatives, and comments published in a report by the General Accounting Office. This rule would require that HHAs obtain a surety bond by October 1, 2000. Although the bond must be effective January 1, 1998, we are proposing not to hold sureties liable for excessive interim payments attributable to the implementation of the interim payment systems made between October 1, 1997 and September 30, 2000. Other suggestions recommended by GAO were to require a single $50,000 bond for both the Medicare and Medicaid programs and provide an exemption of those HHAs that demonstrate fiscal responsibility. However, these recommendations require Congressional action. The final recommendation was to eliminate the HHA's option for substituting a Treasury note, U.S. bond, or other Federal public debt obligation for a surety bond. We generally agree with these recommendations except for the elimination of substituting a Treasury note, etc., for a surety bond.

Statement of Need:

Home Health Care (skilled nursing, therapy, and related services provided to homebound beneficiaries) has been one of Medicare's fastest growing benefits in recent years. Between 1990 and 1997, spending increased from $3.7 billion to $17.8 billion, an average annual income increase of 26 percent.

This growth occurred because more beneficiaries used the services and more users received more home health care visits. Concurrent with the rise in spending was an increase in the number of home health agencies (HHA), which almost doubled from 1989 to 1997. Changes in practice patterns and the need for home health care have contributed to the greater use of this benefit, but inappropriate use and billing practices have added to Medicare's HHA spending as well. Concern about growth in spending, fraud and abuse, and inadequate oversight led the Congress and the Administration to implement a number of initiatives to better control Medicare's home health care costs. By implementing the BBA provisions, the Congress strengthened HCFA's ability to keep potentially problematic providers out of the Medicare program by codifying a $50,000 surety bond requirement and establishing other participation requirements. HCFA's use of a financial guarantee bond for the return of overpayments regardless of their source will ensure more scrutiny and benefits to the Medicare and Medicaid programs.

Summary of Legal Basis:

The BBA '97 requires each home health agency to secure a surety bond in order to participate in the Medicare and Medicaid programs. This requirement applies to all participating Medicare and Medicaid HHAs, regardless of the date participation began.

Alternatives:

If this rule is not published, we would not implement a provision of the Balanced Budget Act of 1997 related to fraud and abuse initiatives.

Anticipated Cost and Benefits:

The savings to Medicare and Medicaid that could result from this rule would be from any uncollected overpayments that could be collected from the surety companies responsible for the bond. The other benefit of the surety bond requirement is that it provides a deterrent to fraud and abuse. It is unclear how many HHAs would be affected but the impact is expected to be small. We believe that it is impossible to estimate the savings due to this regulation.

Risks:

Failure to publish this rule could jeopardize the trust funds for failure to collect overpayments under the Medicare and Medicaid programs.

Timetable:

Action	Date	FR Cite
NPRM	01/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Organizations

Government Levels Affected:

None

Additional Information:

RIN 0938-AJ08 in the October 1998 Unified Agenda provides information about rulemaking actions taken and withdrawn in 1998 concerning surety bond requirements for home health agencies.

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HHS—HCFA

FINAL RULE STAGE

40. NATIONAL STANDARD HEALTH CARE PROVIDER IDENTIFIER (HCFA-0045-F)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1320d-2

CFR Citation:

45 CFR 142

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This rule addresses the health care industry's need for a standardized provider identifier. It implements one of the requirements for administrative simplification in section 262 of the Health Insurance Portability and Accountability Act of 1996. A standard provider identifier will save the health insurance industry significant costs incurred in maintaining multiple identifier systems.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996(HIPAA) (P.L. 104-191) creates a new part C, entitled ''Administrative Simplification,'' to title XI of the Social Security Act. One of the standards for health identifiers that is mandated by part C is a standard unique health care provider identifier, to be used in the health care system. This final regulation announces the adoption of the National Provider Identifier (NPI) as the standard unique health care provider identifier. It also provides information on how health care providers will be assigned NPIs and defines the requirements of health plans, health care providers, and health care clearinghouses with respect to obtaining and using this standard. Implementation of the NPI and the other Administrative Simplification standards will increase the efficiency of the processing of standard transactions within the health care system.

Summary of Legal Basis:

Currently, health plans assign identification numbers to their member health care providers. Different health plans assign different numbers to the same health care providers. The identifiers are frequently not standard within a health plan or across health plans. This results in health care providers having different identification numbers for different health programs, often having multiple billing numbers issued within a single health program. This complicates the health care providers' claims submissions and other transactions and increases the costs incurred by health care providers in conducting those transactions.

The Administrative Simplification provisions of HIPAA were designed to improve the efficiency and effectiveness of the health care system by encouraging the development of a health information system through the establishment of the standard unique health care provider identifier and other standards and requirements to facilitate the electronic transmission of certain health information.

Alternatives:

This final regulation announces the NPI as the standard unique health care provider identifier. The NPI is a 10-position all numeric identifier, with a check-digit in the tenth position. There is no intelligence in the number. This

design and our assignment strategy will allow more than 200 million NPIs to be issued. The NPI meets the principles established by the Department of Health and Human Services (HHS) for designation as a national standard. This final regulation defines ''health care provider'' in terms of the entities that will receive NPIs.

Health care providers will be enumerated by a Federally-directed registry (the enumeration contractor). The enumeration contractor will use the National Provider System (NPS) to uniquely identify a health care provider and issue it an NPI. The NPS will be developed by HCFA. Health care providers must supply updates to their NPS data to the enumeration contractor within 30 days of the effective dates of the changes.

The NPS will establish the National Provider File (NPF), which will contain information collected from health care providers in order to assign them NPIs. The NPS will assign a single, unique NPI to a health care provider. Upon the dissolution of an organization health care provider or the death of a individual health care provider, the NPS will deactivate the NPI that had been issued to that health care provider and will not assign a deactivated NPI to any other health care provider. The NPS will disseminate information from the NPF to users in accordance with the Privacy Act and the NPS System of Records.

Anticipated Cost and Benefits:

Our analysis of the costs and savings of the HIPAA Administrative Simplification standards is an aggregate impact of all the standards. Assessing the impact of each standard independently would inflate the costs and would yield inaccurate results. While each individual standard is beneficial, the standards as a whole have a synergistic effect on savings. A difficulty in this analysis was the fact that we have no historical experience in assessing the costs and benefits of such a sweeping change. The costs of implementing the standards specified in HIPAA are primarily one-time or short-term costs related to conversion. These costs will be incurred during the first 3 years of implementation. Benefits will accrue almost immediately, but will not exceed costs for health care providers until after the third year of implementation. After the third year, the benefits will continue to accrue into the fourth year and beyond. The impact analysis for the costs and benefits associated with all the Administrative Simplification standards indicates that the combined net savings for health plans and health care providers would amount to $1.5 billion dollars after 5 years.

Risks:

This rule will formally establish the standard for the unique health care provider identifier and will communicate the requirements for health plans, health care providers, and health care clearinghouses in implementing this standard.

Failure to publish this rule would jeopardize the benefits of administrative simplification. Payers would continue to maintain their own system of enumerating providers, and providers would need to maintain systems to store the different identifiers. Additional costs would thus be incurred.

Timetable:

Action	Date	FR Cite
NPRM	05/07/98	63 FR 25320
NPRM Comment Period End	07/06/98	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

HCFA-0045-

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HHS—HCFA

41. MEDICARE PROGRAM; MEDICARE+CHOICE PROGRAM (HCFA-1030-2-F)

Priority:

Other Significant

Legal Authority:

PL 105-33, section 400; 42 USC 1395w-21 to 1395w-27

CFR Citation:

42 CFR 422

Legal Deadline:

None

Abstract:

This final rule responds to comments on the June 26, 1998 interim final rule that implemented the Medicare+Choice (M+C) program and makes revisions to those regulations where warranted.

Statement of Need:

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Public Law 105-33), enacted August 5, 1997, added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the ''Medicare+Choice (M+C) Program.'' Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, may elect to receive benefits through either the existing Medicare fee-for-service program or Part C M+C plan, if one is available where he or she lives. The M+C statute authorizes a variety of private health plan options for beneficiaries, including both the traditional managed care (such as those offered by health maintenance organizations (HMOs)) that traditionally have been offered under section 1876 of the Act, and new options that were not previously authorized. Among the alternatives authorized by the BBA are M+C coordinated care plans (including plans offered by health maintenance organizations, preferred provider organizations, and provider-sponsored organizations), M+C ''MSA'' plans, that is, a combination of a high deductible M+C health insurance plan and a contribution to an M+C medical savings account (MSA), and M+C private fee-for-service plans.

The M+C program also introduced several other fundamental changes to the managed care component of the Medicare program. These changes include:

Establishment of an expanded array of quality assurance standards and other consumer protection requirements;

Introduction of an annual coordinated enrollment period, in conjunction with the distribution by HCFA of uniform, comprehensive information about M+C plans that is needed to promote informed choices of beneficiaries;

Revisions in the way we calculate payment rates to M+C organizations

that will narrow the range of payment variation across the country and increase incentives for organizations to offer M+C plans in diverse geographic areas; and

Establishment of requirements concerning provider participation procedures.

As directed by the BBA, we published an interim final rule on June 26, 1998 to implement the M+C program. On February 17, 1999, we published a limited final rule that set forth selected changes to the interim final regulations.

This more comprehensive final rule is necessary to respond to all comments on the interim final rule and implement other necessary changes. Issues discussed in this rule include eligibility, election, and enrollment policies; marketing requirements; access requirements; service area and benefit policy; quality improvement standards; payment rates, risk adjustment methodology and encounter data submission; provider participation rules; beneficiary appeals and grievances; contractual requirements; and preemption of State law by Federal law.

This final rule also addresses comments on the M+C user fee interim final rule published on December 2, 1997 and on the provider-sponsored organization (PSO) interim final rule published April 1, 1998.

Summary of Legal Basis:

Sections 1851 through 1859 of the Social Security Act and the implementing regulations at 42 CFR 422 set forth a series of requirements for organizations that participate in the M+C program. The specific areas addressed by the different sections of the statute are as follows:

Section 1851—Eligibility, election and enrollment

Section 1852—Benefits and beneficiary protections

Section 1853—Payment to M+C organizations

Section 1854—Premiums

Section 1855—Organizational and financial requirements for M+C organizations

Section 1856—Establishment of standards

Section 1857—Contracts with M+C organizations

Section 1859—Definitions and miscellaneous provisions

Part 422 establishes regulatory requirements based on these statutory provisions.

Alternatives:

Section 1856(b)(1) of the Act provided that in order to carry out the requirement to establish M+C standards by regulation, the Secretary was authorized to promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment. Inherent to this provision is the Department's commitment to subsequent publication of a final rule that responds to those public comments. Thus, we believe we have no alternative other than to publish a comprehensive final rule concerning the M+C program standards.

Anticipated Cost and Benefits:

We do not anticipate that this final rule will implement any changes in the M+C program that will have a significant economic impact on M+C organizations or the general public. Where possible without negative effects on the care provided to M+C enrollees, we intend to make minor changes in the M+C regulations that would reduce the administrative burden on M+C organizations.

Risks:

Given that the payment rates for M+C organizations are set by the statute, and that we do not intend to impose any burdensome new requirements on M+C organizations, we do not believe that this final rule poses any risks of financial harm to M+C organizations of causing pull-outs from the M+C program that could negatively affect Medicare beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	06/26/98	63 FR 34968
NPRM Comment Period End	09/24/98	
Limited Final Rule	02/17/99	64 FR 7968
Final Rule	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—HCFA

42. MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES (HCFA-1005-F)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

PL 105-33, sec 4521; PL 105-33, sec 4522; PL 105-33, sec 4523; PL 99-509, sec 9343(c)

CFR Citation:

42 CFR 409.10; 42 CFR 410.2; 42 CFR 410.27; 42 CFR 410.28; 42 CFR 410.30; 42 CFR 411.15; 42 CFR 412.50; 42 CFR 413.118; 42 CFR 413.122; 42 CFR 413.124; 42 CFR 413.130; 42 CFR 413; 42 CFR 489.20; 42 CFR 1003.101 to 102; 42 CFR 1003.105

Legal Deadline:

Final, Statutory, November 1, 1998.

Abstract:

The Balanced Budget Act of 1997 (BBA) (Public Law 105-33), enacted on August 5, 1997, provides for implementation of a Prospective Payment System (PPS) for hospital outpatient services (and for part B services furnished to inpatients who have no Part A coverage) furnished on or after January 1, 1999.

In the proposed rule published on September 8, 1998, HCFA indicated that, although the statutory effective date for the outpatient prospective payment system is January 1, 1999, implementation of the system would be delayed because of year 2000 systems concerns. Demands on intermediary bill-processing systems and HCFA internal systems to become compliant for the year 2000 precluded making the major systems changes that are required to implement the prospective payment system.

This system will also apply to partial hospitalization services furnished by community mental health centers. The BBA also requires a new method for calculating beneficiary copayments for the hospital outpatient services included under the PPS. The PPS will consist of about 340 groups of services, called ''Ambulatory Payment Classifications'' or APCs, that are related clinically and in terms of their resource use. We will assign a group weight to each group, based on the median cost (operating and capital) of the services included in the group. We will convert the weights for each group to payment rates using a national conversion factor, taking into account group weights and the projected volume of services for each group. In addition, this rule would establish in regulations the requirements for designating certain entities as provider-based or as a department of a hospital.

Statement of Need:

As the Medicare statute was originally enacted, Medicare payment for hospital services (inpatient and outpatient) was based on hospital-specific reasonable costs attributable to serving Medicare beneficiaries. The law was later amended to limit payment to the lesser of a hospital's reasonable costs or to its customary charges. In 1983, section 601 of the Social Security Amendments of 1983 (Public Law 98-21) completely revised the cost-based payment system for most hospital inpatient services by enacting section 1886(d) of the Social Security Act (the Act). This section provided for a PPS for acute inpatient hospital stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although payment for most inpatient services became subject to PPS, hospital outpatient services continue to be paid based on hospital-specific costs which provided little incentive for hospital efficiency for outpatient services. At the same time, advances in medical technology and changes in practice patterns were bringing about a shift in the site of medical care from the inpatient to the outpatient setting. During the 1980's, the Congress took steps to control the escalating costs of providing outpatient care. The Congress amended the statute to implement across-the-board reductions of 5.8 percent and 10 percent to the amounts otherwise payable for hospital operating costs and capital costs, respectively, and legislated a number of different payment methods for specific types of hospital outpatient services. These methods included fee schedules for clinical diagnostic laboratory tests, orthotics, prosthetics, and durable medical equipment (DME); composite rate payment for dialysis for persons with end-stage renal disease; and payments based on blends of hospital costs in the rates paid in other ambulatory settings, such as separately certified ambulatory surgical centers (ASCs) or physician offices for certain surgery, radiology, and other diagnostic procedures. Nevertheless, Medicare payment for services performed in the hospital outpatient setting remains largely cost-based.

Summary of Legal Basis:

In section 9343 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986) (Public Law 99-509) and in section 4151(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), the Congress required the Secretary to develop a proposal to replace the current hospital outpatient payment system with a PPS and to submit a report to Congress on the system. In section 9343 of OBRA 1986, the Congress paved the way for development of a PPS by requiring hospitals to report claims for services under the HCFA Common Procedure Coding System (HCPCS), and by extending the prohibition against unbundling of hospital services under section 1862(a)(14) of the Social Security Act (the Act) to include outpatient services as well as inpatient services. HCPCS coding enabled us to determine what specific procedures and services were being billed, while the extension of the prohibition against unbundling ensured that all non-practitioner services provided to hospital outpatients would be billed only by the hospital not by an outside supplier, and therefore, would be reported on hospital bills and captured in the hospital outpatient data used in developing an outpatient PPS.

The Secretary submitted a report to Congress on March 17, 1995. The report summarized the research HCFA conducted in searching for a way to classify outpatient services for purposes of developing an outpatient PPS. The report cited Ambulatory Patient Groups (APGs), developed by 3M-Health Information Systems under a cooperative grant with HCFA, as the most promising classification system for grouping outpatient services and recommended that the APG-like groups be used in designing a hospital outpatient PPS.

The report also presented a number of options that could be used, once the PPS was in place, for addressing the issue of rapidly growing beneficiary copayment. As a separate issue we recommended that the Congress amend the provisions of the law pertaining to the blended payment methods for ASC surgery, radiology, and other diagnostic services to correct an anomaly that resulted in a less than full recognition of the amount paid by the beneficiary in calculating program payment (referred to as the formula-driven overpayment).

The Balanced Budget Act of 1997 (BBA) (Public Law 105-33), enacted on August 5, 1997, contains a number of provisions that affect Medicare payment for hospital outpatient services. The purpose of this rule is to implement sections 4521, 4522, and 4523 of the BBA. Section 4521 of the BBA eliminates the formula-driven overpayment, effective for services furnished on or after October 1, 1997. Section 4522 extends the current cost reduction of 5.8% and 10% (applicable to hospital outpatient operating cost and hospital capital costs, respectively) through December 31, 1999. Section 4523 provides for implementation of a PPS for hospital outpatient services (and for part B services furnished to inpatients who have no part A coverage) furnished on or after January 1, 1999. This system will also apply to partial hospitalization services furnished by community mental health centers. Section 4523 also requires a new method for calculating beneficiary copayments for the hospital outpatient services included under the PPS.

This rule would also implement section 9343(c) of the Omnibus Reconciliation Act of 1986, which prohibits Medicare payment for non-physician services furnished to a hospital outpatient by a provider or supplier other than a hospital, unless the services are furnished under an arrangement with a hospital. This section also authorizes HHS's Office of Inspector General to impose a civil money penalty against any individual or entity who knowingly or willfully presents a bill for non-physician or other bundled services not provided directly or under such an arrangement.

The Secretary has the authority under the BBA to determine which services are included (with the exception of ambulance services and physical, occupational, and speech therapies, for which fee schedules are being separately created). We will continue to pay for laboratory services and for orthotics and prosthetics on their prospective fee schedules, and for

chronic dialysis using the composite rate.

Alternatives:

If this final rule were not published, we would not implement the Balanced Budget Act of 1997 provision mandating a prospective payment system for hospital outpatient services. In addition, there would be no relief for beneficiaries from the large coinsurance burdens that they have been bearing for outpatient services.

Anticipated Cost and Benefits:

The primary benefit of this rule is the elimination of a cost-based system, which provides little incentive for hospital efficiency for outpatient services. In addition, the regulation will provide considerable relief over time to beneficiaries from high coinsurance payments under the current system. Finally, the rules governing provider-based status will alleviate an important area of program abuse.

Timetable:

Action	Date	FR Cite
NPRM	09/08/98	63 FR 47551
Correction Notice	06/30/99	64 FR 35258
NPRM Comment Period End	07/30/99	
Final Action	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

The April 1999 Unified Agenda erroneously reported this RIN as a completed action.

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RIN: 0938–AI56

HHS—HCFA

43. SECURITY AND ELECTRONIC SIGNATURE STANDARDS (HCFA-0049-F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 104-191; 42 USC 1320d-2

CFR Citation:

45 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This rule implements some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996. It establishes standards for the security of health information and electronic signature use by health plans, health care clearing houses, and health care providers. These entities would use the security standard to develop and maintain the security of all electronic health information pertaining to an individual. The electronic signature standard is applicable only with respect to use with the specific transactions defined in the Health Insurance Portability and Accountability Act of 1996.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996 requires the Secretary of Health and Human Services to adopt security standards that require reasonable and appropriate administrative, technical and physical safeguards to (1) ensure the integrity and confidentiality of health information, (2) protect against any reasonably anticipated threats or hazards to the security or integrity of the information and protect against unauthorized uses or disclosures of the information.. Further, the Secretary, in coordination with the Secretary of Commerce, is to adopt standards specifying procedures for the electronic transmission and authentication of signatures with respect to certain transactions specified in HIPAA. This rule stipulates the requirements necessary to comply with the law.

Summary of Legal Basis:

The Administrative Simplification provisions of HIPAA require the Secretary to establish standards for the security of health information and electronic signature use by health plans, health care clearing houses, and health care providers.

Alternatives:

In the absence of federal regulations, the security of health care information in electronic form would be left to the private sector to develop. It is believed that this course of action would result in an extremely uneven level of protection (ranging from none to excessive) for electronic health information pertaining to individuals and make it difficult, if not impossible, to provide for privacy of this information.

Anticipated Cost and Benefits:

As the effect of any one of the HIPAA standards is affected by the implementation of other standards, it is misleading to discuss the impact of one standard by itself. Therefore, an Impact Analysis on the total effect of all the standards was published in the proposed rule concerning the national provider identifier (HCFA-0045-P) which was published on May 7, 1998 (63 FR 25320). Security protection for health care information is not a ''stand alone'' type requirement. Appropriate security protections will be a business enabler, encouraging the growth and use of electronic data interchange. The synergistic effect of the employment of the recommended security practices, procedures and technologies will enhance all aspects of HIPAA's Administrative Simplification requirements.

Risks:

The storage, handling and transmission of health information has long been a paper process. However, the transition from paper to electronic media has begun and is increasing at a rapid pace. This transition has brought on a significantly increased risk to the security and confidentiality of health information, particularly for information pertaining to individuals. This rule formally establishes a baseline set of requirements for security that must be adopted by health care providers, health plans and health care clearinghouses. Compliance with these requirements will greatly decrease risk to the security, integrity and confidentiality of health information pertaining to individuals.

Timetable:

Action	Date	FR Cite
NPRM	08/12/98	63 FR 43242
Final Action	05/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 0938–AI57

HHS—HCFA

44. HEALTH INSURANCE REFORM: STANDARDS FOR ELECTRONIC TRANSACTIONS (HCFA-0149-F)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1320d-2

CFR Citation:

45 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

The rule puts in place code-set standards and standards for eight electronic transactions to be used by health plans, certain health care providers, and health care clearing houses. It would implement requirements for administrative simplification in section 262 of the Health Insurance Portability and Accountability Act of 1996. The standards will significantly reduce costs for processing health care transactions.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996, subtitle F of title II added to title XI of the Social Security Act a new part C, entitled ''Administrative Simplification.'' The purpose of this part is to improve the Medicare program under title XVIII of the Social Security Act and the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information. This regulation implements the requirements for standard transactions and code sets.

Summary of Legal Basis:

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.

As established by Part C of title XI, section 1173 of the Act requires the Secretary to adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Section 1173 of the Act requires the Secretary to establish standards for code sets for each data element for each health care transaction. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement and expansion of code sets. In order to codify this authority, we have proposed implementing regulations at 45 CFR 162.

Alternatives:

Alternatives to naming standards would be to leave the marketplace to determine the standards. Up to now, this has not been successful. There has been a steady increase in use of electronic data interchange in the health care market since 1993, and it is predicted there will be continued growth, even without national standards. However, the upward trend in electronic health care transactions will be enhanced by having national standards in place. Because national standards are not in place today, there continues to be a proliferation of proprietary formats in the health care industry. Proprietary formats are those that are unique to an individual business. Due to proprietary formats, business partners that wish to exchange information electronically must agree on which formats to use. Since most health care providers do business with a number of plans, they must produce electronic transactions in many different formats.

Anticipated Cost and Benefits:

The economic impact that will stem from this rule will result in an estimated net savings to health plans and health care providers of $1.5 billion during the first five years; use of the standards would continue to save the industry money.

Risks:

This regulation will standardize a set of administrative transactions in the health care industry. Not publishing this rule would see the continuing of the myriad of formats of these transactions and eliminate the anticipated $1.5 billion in savings due to simplification efforts.

Timetable:

Action	Date	FR Cite
NPRM	05/07/98	63 FR 25277
NPRM Comment Period End	07/06/98	
Final Action	01/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—HCFA

45. NATIONAL STANDARD EMPLOYER IDENTIFIER (HCFA-0047-F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 104-191; 42 USC 1320d-2

CFR Citation:

45 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This rule institutes the employer identification number (EIN) as the standard for identifying employers for

purposes of administrative simplification, as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Use of one standard in the health care industry will reduce the cost of identifying employers in electronic health care transactions.

Statement of Need:

The Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) includes Subtitle F—Administrative Simplification, whose purpose is to improve the Medicare and Medicaid programs under the Social Security Act, and the efficiency and effectiveness of the health care system, by the establishment of standards and requirements for the electronic transmission of certain health information. This regulation establishes the standard for a unique employer identifier, as required by the Administrative Simplification provisions of P.L. 104-191.

Summary of Legal Basis:

The Administrative Simplification provisions of HIPAA require the Secretary of HHS to adopt a standard unique health identifier for each employer for use in the health care system and to specify the purposes for which a unique health identifier may be used.

Alternatives:

HHS examined several existing identifiers that might be adopted for the standard. In keeping with the requirements of HIPAA, because no standard setting organization had developed, adopted, or modified a standard for an employer identifier, HHS consulted with the National Uniform Billing Committee, the National Uniform Claim Committee, the Workgroup for Electronic Data Interchange and the American Dental Association in selecting this standard. HHS also relied on the recommendations of the National Committee on Vital and Health Statistics.

Anticipated Cost and Benefits:

As the effect of any one standard is affected by the implementation of other standards, it can be misleading to discuss the impact of one standard by itself. Therefore HHS did an impact analysis showing total costs and savings of all the HIPAA standards in the proposed rule concerning the national provider identifier (HCFA-0045-P), which can be found at 63 FR 25320. HHS determined that the requirements concerning the employer identifier would have a one time impact on those providers, clearinghouses, and health plans that have to convert to use the EIN, and on those employers that would have to disclose the EIN to covered entities.

Risks:

Failure to publish this rule would mean that no standard employer identifier would be established for use in the health care system. Lack of a standard employer identifier would decrease the savings in health care costs to be realized from administrative simplification.

Timetable:

Action	Date	FR Cite
NPRM	06/16/98	63 FR 32784
NPRM Comment Period End	08/17/98	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

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HHS—HCFA

46. MEDICAID MANAGED CARE; REGULATORY PROGRAM TO IMPLEMENT CERTAIN MEDICAID PROVISIONS OF THE BALANCED BUDGET ACT OF 1997 (HCFA-2001-P)

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, Local or Tribal Governments.

Legal Authority:

PL 105-33, sec 4701 to 4710

CFR Citation:

42 CFR 438; 42 CFR 430; 42 CFR 431; 42 CFR 434; 42 CFR 435; 42 CFR 438; 42 CFR 440; 42 CFR 447

Legal Deadline:

None

Abstract:

This rulemaking establishes rules for Medicaid managed care programs which involve quality of care and services under Medicaid managed care programs. It implements certain provisions in sections 4701 through 4710 of the Balanced Budget Act of 1997 (BBA) (PL 105-33).

Statement of Need:

The BBA significantly modifies Medicaid managed care programs by providing a new State plan amendment vehicle for States to furnish managed health care to beneficiaries, enhanced enrollee protections, and an emphasis on the quality of health care delivered to Medicaid enrollees.

Summary of Legal Basis:

Section 1903(m) of the Social Security Act and implementing regulations at 42 CFR part 434 contain a number of requirements related to Medicaid managed care contracts. Among other things, the requirements relate to contract provisions involving enrollment and disenrollment in a Medicaid managed care organization (MCO), marketing, choice of health professionals within an MCO, quality assurance systems, grievance procedures, and plan solvency. Statutory amendments made by sections 4701 through 4710 of the BBA modify those requirements.

To control cost while enhancing quality of care, States are increasingly delivering services to their Medicaid populations through Medicaid managed care organizations (MCOs) and other managed care arrangements. These arrangements vary according to the comprehensiveness of the services they provide and the degree to which they accept risk. Fully capitated plans contract on a risk basis to provide beneficiaries with a comprehensive set of covered services in return for a monthly capitation payment. In general, partially capitated plans provide a less than comprehensive set of services on a risk basis; services not included in the contract are reimbursed on a fee-for-service basis. In addition, some States implement a primary care case management (PCCM) system in which a Medicaid beneficiary selects or is

assigned to a single primary care provider that provides or arranges for all covered services and is reimbursed on a fee-for-service basis. Under each of these managed care arrangements, beneficiaries have a regular source of coordinated care and States have predictable, controlled spending per beneficiary.

The BBA creates a new section of the Social Security Act relating to managed care arrangements. The new section 1932 establishes increased enrollee protections, quality assessment and performance improvement strategies for States, and enrollee rights and responsibilities.

Alternatives:

If this rule is not published, we would not implement many of the provisions in the Balanced Budget Act of 1997 related to Medicaid managed care.

Anticipated Cost and Benefits:

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

Risks:

This rule will potentially improve the quality of health care provided to Medicaid managed care enrollees and provide States with new tools to become more effective purchasers of health care services. Failure to publish this rule would jeopardize broad-based improvement in the quality of care our beneficiaries receive and would deprive States of many tools that would improve their managed care programs.

Timetable:

Action	Date	FR Cite
NPRM	09/29/98	63 FR 52021
NPRM Comment Period End	11/30/98	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Organizations, Governmental Jurisdictions

Government Levels Affected:

Federal, Tribal, State, Local

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HHS—HCFA

47. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM (HCFA-1059-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 105-33, sec 4603

CFR Citation:

42 CFR ch IV

Legal Deadline:

NPRM, Statutory, October 1, 2000.

Abstract:

This final rule will establish requirements for the new prospective payment system (PPS) for home health agencies as governed by section 4603 of the Balanced Budget Act of 1997 (BBA) (PL 105-33).

Statement of Need:

The BBA significantly changed the way we pay for Medicare home health services. It requires the establishment of a facility-specific PPS and provides for interim steps until the PPS is established. Under the interim system HHAs will receive payment in accordance with section 4602 of the Balanced Budget Act of 1997. The interim payment system establishes two sets of cost limits for home health agencies. The long-standing home health per visit cost limits are reduced from 112 percent of the mean labor-related and non-labor per visit costs for freestanding agencies to 105 percent of the median. In addition, home health agency costs will be subject to an aggregate per-beneficiary cost limitation. For those providers with a cost report ending in Federal fiscal year 1994, the per-beneficiary cost limitation is based on a blend of costs (75 percent on 98 percent of the agency-specific costs and 25 percent on 98 percent of the standardized regional average of the costs for the agency's census region). For new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, the per-beneficiary limitation will be the national median of the per-beneficiary limits for HHAs. Under the interim system, HHAs will be paid the lesser of 1) actual costs; 2) the per-visit limits; 3) the per-beneficiary limits. The result of the interim system will be to create a strong incentive for HHAs to reduce utilization to at least 1994 levels to fall within the aggregate cost limit. The interim payment system was effective 10/1/97 and will be in effect until prospective payment for home health agencies is implemented.

Section 4603 of the BBA establishes section 1895 of the Social Security Act, which specifies the authority for the development of a prospective payment system for home health services effective 10/1/99, which will ultimately be based on units of payment, most likely episodes of care. In developing the PPS, the Secretary will consider an appropriate unit of service, the number of visits provided within the unit, and their cost. Payment for a unit of home health service will be modified by a case mix adjustor, set by the Secretary, to explain a significant amount of the variation in the cost of different units of service. The HHA would have the potential of profit or loss on each individual patient. Over many patients, the HHA would presumably make or lose money based on its ability to provide needed care effectively and efficiently.

Summary of Legal Basis:

Section 1861(v)(1)(A) of the Social Security Act requires the limits that comprise the interim system. Under this authority, HCFA has maintained limitations on home health agency per-visit costs since 1975. Additional statutory provisions specifically governing limitations applicable to home health agencies are contained at section 1861(v)(1)(L) of the Social Security Act. These limits will be replaced by the establishment of a prospective payment system as defined in section 4603 of the BBA that requires the Secretary to establish and implement the prospective payment system for home health services.

Alternatives:

Section 4603 of the BBA specifies the authority for the development of a prospective payment system for home health services effective 10/1/99. However, there is contingency language for the home health prospective payment system provided in BBA. If the Secretary for any reason does not establish and implement the

prospective payment system for home health services, the Secretary shall provide for a reduction by 15 percent of the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000.

Anticipated Cost and Benefits:

The Congress anticipates that the implementation of a PPS for home health services will achieve the combined benefits of establishing a system which will enable HCFA to find the provision of medically necessary HHA care to beneficiaries consistent with the HHA's own case mix and will also prevent the development of further unsustainable growth in HHA costs. The combined effects of the ''interim'' and final systems are required to achieve this result.

Risks:

The statutory contingency for reducing cost caps under the interim system by 15 percent, if the PPS is not timely implemented, is not the preferred method for achieving the desired savings because the interim system does not adjust fully for case mix, as the PPS is required to do. Therefore, the longer the delay in implementation of the PPS, the greater the potential disparity between the case mix of an individual HHA and its payments.

Timetable:

Action	Date	FR Cite
NPRM	11/03/99	64 FR 58133
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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HHS—HCFA

48. ● THE CHILDREN'S HEALTH INSURANCE PROGRAM: IMPLEMENTING THE BALANCED BUDGET ACT OF 1997 (HCFA-2006-P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1396; PL 105-33

CFR Citation:

42 CFR 457

Legal Deadline:

None

Abstract:

This rulemaking establishes rules for the new Children's Health Insurance Program (CHIP). It implements sections 4901 and 4911 of the Balanced Budget Act (BBA) of 1997.

Statement of Need:

The Balanced Budget Act of 1997 (PL 105-33) creates a new title XXI of the Social Security Act to establish a Children's Health Insurance Program that supplements the Medicaid program and enables States to create a new and unique health delivery system for low-income children. This regulation will codify a series of policy guidance that has been released to the States and other interested parties over the past two years.

Summary of Legal Basis:

As established by section 4901 of the BBA, the new title XXI of the Social Security Act authorizes $41 billion over the next 10 years for States to create separate Children's Health Insurance Programs to provide health care coverage to targeted low-income children.

In order to receive reimbursement through an enhanced matching rate, States have three options in developing programs. They may expand existing Medicaid programs, create unique and separate children's health programs, or establish a combination of the two options. Within certain parameters set by the statute, States have flexibility to determine eligibility levels, develop benefit packages, and impose cost-sharing requirements. The statute also includes provisions for meeting strategic objectives, evaluation and data collection. In order to codify this authority, we have proposed implementing regulations at 42 CFR part 457.

Alternatives:

Federal payments under title XXI are based on State expenditures under approved plans that could be effective on or after October 1, 1997. The short time frame between the enactment of the BBA on August 5, 1997 and the availability of funding for States and territories required the Department to begin reviewing CHIP plans at the same time as it was issuing policy guidance to States on how to operate the CHIP program. The Department worked closely with States to disseminate as much information as possible, as quickly as possible, so States could begin to implement their new programs expeditiously. As a result, 54 States and territories have approved CHIP plans. Therefore, CHIP is now in operation prior to the completion of regulations.

Anticipated Cost and Benefits:

Estimates of the economic impact that will stem from this rule will be made available.

Risks:

This rule will formally establish the Department's policies and requirements related to the implementation of this program. It will provide States with needed information and also give them and other interested parties the opportunity to comment on the feasibility of implementing these policies. Failure to publish this rule would jeopardize our relationships with the States, advocates and providers because it would deprive them of many tools needed for establishing concrete programs.

Timetable:

Action	Date	FR Cite
NPRM	11/08/99	64 FR 60881
Final Rule	06/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Organizations

Government Levels Affected:

State, Local

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BILLING CODE 4150–04–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

The Regulatory Plan of the Department of Housing and Urban Development for Fiscal Year 2000 highlights priority regulations and policy initiatives directed towards the achievement of HUD's traditional goals of increasing the supply of affordable housing, ensuring equal opportunity for housing, promoting jobs and economic development, as well as its more recent goal of restoring the public's trust in HUD. These goals are embodied in HUD's mission and its strategic goals for Fiscal Year 2000.

HUD approaches the new fiscal year with a renewed sense of commitment to its mission and goals, and greater accountability for its performance. HUD 2020 Management Reform was designed in 1997 with the objective of improving the overall administration of HUD's programs to enhance the delivery of HUD's services to local communities. HUD has made significant progress in achieving its reforms through the Department, as evidenced by the following.

In a July 15, 1999 report issued by an independent organization, the National Academy of Public Administration (NAPA), HUD was cited as making major progress in improving its management performance and its planning to achieve the Department's strategic goals. In May 1999, HUD received its first clean audit in HUD history. HUD's Fiscal Year 1999 budget was the Department's best budget in a decade. In HUD's FY 1999 appropriations act, HUD received new Section 8 rental assistance vouchers for 90,000 low- and moderate-income families, and the appropriations also included landmark reforms for public and assisted housing. The increased budget for FY 1999, the clean audit, and the recognition of HUD's progress in management reform reflect a HUD that has been revitalized, has demonstrated significant progress in becoming a performance-oriented organization, and is restoring a reputation for credibility and competence. The improvements within HUD translate into improvements for HUD's constituents, such as better delivery of services and stronger partnerships with HUD's public and private partners.

The improvements within HUD also translate into improved regulations and policy initiatives. Consistent with President Clinton's Executive order on Regulatory Planning and Review (E.O. 12866), HUD's approach to regulations is to refrain, as permitted by law, from top-down directives, and over-regulation. HUD's general approach is to establish the necessary legal parameters and guidance, include the appropriate oversight, and provide as much flexibility as possible for program implementation at the local level given local concerns and needs. However, where strong action is needed to ensure that HUD programs are serving the people they are intended to serve, HUD has taken such action, restoring public trust.

Several priority regulations and policy initiatives implemented in Fiscal Year 1999 highlight these approaches to rulemaking.

HUD's Mark-to-Market Program, implemented by a rule which became effective on October 13, 1998, is already assisting State and local housing agencies to maintain affordable housing stock throughout the nation. The program, which gets its name because rents permitted by HUD in privately owned subsidized housing are marked down to the competitive rent level prevailing in an area's rental housing, is designed to enable HUD and its State and local partners to more effectively use Federal subsidies to preserve the maximum amount of affordable housing under the project-based Section 8 program.

The first comprehensive physical inspections of public housing, which got underway in Fiscal Year 1999, following implementation of the final rule on HUD's new Public Housing Assessment System (PHAS), rated 87 percent of the inspected housing good or excellent. The implementation of the PHAS marks the first time in HUD's history that all public housing properties will be physically inspected, as well as financially assessed using comprehensive and consistent assessment protocols. A Request for Proposals (RFP) issued by HUD on May 3, 1999, challenged public housing agencies (PHAs) to improve administration of the project-based Section 8 program by forming partnerships with private firms and nonprofit organizations experienced in property management and accounting. The RFP solicited proposals from PHAs to administer more than 20,000 project-based Section 8 contracts currently administered by HUD. The intended partnerships promoted by the RFP are expected to effectively enforce owner obligations to provide decent housing to residents by adding private sector expertise to a PHA's administration of the contract.

HUD's Homebuyer Protection Initiative, announced in June 1999, is designed to protect consumers from buying HUD-insured homes with undetected defects. The initiative includes a consumer education campaign about appraisals and inspections conducted by HUD, calls for mandatory testing of all appraisers to determine qualifications to perform appraisals for HUD, requires more thorough and reliable appraisals for HUD-insured homes including mandatory disclosure of detected home defects, automated evaluation of appraisals, and stricter enforcement actions to suspend poorly performing appraisers.

HUD's Consumer Protection Measures for elderly homeowners participating in HUD's Home Equity Conversion Mortgage (HECM) Insurance Program, was implemented by final rule issued on January 19, 1999. The rule is directed to protecting elderly homeowners from becoming liable for payment of excessive fees for third party provided services that are of little or no value to the homeowner. The rulemaking was prompted by concerns that some estate planning entities were charging what HUD considered exorbitant fees to elderly homeowners in transactions related to HECMs.

HUD's new policy statement on RESPA — the Real Estate Settlement Procedures Act — is designed to save Americans millions of dollars a year by protecting them from excessive mortgage broker fees and by encouraging improved disclosure of mortgage broker fees and services. The statement, issued March 1, 1999, clarifies HUD's long-standing position dealing with fees paid to mortgage brokers, which is that the compensation a broker receives from a lender and from a borrower must be reasonable for the actual work performed. The fee disclosure called for in the policy statement is designed to make it easier for millions of homebuyers and families refinancing their mortgages to comparison shop for a home loan and save money on the fees they pay mortgage brokers to find and originate home loans.

HUD's Native American Housing Initiative, implemented in March 1999, will enable tribal governments to create non-profit groups that can apply for a share of more than $1 billion in annual assistance under several major HUD programs. Because only local governments and non-profit groups are

eligible for funding under these programs, tribal governments have been unable to benefit from the programs, even though Indian reservations have high poverty and unemployment rates, as well as great housing needs. Under the initiative, the non-profit groups created by tribal governments will be eligible to apply for several funding sources to assist tribal governments in meeting their housing and community needs.

HUD's Officer Next Door Program (issued by interim rule on July 2, 1999) is designed to help revitalize economically distressed areas, make communities safer and promote strong police-community ties. The program offers law enforcement officers a 50 percent discount on homes that were previously insured through the Federal Housing Administration and were then foreclosed when owners failed to make mortgage payments. The savings under the program provided to officers presents a significant incentive to move into neighborhoods in need of revitalization. The program builds on the success of community policing by turning the neighborhood officer into the good neighbor next door.

In addition to these priority regulatory initiatives, Fiscal Year 1999 saw considerable headway made by HUD in implementing the program reforms called for by the Quality Housing and Work Responsibility Act of 1998, enacted on October 21, 1998 (commonly referred to as the ''Public Housing Reform Act''). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing programs and also institutes important reforms in HUD's Section 8 assistance programs. The statute enacts into law many of the reforms proposed by Secretary Cuomo in his HUD 2020 Management Reform Plan for HUD's public housing and Section 8 programs. The Public Housing Reform Act is designed to transform public housing into a setting that encourages and rewards work, brings more working families into public housing, increases the availability of subsidized housing for very poor families, deconcentrates poverty, removes barriers that isolate low income residents, provides for the demolition of the largest failed public housing projects, and replaces these projects with new townhouse style developments through the HOPE VI program.

The Public Housing Reform Act requires that many of its mandated reforms be implemented by rulemaking, including three negotiated rulemaking proceedings. Issuance of regulations to implement these reforms began early in Fiscal Year 1999, and HUD is well underway to completing the rulemakings required by the statute.

On February 18, 1999, HUD issued its interim rule on the Public Housing Agency (PHA) Plans. The two PHA plans — the 5-year Plan and the Annual Plan — allow the PHA to describe its mission and long range goals and objectives and provide details about the PHA's immediate operations, programs and services, and the PHA's strategy for handling operational concerns and resident concerns and needs.

On May 14, 1999, HUD issued its interim rule to provide for the complete merger of the Section 8 tenant-based certificate and voucher programs into a new Housing Choice Voucher Program. This single market-driven program will assist in making Section 8 tenant-based rental assistance more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families.

Proposed rules already issued by HUD under the Public Housing Reform Act include rules pertaining to: Changes in admission and occupancy requirements for public and assisted housing; one-strike screening and eviction for drug abuse and other criminal activity in public and assisted housing; changes to the PHAS; Public Housing Drug Elimination Program formula allocation; required resident membership on the board of directors of a PHA or similar governing body; pet ownership in public housing; required conversion of developments from public housing stock; voluntary conversion of developments from public housing stock; Section 8 homeownership; public housing homeownership; and public housing agency consortia and joint ventures. HUD's objective is to complete the rulemakings on these subjects as close as possible to the beginning of the new fiscal year. HUD recognizes the importance of these changes, long sought by HUD and by its program partners, being implemented as quickly as possible.

For Fiscal Year 2000, HUD's regulatory plan reflects a continuation of the priority regulations and policy initiatives implemented in Fiscal Year 1999. Where rulemaking is required, it is HUD's intent that regulations be used to strengthen protections of those most vulnerable and in need of protection (the elderly, persons with disabilities and other protected classes), to empower communities by increasing their responsibility to design and implement strategies to address housing and community needs, and to increase the supply of affordable housing.

HUD's Regulatory Plan for Fiscal Year 2000 focuses on HUD's mission and strategic goals.

The Departmental Mission: Promote adequate and affordable housing, economic opportunity, and a suitable living environment free from discrimination.

To accomplish this mission, the Secretary has directed HUD to focus on the following strategic goals that are designed to reflect the core business of HUD:

1. Increase the availability of decent, safe, and affordable housing in American communities;
2. Ensure equal opportunity in housing for all Americans;
3. Promote self-sufficiency and asset development of families and individuals;
4. Improve community quality of life and economic vitality;
5. Restore public trust.

HUD's regulatory priorities for Fiscal Year 2000 include all of the rulemakings required by the Public Housing Reform Act. In addition to these priorities, HUD highlights certain of the Public Housing Reform Act rules and other priority rules in its Plan description that follows. The regulatory priorities set forth in HUD's Regulatory Plan for Fiscal Year 2000, and all the regulations set forth in HUD's Semiannual Regulatory Agenda, are designed to implement HUD's mission and address the strategic goals.

Regulatory Priorities

Regulatory Action: Capital Fund Allocation, Operating Fund Allocation, and Section 8 Housing Certificate Fund Allocation

These three rules, being developed through three separate negotiated rulemaking processes, will provide formula allocation for public housing agencies' capital needs, their operating needs, and their Section 8 tenant-based contract renewal needs. These three rules address the basic funding needs of public housing agencies. By developing these three significant funding rules through the negotiated rulemaking process, public housing agencies, public housing residents, and other affected and interested parties have a say in how to meet their future local needs, and how the funding should be allocated among the public housing agencies, given their needs.

[Furthers Strategic Goals 1 and 4]

Regulatory Action: Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties

This rule will establish for certain multifamily housing an administrative process by which (1) HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing; (2) owners of multifamily housing will be provided an opportunity to seek technical review of HUD's physical condition assessment of their housing; and (3) HUD will notify owners of action to be taken where the housing is found not to be in compliance with HUD's uniform physical condition standards.

[Furthers Strategic Goals 1 and 5]

Regulatory Action: Resident Opportunities and Supportive Services Program

This rule would provide for more active involvement by public housing residents in their community and geographical area by linking public housing residents to supportive services and resident empowerment activities, and establishing methods for assisting residents in becoming economically self-sufficient. This rule is important in reducing the isolation of low-income residents by promoting their involvement in key areas that affect their lives — their housing and their communities. The rule is also important in promoting economic empowerment of public housing residents.

[Furthers Strategic Goals 3 and 4]

Regulatory Action: HOPE VI Program

This rule will establish the legal parameters and guidance that will govern funding and eligible activities of HUD's HOPE VI Program, but under President Clinton's and HUD's regulatory principles allow HOPE VI grantees to develop, within those parameters, their own strategies to address public housing that is in severe distress. Consistent with new statutory requirements, the rule includes as an eligible activity appropriate homeownership downpayment assistance for displaced residents or other appropriate replacement homeownership activities.

[Furthers Strategic Goals 1, 3 and 4]

Regulatory Action: The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (Government Sponsored Entities)

Through this rule, HUD will issue new housing goal levels for the purchase of mortgages by Fannie Mae and Freddie Mac (collectively, the Government Sponsored Entities, or GSEs) for calendar years 2000 through 2003. The new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs for very low-, low- and moderate-income families and residents of underserved areas and, therefore, to more fully realize their public purposes.

[Furthers Strategic Goals 2 and 3]

HUD—Office of the Secretary (HUDSEC)

PROPOSED RULE STAGE

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49. ● SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC: PURCHASE GOALS (FR-4494)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 1451 et seq; 12 USC 1716-1723h; 12 USC 4501-4641; 28 USC 2641; 42 USC 3535(d); 42 USC 3601-3619

CFR Citation:

24 CFR 81

Legal Deadline:

None

Abstract:

Through this rule, the Department is issuing new housing goal levels for the purchase of mortgages by Fannie Mae and the Freddie Mac (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2000 through 2003. In accordance with the Federal Housing Enterprise Financial Safety and Soundness Act of 1992, this rule establishes new goal levels for purchasing of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule also clarifies HUD's guidelines for counting different types of mortgage purchases toward those goals, and provides greater public access to certain types of mortgage data in HUD's public use database.

Statement of Need:

Current regulations, published in 1995, establish the GSEs' housing goals for 1995-99. While the goals would remain effective beyond 1999 at 1999 levels, to avoid any lapse in coverage, the Secretary is establishing new goals to reflect current conditions. The new goals will provide strong incentives for the two enterprises to more fully address the housing finance needs for very low-, low- and moderate-income families and residents of underserved areas and thus, to realize more fully their public purposes. Such incentives are consistent with the Department's strategic objectives of increasing homeownership opportunities and the supply of affordable rental housing in the United States.

Summary of Legal Basis:

The Department is authorized to establish housing goals for the GSEs by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), which sets several parameters for the housing goals and provides other requirements for many of the issues addressed in this rule.

Alternatives:

The alternative of leaving the housing goals unchanged was considered. It was rejected because it failed to meet HUD's strategic objectives of increasing the supply of affordable rental housing and homeownership and promoting equal housing opportunities for those protected by the law.

Anticipated Cost and Benefits:

This rule will have the benefit of increasing the number of affordable housing units for low- and moderate-income families and underserved communities over the next four years (2000-03). However, there is no indication that focusing the GSEs' attention on the affordable lending market would be costly for the GSEs. In fact, HUD's analysis indicates that meeting the proposed housing goals will have little impact on the GSEs' financial returns or on the safety and soundness of GSE operations. Additionally, increased GSE activity in the affordable lending arena should not lead to significant crowding out of traditional portfolio lenders.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2501–AC60

HUD—Office of Housing (OH)

PROPOSED RULE STAGE

50. ● UNIFORM PHYSICAL CONDITIONS AND PHYSICAL INSPECTION REQUIREMENTS FOR CERTAIN HUD MULTIFAMILY HOUSING; ADMINISTRATIVE PROCESS FOR ASSESSMENT OF INSURED AND ASSISTED PROPERTIES (FR-4452)

Priority:

Other Significant

Legal Authority:

12 USC 1701-1715; 42 USC 3535(d)

CFR Citation:

24 CFR 200

Legal Deadline:

None

Abstract:

This rule will establish for certain multifamily housing administrative processes by which (1) HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing; (2) the owners, under certain circumstances, will be provided an opportunity to seek technical review of HUD's physical condition assessment of the multifamily housing; and (3) HUD may take action where the housing is found not to be in compliance with the physical condition standards. The assessment of multifamily housing to ensure that it is a condition that is decent, safe and sanitary is an important mission of HUD. This rule helps HUD to achieve this mission.

Statement of Need:

HUD is responsible for ensuring that housing subsidized by HUD is in a condition that is decent, safe, sanitary and in good repair. Until implementation of HUD's 2020 Management Reform Plan, HUD never had an effective and comprehensive property assessment system. This system was established in 1998 and HUD's Real Estate Assessment Center is charged with the responsibility for assessing the properties in which HUD has an interest. In 1998, HUD established the Public Housing Assessment System, which provides for the assessment, among other things, of the physical condition of public housing. This rule will establish a process for the assessment of the physical condition for certain multifamily housing.

Summary of Legal Basis:

The Congress has charged HUD with the responsibility to ensure that housing assisted by HUD is in decent safe and sanitary condition (42 U.S.C. 1437, 42 U.S.C. 12702, 12 U.S.C. 1701-z-11).

Alternatives:

In 1998, HUD established uniform physical condition standards and uniform physical inspection requirements. Until that date, physical condition requirements applicable to housing assisted under various HUD programs were similar but not uniform. Additionally, there was no comprehensive oversight and assessment of the properties in HUD's portfolio. Inspection was left to owners and managers with infrequent oversight by HUD, and HUD was without important information on the condition of the housing in its portfolio. By establishing uniform physical condition standards, HUD seeks to bring consistency in physical condition standards for all HUD housing, to standardize the inspection to be undertaken to determine compliance with the standards, and to implement an electronically based inspection system to evaluate, rate and rank the physical condition of HUD housing in an objective manner as possible.

Anticipated Cost and Benefits:

HUD has undertaken the responsibility for initial physical inspection of the properties in its portfolio and determining the condition of these properties. The benefit to owners of the covered multifamily housing is the elimination of subjectivity in the physical condition analysis process. By having uniform physical condition standards and uniform physical inspection requirements, owners are subject to the same standards and the standards do not vary because the inspection by one HUD Office might differ from that conducted by another HUD Office. The benefit to residents is increased confidence that HUD is committed to providing decent, safe and sanitary housing.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

51. OPERATING FUND ALLOCATION FORMULA (FR-4425)

Priority:

Other Significant

Legal Authority:

42 USC 1437g(e); 42 USC 1437g(f); 42 USC 3535(d)

CFR Citation:

24 CFR 990

Legal Deadline:

Final, Statutory, October 1, 1999, Section 519(f) permits the Department to extend the effective date for up to 6 months.

Abstract:

This rule will implement a new formula system for allocating funds to public housing agencies for their operation and management of public housing. The new formula system is being developed through negotiated rulemaking procedures, as required by section 519 of the Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, approved October 21, 1998, 112 Stat. 2551; hereafter, ''Public Housing Reform Act''). That statute amended section 9 of the United States Housing Act of 1937 to require development of a new formula that would change the current method (the Performance Funding System) of determining the payment of operating subsidies to public housing agencies.

The members of the negotiated rulemaking advisory committee include national housing associations, housing authorities, tenant and community organizations, public interest organizations and HUD. Committee meetings began in March 1999 and are continuing.

Statement of Need:

Section 519 of the Public Housing Reform Act requires HUD to develop this rule to govern funding of PHAs' operating and management needs.

Summary of Legal Basis:

Section 519 of the Public Housing Reform Act amending Section 9 of the U.S. Housing Act of 1937, codified at 42 USC 1437g.

Alternatives:

The Public Housing Reform Act requires that this new formula system be developed through negotiated rulemaking.

Anticipated Cost and Benefits:

The costs of the program as administered with one fund from which a PHA will fund all of its operating and management needs will be the same as under existing provisions. The benefits of having this new formula system developed through negotiated rulemaking is that it allows those entities and individuals directly affected — public housing agencies and their residents — to have a say in how the formula will operate, and consequently to help foster constructive, creative and acceptable solutions to difficult problems.

Risks:

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

Timetable:

Action	Date	FR Cite
Notice	02/03/99	64 FR 5570
Notice Comment Period End	03/05/99	
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 2577–AB88

HUD—PIH

52. • RESIDENT OPPORTUNITIES AND SUPPORTIVE SERVICES (FR-4525)

Priority:

Other Significant

Legal Authority:

42 USC 1437-6; 42 USC 3535(d)

CFR Citation:

24 CFR 964

Legal Deadline:

None

Abstract:

This rule will implement section 538 of Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, approved October 21, 1998, 112 Stat. 2461; hereafter, ''Public Housing Reform Act'') by adding the Resident Opportunities and Supportive Services (ROSS) program requirements to 24 CFR part 964. The purpose of the ROSS Program is to provide linkage of services to public housing residents, including supportive services and resident empowerment activities. Eligible activities include those related to physical improvements of a public housing development in order to provide space for supportive services of residents; work readiness including education, job training and counseling; and other activities designed to improve the economic self-sufficiency of residents.

Statement of Need:

The program established by section 538 of the Public Housing Reform Act is a permanent program. The regulations will provide the appropriate notice of the legal framework for the program, and clear and uniform criteria for program eligibility and participation.

Summary of Legal Basis:

Section 538 of the Public Housing Reform Act, amending title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437z-6).

Alternatives:

As a program that authorizes the use of funds for resident supportive services, the ROSS Program could be administered by a notice of funding availability (NOFA), but a NOFA does not provide a long term legal framework for the program. Requirements established for a program by NOFA are generally limited to short-term funding initiatives and demonstration programs. A permanent program requires regulations. HUD, however, will develop regulations consistent with President Clinton's Executive order on Regulatory Planning and Review (E.O. 12866) to provide flexibility, the least burden, and performance incentives.

Anticipated Cost and Benefits:

The establishment of regulations will bring certainty to this funding program, and confirm its permanency. Although interested parties looked to the notice of funding availability, issued in Fiscal Year 1999, the first year of funding, to determine applicable requirements, the regulations when issued will provide the legal basis for the program. The certainty to be provided through issuance of regulations should reduce costs by providing longer term planning on the part of grantees.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	01/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—PIH

53. ● HOPE VI PROGRAM (FR-4530)

Priority:

Other Significant

Legal Authority:

42 USC 1437v; 42 USC 3535(d)

CFR Citation:

24 CFR 000

Legal Deadline:

None

Abstract:

This rule will establish regulations that will govern funding and eligible activities of HUD's HOPE VI Program. To date, HOPE VI has been operated from year to year as a demonstration program in accordance with authorization provided each year in appropriations bills. HOPE VI activities were funded and guided by notices of funding availability issued each fiscal year by HUD. The Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, approved October 21, 1998, 112 Stat. 2585; hereafter, ''Public Housing Reform Act'') makes HOPE VI a permanent program. The regulations to be implemented for the HOPE VI program will include the provisions set out in section 535 of the Public Housing Reform Act.

Statement of Need:

With the establishment of a permanent framework for the HOPE VI Programs, regulations are necessary to establish certainty and consistency in the operation of HOPE VI funded projects as provided by the statute. The regulations will establish clear and uniform criteria for program eligibility and participation.

Summary of Legal Basis:

Section 535 of the Public Housing Reform Act (42 U.S.C. 1437v).

Alternatives:

The HOPE VI Program has been operated as a demonstration program and funded by a NOFA on a yearly basis, dependent upon continued authorization through appropriations bills. The permanent framework provided by the Public Housing Reform Act necessitates the establishment of a permanent legal framework for administration of the program.

Anticipated Cost and Benefits:

The establishment of regulations will bring certainty and permanency to the program, which has been lacking to date. Interested parties have looked to the notice of funding availability, issued annually, to determine applicable requirements. The certainty to be provided through issuance of regulations should reduce costs by providing longer term planning on the part of grantees.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—PIH

FINAL RULE STAGE

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54. CAPITAL FUND ALLOCATION FORMULA (FR-4423)

Priority:

Other Significant

Legal Authority:

42 USC 1437g(d); 42 USC 1437g(f); 42 USC 3535(d)

CFR Citation:

24 CFR 905

Legal Deadline:

Final, Statutory, October 1, 1999.

Abstract:

This rule will implement a new formula system for allocating funds to public housing agencies for their public housing program capital needs, whether related to development or modernization. The new formula system is being developed through negotiated rulemaking procedures, as required by section 519 of the Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, approved October 21, 1998, 112 Stat. 2551; hereafter, ''Public Housing Reform Act''). That statute amended section 9 of the United States Housing Act of 1937 to require development of a single formula to replace the existing development and modernization funding methods. This rule will work in conjunction with a rule that replaces the existing framework for public housing development and modernization, found in 24 CFR parts 941 and 968.

The members of the negotiated rulemaking advisory committee include national housing associations, housing authorities, tenant and community organizations, Fannie Mae, and HUD. Committee meetings began in April 1999 and concluded in August 1999.

The Capital Fund formula in this rule fulfills the statute's mandate to include a mechanism to reward performance. It also provides for a replacement housing factor, in recognition that funding for this purpose will facilitate demolition of obsolete housing and allow public housing authorities (PHAs) to address some of the remaining housing needs in the affected communities.

Statement of Need:

Section 519 of the Public Housing Reform Act requires HUD to develop

this rule to govern funding of PHAs' public housing capital needs.

Summary of Legal Basis:

Section 519 of the Public Housing Reform Act amending Section 9 of the U.S. Housing Act of 1937 codified at 42 USC 1437g.

Alternatives:

The Public Housing Reform Act requires a formula system to be established by negotiated rulemaking.

Anticipated Cost and Benefits:

The costs of the program as administered with one fund from which a PHA will fund all of its capital needs will be the same as under existing provisions. However, the benefits of having just one funding mechanism for all such needs, and the provision of additional flexibility to PHAs to manage their physical assets will provide increased benefits to the PHAs. The additional consultation of residents built into the program will also benefit both tenants and the health of the public housing developments, through a stronger sense of involvement and commitment on the part of residents.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM	09/14/99	64 FR 49924
End NPRM Comment Period	10/14/99	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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BILLING CODE 4210–01–F

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

The Department of the Interior (DOI) is the principal steward of our nation's natural resources and guardian of many of our priceless cultural resources. We serve as trustee to Native Americans and Alaska natives and also are responsible for relations with the island territories under United States jurisdiction. As part of our duties, we manage more than 450 million acres of Federal lands, approximately 3 billion acres of the Outer Continental Shelf, and more than 57,000 buildings. In carrying out our many responsibilities we are committed to creative ideas that:

- Ensure the long-term viability of our resources
- Protect the environment in which our resources are found
- Minimize negative effects and maximize benefits to the American people.

The Department's bureaus and offices seek to ease the burdens imposed by regulations while increasing the protection of resources under their jurisdiction. Examples of this include:

- Establishing a community approach to maintaining the environmental systems that support native species and to preventing invasive species introductions. We expect this to reduce the rate at which individual species become threatened and endangered. This approach enlists the voluntary support of land owners to achieve environmental goals while potentially reducing the regulatory cost.
- Using performance-based regulations rather than process-based regulations. This gives local entities the options of using the most cost-effective method to meet the spirit and letter of the law while providing the best result for the specific instance and location.
- Incorporating scientific standards, where applicable, into regulations.
- Continuing to reduce the number of regulations and converting those that remain to plain language. This will improve the public's ability to understand regulatory requirements and will result in improved compliance.

The Department's overall goal is to maintain or improve the quality of the environment while:

- Reducing the financial burden on the general public;
- Increasing the flexibility of the public to use the best means available to ensure that the laws are met; and
- Making regulations easy to understand and administer.

This approach to improving regulations will help us better execute our mission and meet the requirements of our 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 relationship 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 partnership with the States and Indian tribes, has the responsibility for setting and enforcing environmental standards during coal mining and reclamation operations. OSM has implemented an innovative approach to facilitate the reclamation of abandoned mine lands by allowing the party conducting the reclamation to offset the cost of reclamation through the sale of coal extracted as an incidental part of the reclamation project.

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 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.

DOI bureaus have taken the initiative in working with other Federal agencies, non-Federal government agencies, and public entities to make our regulations easier to comply with and understand. Because regulatory reform is a continuing process that requires the participation of all affected parties, we strive continually to include affected entities in the decision making process and to issue rules more efficiently. To better manage and review the regulatory process, we have revised our internal rulemaking guidance. Results have included:

- Increased bureau awareness of and responsiveness to the needs of small businesses and better compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA);
- A Department-wide effort to evaluate the economic effects of rules and regulations that are planned; and
- Issuance of new guidance in the Departmental Manual to ensure the use of plain language in Government writing.

We are committed to improving the regulatory process through the use of plain language. Simplifying regulations has resulted in a major rewrite of the regulations for onshore oil and gas leasing and operations in an easily understandable form that: (a) Puts previously published rules into one location in a logical sequence; (b) eliminates duplication by consolidating existing regulations and onshore orders and national notices to lessees; (c) incorporates industry standards by reference; and (d) implements performance standards in some of the operating regulations. Our regulatory process ensures that bureaus share ideas on how to reduce regulatory burden while meeting the requirements of the laws they enforce and improving their

stewardship of the environment and resources under their purview.

Encouraging Responsible Management of the Nation's Resources

The Department's mission is to protect and provide access to our Nation's natural and cultural heritage and to honor our trust responsibilities to tribes. We are committed to this mission and to applying laws and regulations fairly and effectively. The Department's priorities are compliance, enforcement, prevention, solving problems, and protecting public health and safety. To this end, our bureaus encourage users of public resources to adopt long-term strategies designed to meet current needs while preserving resources for future generations.

An example of this is the ''no surprises'' policy of the U.S. Fish and Wildlife Service (FWS). This policy gives property owners an incentive to implement voluntary conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed in the near future. These property owners will receive assurances from FWS that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. This policy results in fewer fines, no ''surprises'' (in the form of unexpected fines) for conforming landowners, and better overall compliance with the Endangered Species Act.

Minimizing Regulatory Burdens

We are using the regulatory process to ease the burdens on various entities throughout the country. For instance, the Endangered Species Act (ESA) allows for the delisting of threatened and endangered species if they no longer need the protection of the ESA. We have has identified approximately 40 species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate. Experience has shown us that changing the planning process for land use and water development can reduce unnecessary delays and paperwork associated with agency decision making. For some projects, an improved planning process has dramatically reduced the time required for paperwork.

We use performance standards in a variety of regulations. These allow the affected entity to choose the most economical method to accomplish a goal provided it meets the requirements of the regulations. An example of this is Minerals Management Service's (MMS) proposed training rule, which will allow companies with operations in the Outer Continental Shelf (OCS) to select their own training courses or programs for employees. Currently MMS has a prescriptive program where employees working on the OCS must attend an MMS-certified school. The new rule will allow lessees and contractors to properly train the employees by any method they choose as long as the employees are competent. We anticipate that this will result in new and innovative training techniques and allow companies added flexibility in tailoring their training to employees' specific duties.

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 adequate opportunities to participate in developing new regulations. Under this Administration, encouraging increased public participation in the regulatory process to make regulatory policies more responsive to our customers' needs is a priority.

The Department is reaching out to communities to seek their input on a variety of regulatory issues. For example, every year the 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 give other interested parties, including hunters and other groups, adequate opportunity to participate in establishing the upcoming season's regulations.

Similarly, the Bureau of Land Management (BLM) uses Resource Advisory Councils (RACs) made up of affected parties to help prepare regulations that it issues under the Rangeland Reform Act.

We also encourage public consultation during the regulatory process. For example:

- OSM is continuing its outreach to interested groups to improve the substance and quality of rules and, to the greatest extent possible, achieve a consensus on regulatory issues;
- The Bureau of Indian Affairs is developing its roads program rule using the negotiated rulemaking process. Because of the importance of the roads program to the individual tribes and because of the varying needs of the tribal governments, the negotiated rulemaking process will result in a rule that better serves the diverse needs of the Native American community.

The Future of DOI

In compliance with the Government Performance and Results Act of 1993 (GPRA), we are preparing a revised comprehensive strategic plan to prepare DOI for the 21st century. The plan will cover the period from 2000 through 2005 and will be a stand-alone plan with the five Departmental goals supported by the bureau goals. It gives employees and managers clear goals and strategies to help the Department meet its mission and fulfill its commitment to the nation. We believe that this plan must evolve in response to the changing natural and human environments. For this reason, our bureaus have already begun their strategic plans to respond to those changes and to prepare for others that may take place in the future.

A copy of DOI's current strategic plan (including updates that have been made during FY 1999) can be seen on our web site at this address: http://www.doi.gov/gpra/

Bureaus and Offices Within DOI

The following brief descriptions summarize 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 (OEPC) 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. OEPC 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), OEPC 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 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.

Bureau of Land Management

The Bureau of Land Management manages about 264 million acres of land surface and about 570 million acres of Federal mineral estate. These lands consist of extensive grasslands, forests, mountains, arctic 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 archeological and cultural sites. BLM manages these lands and resources for multiple use and the sustained yield of renewable resources. Primary statutes under which the Agency must operate 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, arctic, 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 public that 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 cooperation with other agencies, States, tribal governments, and the public.

The regulatory program contains its own objectives. These include preparing regulations that:

- Are 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.

MMS's regulatory philosophy 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 and 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 during rulemaking; 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 develop and apply 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 more than 500 national wildlife refuges and in national fish hatcheries. These uses are authorized only if they are compatible with the purpose for which each area was established, are consistent with State and local laws where practical, and afford the public appropriate economic and recreational opportunity. 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 is covered by the second category of regulations, required by various international treaties. Annually, the Department issues a regulation on migratory bird hunting seasons and bag limits, developed in partnership with the States, American Indian tribal governments, and the Canadian Wildlife Service. Although issued annually, regulations such as these have been in existence for more than 50 years and have 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 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). 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 works continually with foreign and State governments, the affected industries and individuals, and other interested parties to minimize the burdens associated with Service-related activities. Easing these burdens through regulatory actions continues to balance possible benefits with adequate protection for 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.

National Park Service

The National Park Service is dedicated to conserving the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The Service is also responsible for managing a great variety of national and international programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

There are more than 375 units in the National Park System, including national parks and monuments; scenic parkways, preserves, trails, riverways, seashores, lakeshores, and recreation areas; and historic sites associated with important movements, events, and personalities of the American past.

The National Park Service develops and implements park management plans and staffs the areas under its administration. It relates the natural values and historical significance of these areas to the public through talks, tours, films, exhibits, and other interpretive media. It operates campgrounds and other visitor facilities and provides, usually through concessions, lodging, food, and transportation services in many areas. The National Park Service also administers the following programs: The State portion of the Land and Water Conservation Fund, Nationwide Outdoor Recreation coordination and information and State comprehensive outdoor recreation planning, planning and technical assistance for the National Wild and Scenic Rivers System, and the National Trails System, natural area programs, the National Register of Historic Places, national historic landmarks, historic preservation, technical preservation services, Historic American Buildings survey, Historic American Engineering Record, and interagency archeological services.

The National Park Service maintains regulations that help manage public use, access, and recreation in units of the National Park System. The Service provides visitor and resource protection to ensure public safety and prevent derogation of resources. The regulatory program develops and reviews regulations, maintaining consistency with State and local laws, to allow these uses only if they are compatible with the purpose for which each area was established.

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—Minerals Management Service (MMS)

PROPOSED RULE STAGE

55. VALUATION OF OIL FROM INDIAN LEASES

Priority:

Other Significant. Major under 5 USC 801.

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 to value oil that is not sold at arm's-length. 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 highest of crude oil futures prices, major portion prices, or gross proceeds. It would eliminate any direct reliance on posted prices. This rulemaking would also add more certainty to valuation of oil produced from Indian leases.

Summary of 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:

We considered a range of valuation alternatives. Among these were: (1) Making minor adjustments to the current gross proceeds valuation method using spot prices; (2) using index-based prices with fixed adjustments for production from specific geographic zones; (3) relying on some type of field pricing other than posted prices; and (4) taking oil in-kind.

We chose the higher of New York Mercantile Exchange (NYMEX) futures prices, major portion prices in the field or area, or gross proceeds received by the lessee or its affiliate. We chose NYMEX-based prices as one of three measures of value because NYMEX represents the price for a widely-traded domestic crude oil, there is little likelihood that any particular participant in NYMEX trading could affect the prices, and NYMEX prices are regarded by many experts to be the best available measure of oil market value.

Anticipated Cost and Benefits:

We estimate 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	02/12/98	63 FR 7089
NPRM Comment Period Extended	04/09/98	63 FR 17349
NPRM Comment Period End	05/13/98	
Supplementary NPRM	01/00/00	
Comment Period End	03/00/00	
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Tribal

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DOI—MMS

FINAL RULE STAGE

56. 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 non-arm's-length crude oil transactions and establish a new MMS form for collecting value differential data. These changes would decrease reliance on oil posted prices and assign a value to crude oil that better reflects market value.

Statement of Need:

Current oil valuation regulations rely primarily on posted prices and prices under arm's-length sales to value oil that is not sold at arm's length. 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 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:

We 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. As most recently proposed, we chose to retain the concept that, for true, outright, arm's length sales, gross proceeds generally represent royalty value.

For non-arm's-length transactions in the most recent proposal, we chose three different methods for three distinct geographic areas. For production other than in California, Alaska, or the Rocky Mountain region, we chose to use appropriate spot prices because they result from market surveys of actual prices paid and received in the marketplace and thus form the basis for much of the way crude oil is marketed. We originally chose New York Mercantile Exchange (NYMEX) prices because they represent the price for a widely traded crude oil and there is little likelihood that any particular trading participant could affect the prices. However, we decided on spot prices because, when adjusted for location and quality, they essentially duplicate NYMEX prices, and this eliminates the need for one set of adjustments.

For non-arm's-length transactions in the geographically isolated California and Alaska markets, we chose Alaska North Slope (ANS) spot prices. 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. Finally, due to the lack of a reliable spot price in the Rocky Mountain region, we chose a series of benchmarks relying on the lessee's arm's-length sales and purchases, alternative spot prices, or a value determination by the Director.

Anticipated Cost and Benefits:

We estimate that compliance with this rulemaking would cost the oil and gas industry approximately $161,000 annually. The benefits of this rulemaking would be an estimated $66 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. These changes should also reduce 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
Comment Period Extended	02/18/97	62 FR 7189
NPRM Comment Period Extended	02/24/97	62 FR 19966
NPRM Comment Period End	03/25/97	
Supplemental NPRM	07/03/97	62 FR 36030
Comment Period End	08/04/97	

Action	Date	FR Cite
NPRM Comment Period Extended	09/22/97	62 FR 49460
Comment Period Extended	10/23/97	62 FR 55198
Supplementary NPRM	02/06/98	63 FR 6113
Comment Period Extended	03/24/98	63 FR 14057
Comment Period Extended	07/08/98	63 FR 36868
Supplementary Proposed Rule	07/16/98	63 FR 38355
Comment Period Extended	07/27/98	63 FR 40073
Comment Period Reopened	03/12/99	64 FR 12267
Comment Period Extended	04/13/99	64 FR 17990
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State

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DOI—Bureau of Land Management (BLM)

PROPOSED RULE STAGE

57. 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.

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 Legal Basis:

Section 302(b) of the Federal Land Policy and Management Act gives the Secretary of the Interior or his or her 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 Cost and Benefits:

The Department has prepared a cost-benefit analysis. 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 be slightly 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	02/09/99	64 FR 6422
NPRM Comment Period End	05/10/99	
Supplementary Proposed Rule	10/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local

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DOI—BLM

FINAL RULE STAGE

58. 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). The rule will: (1) use performance standards in certain places instead of prescriptive requirements, to allow more flexibility for operators and protect the environment and Federal royalty interests; (2) cite industry standards and incorporate them by reference rather than repeat those standards in the rule; (3) incorporate the requirements of the Onshore Oil and Gas Orders and national notices to lessees into the regulations to eliminate overlap with current regulations; (4) revise and replace BLM's 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, presented by process rather than by subject matter.

Summary of 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 in Onshore Operating Orders is published separately from the regulations and at irregular intervals.

Anticipated Cost 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; and (3) streamlining 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	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	64 FR 29256
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State, Local

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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 for 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 the reimbursements.

In response to public comments during the cost recovery rulemaking, the FBI published on April 28, 1998, a proposed rule defining the terms ''significant upgrade'' and ''major modification.'' The FBI is considering the comments it has received and anticipates publishing a final rule in the year 2000.

On March 12, 1998, the FBI, on behalf of law enforcement, published a Final Notice of Capacity (following two previously published notices on the same subject) informing telecommunications carriers offering local exchange services and certain commercial mobile radio services (specifically cellular service and broadband PCS) of the estimated actual and maximum number of simultaneous interceptions that law enforcement might conduct on or after specified dates.

On December 18, 1998, the FBI published a Notice of Inquiry (NOI) soliciting information and suggestions from interested parties for developing reasonable capacity methodologies for characterizing the capacity requirements for telecommunications services other than those covered by the March 12, 1998, Final Notice of Capacity. The FBI will be issuing a Further Notice of Inquiry (FNOI) that will respond to comments on the NOI and intends to focus on developing reasonable methodologies for the paging, mobile satellite service, specialized mobile radio, and enhanced specialized mobile radio services. The FBI anticipates publishing this FNOI by the beginning of the year 2000.

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 during fiscal year 1999. 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 anticipates additional progress in its efforts to simplify the employers' compliance with employment verification (Form I-9) requirements of the Act. The Service published a proposed rule on February 2, 1998. This proposal reflected numerous changes stemming from IIRIRA and from a comprehensive review of the 10-year-old verification regulations, as required by the Regulatory Flexibility Act. The result was a comprehensive overhaul of the regulations. The Service adopted a ''plain language'' approach and simplified the structure of the regulation. Both steps were well received by the public. In addition, the list of documents acceptable for employment verification was shortened, and several other requirements were clarified. The Service received thoughtful comments from the public on the proposal. Those are now being reviewed, and the Service anticipates publishing a final rule during the coming fiscal year.

DOJ—Civil Rights Division (CRT)

FINAL RULE STAGE

59. 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 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 Architectural and Transportation Barriers Compliance Board (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 Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above in the Legal Authority and in the 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.

Anticipated Cost 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's proposed rule contained provisions that would have had a significant economic impact on a substantial number of small entities. Therefore, the Board included a regulatory flexibility analysis in its regulatory assessment. Because of significant changes that were made to the final rule pursuant to public comment, the final rule published by the Access Board does not have a significant economic impact on small entities. The Access Board's determination will apply as well to the revised ADA Standards published by the Department. The Department's proposed procedural amendments will not have a significant 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	03/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

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DOJ—CRT

60. 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 54 (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 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 an 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 Cost 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	10/29/99	64 FR 58567
NPRM Comment Period End	12/28/99	
Final Action	12/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local

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DOJ—Immigration and Naturalization Service (INS)

PROPOSED RULE STAGE

61. 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:

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1157; 8 USC 1158; 8 USC 1159; 8 USC 1160; 8 USC 1182; 8 USC 1183; 8 USC 1184

CFR Citation:

8 CFR 103; 8 CFR 207; 8 CFR 208; 8 CFR 209; 8 CFR 210; 8 CFR 212; 8 CFR 214; 8 CFR 232; 8 CFR 235; 8 CFR 240; 8 CFR 241; 8 CFR 245; 8 CFR 245a; 8 CFR 248; 8 CFR 249; 8 CFR 2742; 8 CFR 299

Legal Deadline:

None

Abstract:

This regulation covers the grounds of inadmissibility applicable to those aliens seeking admission to the United States temporarily or permanently. On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which 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 the Immigration Act of 1990 (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 1993, Pub. L. 103-43; the Immigration and Nationality Technical Corrections Act of 1991 (INTCA), Pub. L. 103-416; and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132.

Statement of Need:

This regulation is necessary to implement the IIRIRA and IMMACT 90, Pub. L. 101-649; the MTINA, Pub. L. 102-232; the National Institutes of Health Revitalization Act of 1996, Pub. L. 103-43; and the AEDPA, Pub. L. 104-132.

Summary of Legal Basis:

See Statement of Need.

Alternatives:

None

Anticipated Cost 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—Centers 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 (INS No. 1413)	12/00/99	
Final Action	11/00/00	

Regulatory Flexibility Analysis Required:

No

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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DOJ—INS

FINAL RULE STAGE

62. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS (SECTION 610 REVIEW)

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, March 31, 1998, An interim rule, published Sept. 30, 1997, makes the minimal changes required by statute. The provisions will remain in effect until completion of this rulemaking.

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. The proposed rulemaking published 2/12/98 implements sections 212(a) and (d) of IIRIRA and proposes other changes to the employment verification process identified through that review. A revised Form I-9 was included with the proposed rulemaking.

The comment period closed on 4/3/98. The Service is analyzing the comments. 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.

INS No. 1947-98, Interim Rule published 2/9/99 (64 FR 6187). The ''Receipt Rule'' permits employees to present their employer certain types of ''receipts'' in lieu of a document listed on the Form I-9. (Previously under RIN 1115-AE94, which was withdrawn and placed under AB73 due to the relationship of the regulations.)

Statement of Need:

The Immigration Reform and Control Act of 1986 amended the Immigration and Nationality Act (INA) 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.

Summary of 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 was introduced in 1989. In February 1997, a more secure EAD Form (I-766) was produced with state of the art technology.

Anticipated Cost 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 No. 1399 Comment Period End 12/23/93	11/23/93	58 FR 61846
NPRM-INS No. 1339S Comment Period End 07/24/95	06/22/95	60 FR 32472
Notice-INS No. 1713 INS No. 1713 Applications Due 01/29/96	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96 Notice Pilot Demonstration Program-INS No. 1713	02/06/96	61 FR 4378
Final Rule INS No. 1399E	09/04/96	61 FR 46534
Interim Final Rule INS No. 1818	09/30/97	62 FR 51001
NPRM-INS No. 1890-97 Comment Period End 04/03/98	02/02/98	63 FR 5287
Final Rule INS No. 1890-97	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

The deadline for implementing section 412(a) of IIRIRA was extended to March 31, 1998 by P.L. 105-54. This 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. 1890-97; 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 Bob Reed, (202) 514-2998.

Interim Rule INS No. 1818 was published on 9/30/97 at 62 FR 51001 to maintain the status quo as much as possible until the Service completes the more comprehensive document reduction initiative designated by INS No. 1890-97.

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BILLING CODE 4410–BP–F

DEPARTMENT OF LABOR (DOL)

1999 Regulatory Plan

Executive Summary

The Secretary of Labor has set three strategic goals for the Department: first, to enhance opportunities for America's workforce; second, to promote the economic security of workers and their families; and third, to foster quality workplaces that are safe, healthy and fair. 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.

In keeping with the President's Plain Language Memorandum of June 1, 1998, 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.

DOL's 1999 Regulatory Plan highlights the Department's 25 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 three strategic goals.

The Secretary of Labor's Strategic Goals

A Prepared Workforce: This first goal is to assure that American workers have the opportunity to obtain the information and tools they will need throughout their careers to enhance their productivity and raise their standard of living. The new economy requires workers to continue their education beyond a high school diploma, or even a college degree — education must mean lifelong learning and constant development of new skills.

A Secure Workforce: The rapidly changing global economy imposes economic security concerns on both employers and employees. The life cycles of many products are shorter and shorter, requiring quick adjustments by both industry and labor. Competitive forces can lead to plant closures and layoffs, plant and employee relocations, and in some cases to attempts to avoid legal obligations. The Department will continue to do all it can to increase compliance with worker protection laws, protect worker benefits, and provide worker retraining.

Quality Workplaces: The intensely competitive global economy offers unparalleled opportunities for both business and labor, but also can pressure some unscrupulous employers to shrink from their responsibilities to their employees. Smart employers recognize that they must utilize all of the talent that is available to them and that a quality workplace is a productive workplace. The Department works with employers to prevent workplace discrimination and to help them recognize the benefits of ensuring equal opportunity and equal pay for all workers. DOL also is 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 is particularly committed to reducing the exploitation of child labor. The Department's ultimate goal is full compliance with employment laws which will ensure workers a safe, healthy, and fair workplace.

The Department's Regulatory Priorities

The Employment Standards Administration's (ESA's) Wage and Hour Division enforces 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 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 assist young workers in having safe jobs and enhance their opportunity to gain the skills 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 the economic security of their 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 help guarantee workers a secure and quality 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 in 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. This NPRM encourages contractors to analyze their own compensation and other employment practices to ensure that all employees are fairly treated. In addition, this plan entry will help fulfill the Administration's Equal Pay and Civil Rights initiative to eliminate wage discrimination by identifying and remedying compensation discrimination by Federal contractors.

The mission of the Mine Safety and Health Administration (MSHA) is to protect the safety and health of the Nation's miners. The Federal Mine Safety and Health Act of 1977 (Mine Act) places primary responsibility for preventing the existence of unsafe and unhealthful working conditions in mines on the operators, with the assistance of the miners. The Mine Act 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 past 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, mine operators and government is needed. MSHA's Regulatory Plan reflects this commitment. It will continue to concentrate on improving existing health standards and addressing emerging health hazards in mining.

Several significant regulatory actions exemplify MSHA's commitment to improving workplace health for miners. MSHA has issued proposed rules for diesel particulate matter in underground coal and metal and nonmetal mines to reduce the potential health hazards associated with the exhaust emitted by diesel-powered equipment. Those hazards range from headaches and nausea to respiratory disease and cancer.

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. MSHA is developing a proposed rule to provide a means to verify operators' coal dust control plans and to prevent overexposure to respirable coal mine dust on each and every working shift.

MSHA has identified the above actions for the October 1999 Regulatory Plan because occupational lung disease is the most serious and pervasive occupational illness in mining. MSHA believes these combined initiatives will greatly improve health protection for miners and are, therefore, tied directly and significantly to its mission and strategic plan.

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. 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, and focus on developing a proposed ergonomics rule and a basic safety and health programs rule.

The seven rules in OSHA's Regulatory Plan directly support OSHA's mission as well as the Secretary's goal of assuring America's workers a quality workplace. Each rule is designed to reduce occupational deaths, injuries, and illnesses among America's workers or to simplify OSHA recordkeeping requirements for employers. OSHA's Plan entries address the causes of the most dangerous occupational injuries, i.e., those with fatal or disabling consequences, those affecting large number of workers, those for which recognized solutions are available, or those identified as top priorities by the Agency's Priority Planning process.

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 this problem, 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 language 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 1999 Regulatory Plan reflect the rulemaking approach that is being followed by the New OSHA. For example, the Agency plans to initiate a process with stakeholders to select for future regulation a group of air contaminants that both OSHA and the regulated community recognize as hazardous to worker health. The Agency is considering the establishment of a Standards Advisory Committee to work on the selection of candidates for future air contaminants rulemaking.

One of the most important regulatory initiatives ever undertaken by OSHA — development of an ergonomics programs rule — is the centerpiece of the Agency's current Regulatory Plan. This rule will ensure that employers in general industry whose employees work in manual handling or manufacturing jobs, or whose employees experience a work-related musculoskeletal disorder (MSD), implement ergonomics programs in those jobs. About 65 percent of all MSDs reported by employers to the Bureau of Labor Statistics each year are caused by ergonomic risk factors in manual handling and manufacturing production jobs, although fewer than 30 percent of all general industry employees work in these jobs. Evidence of the effectiveness of ergonomics programs in achieving OSHA's ultimate goal — the prevention of musculoskeletal disorders 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. 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 ergonomics programs that are demonstrably effective. Included among these was a series of regional meetings 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 ergonomics programs, this standard will help to produce the high-performance workplaces of tomorrow. In sum, OSHA's regulatory strategy is designed to achieve a body of standards that will make sense to ordinary people, protect the safety and health of the U.S. work force, and enhance the productivity of American businesses.

The Pension and Welfare Benefits Administration (PWBA) administers and enforces the provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA establishes reporting, disclosure and other standards applicable to an estimated 700,000 private-sector employee pension benefit plans, covering approximately 87 million participants and an estimated 6 million employee welfare benefit plans, including group health plans, covering approximately 185 million participants.

PWBA's regulatory priorities continue to focus on 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 involve implementation of enhanced standards for group health plans, including strengthening the claims review processes and improving the disclosure of health care benefit information. PWBA also will be working with the Department of Health and Human Services to adopt regulations under the Child Support Performance and Incentive Act of 1998, that will establish a model qualified medical child support order for use by State child support agencies to facilitate the extension of health care coverage to children under their jurisdiction. Another PWBA priority for the 1999 Plan is the adoption of standards to improve security and accountability with respect to assets held by small pension plans.

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 recent welfare reform legislation. The Employment and Training Administration (ETA) has issued interim planning guidance under this legislation. Moving people from welfare to work is not only a primary goal of Federal welfare to work opportunities, but also responds to the Secretary's goal of a Prepared Workforce. Guidance and regulations reflect minimal amplification of the law, and were written only when further information or clarification was needed to make the program operational. Reporting requirements assure program integrity and provide timely information for tracking performance against established measures. Performance measures will be consistent with long-term goals. Wherever possible, existing regulations and systems will be used.

The Employment Training Administration is issuing for comment a proposed rule to create, by regulation, the opportunity for the State agencies that administer the Unemployment Compensation (UC) program to pay, under a voluntary experimental program, UC to parents who take time off from employment after the birth or placement for adoption of a child. This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of Labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted children and to evaluate the effectiveness of using the UC system for these or related purposes. This regulation will permit interested States to experiment with methods for allowing the use of the UC program for this purpose.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

63. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (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

CFR Citation:

41 CFR 60-1; 41 CFR 60-2

Legal Deadline:

None

Abstract:

These regulations cover nondiscrimination and affirmative action obligations of Federal contractors under Executive Order 11246 as amended. The part 60-1 final rule, published 8/19/97, revised parts of the regulations implementing E.O. 11246. OFCCP's review of regulatory options continues with emphasis on streamlining and clarifying the regulatory language and reducing paperwork requirements associated with compliance. OFCCP plans to propose revisions to written affirmative action program (AAP) requirements to reduce burdens on the regulated community and to improve the enforcement of the Executive order.

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 published changes to the provisions that govern preaward review requirements; recordkeeping and record retention requirements; certification requirements; and related provisions. In addition, other revisions have been made that 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 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.

Anticipated Cost 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:

Failure to move forward with OFCCP's regulatory agenda would cause the continuation of outdated methods of evaluating contractor compliance and impede effective enforcement of Executive Order 11246.

Timetable:

Action	Date	FR Cite
NPRM Affirmative Action Plans (60-2)	03/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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

64. 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 whether changes are needed in some of the applicable hazardous occupation orders. 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.

Summary of Legal Basis:

These regulations are issued under sections 3(1), 11, and 12 of the Fair Labor Standards Act, 29 USC secs. 203(1), 211, and 212 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that may be particularly hazardous or detrimental to the health or well-being of minors under 18 years old.

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 Cost 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 HOS 2, 10 and 12	11/20/91	56 FR 58626
Final Rule Effective	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—ESA

65. 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.

Summary of Legal Basis:

These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms ''any employee employed in a bona fide executive administrative, or professional capacity ..., or in the capacity of outside salesman...,'' for purposes of applying the exemption to employees who meet the specified criteria.

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 Cost 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	
NPRM	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Local, State, Federal

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DOL—ESA

FINAL RULE STAGE

66. 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:

Other Significant

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 1999 Public Law 105-277 (October 21, 1998). 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.

Summary of Legal Basis:

These regulations are issued under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 USC appendix) and the Copeland Act (40 USC 276c) in order to provide coordinated enforcement of the prevailing wage provisions of the Davis-Bacon Act (40 USC 276a-276a-7) and several additional Federal statutes that require payment of prevailing wages as determined by the Secretary of Labor according to the Davis-Bacon Act to laborers and mechanics working on federally funded or assisted construction contracts (see list of statutes in 29 CFR sec. 5.1).

Alternatives:

The Administration has determined that there are only limited alternatives to addressing this issue through rulemaking, in addition to possible legislative changes.

Anticipated Cost 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 included in the NPRM range from $72.8 million to $296 million, depending upon the alternative considered and the data sources used.

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	04/09/99	64 FR 17442
Comment Period Ends	06/08/99	
Final	01/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State, Local, Tribal

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DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

67. ● BIRTH AND ADOPTION UNEMPLOYMENT COMPENSATION

Priority:

Other Significant

Legal Authority:

42 USC 1302(a); 42 USC 503(a)(2) and (5); Secretary's Order No. 4-75 (40 FR 18515); Secretary's Order No. 14-75 (November 12, 1975); 26 USC 3306(h); 26 USC 3304(a)(1) and (4)

CFR Citation:

20 CFR 604

Legal Deadline:

None

Abstract:

The Department of Labor is issuing for comment a Notice of Proposed Rulemaking to create, by regulation, the opportunity for the State agencies that administer the Unemployment Compensation (UC) program to pay, under a voluntary experimental program, UC to parents who take time off from employment after the birth or placement for adoption of a child. This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted child/children and to evaluate the effectiveness of using the UC system for these or related purposes. This regulation will permit interested States to experiment with methods for allowing the use of the UC program for this purpose.

Statement of Need:

This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of Labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted children and to evaluate the effectiveness of using the UC system for these or related purposes. That Memorandum cited a Family and Medical Leave Commission study indicating that lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child.

Summary of Legal Basis:

This rulemaking action is undertaken under the authority of sections 1102(a) and 303(a)(2) and (5) of the Social Security Act, sections 3304(a)(1) and (4) and 3306(h) of the Federal Unemployment Tax Act, and the Secretary's Orders No. 4-75 and 14-75.

Alternatives:

The Department of Labor considered different regulatory alternatives and intends to pursue, in the proposed rule, an approach that gives States as much flexibility as possible within the defined parameters of the experimental program.

Anticipated Cost and Benefits:

Based on legislative activity and expressed interest, the Department of Labor anticipates that a relatively small number of States will enact experimental Birth and Adoption Unemployment Compensation programs and, on this basis, estimates that the annual aggregate cost of Birth and Adoption Unemployment Compensation to the States will be between $50 and $87 million. The benefit of this regulatory action will be to help eliminate a significant barrier that parents face in taking leave, thus having a positive effect on family well-being.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	
NPRM Comment Period End	11/00/99	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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DOL—ETA

FINAL RULE STAGE

68. WELFARE-TO-WORK (WTW) GRANTS

Priority:

Other Significant

Legal Authority:

42 USC 601 to 619

CFR Citation:

20 CFR 645

Legal Deadline:

Final, Statutory, November 3, 1997, 90 days from enactment.

Abstract:

The Employment and Training Administration published interim final regulations on November 18, 1997, implementing 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 and certain noncustodial parents. 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 interim final regulations and other guidance focus on providing maximum local flexibility. Guidance and regulations reflect minimal amplification of the law and provide further information or clarification as needed to make the program operational. Existing regulations and systems are used wherever possible. Reporting requirements will assure program integrity and provide timely information for tracking performance. Performance measures have been established and will serve as the basis for the award of FY 2000 bonus grants to the States based on successful performance. Products provided link welfare agencies and workforce development system agencies at the operational level in order to maximize resources available and avoid duplication and overlap. Leveraging of non-Federal resources at the State and local level is 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 final 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.

Summary of Legal Basis:

Promulgation of these regulations is authorized by SSA section 403 (a)(1)(5)(C)(viii).

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 Cost 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. 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	11/18/97	62 FR 61587
Final Action	11/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local, Tribal

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DOL—ETA

69. WORKFORCE INVESTMENT ACT OF 1998

Priority:

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

Legal Authority:

Workforce Investment Act of 1998, section 189(2)-506(c); 29 USC 939(a)

CFR Citation:

20 CFR 660 to 671; 20 CFR 652

Legal Deadline:

Other, Statutory, February 7, 1999, Interim Final Rule.

Final, Statutory, December 31, 1999.

Abstract:

The Workforce Investment Act of 1998 was signed into law by President Clinton on August 7, 1998. Titles I and III, and V of the Act fall under the purview of the Employment and Training Administration. Title V falls under the purview of ETA as well as the Department of Education. The Act makes significant changes in the way this country's employment and training programs do business. The Act will ensure that Americans have the information and training they need to qualify for good jobs and successfully manage their careers. The interim final regulations, final regulations, and other guidance will focus on providing maximum local flexibility. Guidance and regulations will reflect minimal amplification of the law and will provide further information or clarification as needed to make the program operational. Reporting requirements will assure program integrity and provide timely information for tracking performance.

Statement of Need:

The purpose of title I of the Workforce Investment Act of 1998 is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and skill attainment of participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation. The Employment and Training Administration will issue regulations and other guidance and provide technical assistance that will focus State and local efforts towards the program's goal while allowing maximum local flexibility. The Department of Labor and its partners must move quickly to implement the reforms contained in the legislation. Interim final regulations were published on April 15, 1999. The law requires that final regulations be published no later than December 31, 1999.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance necessary to carry out new provisions under the new legislation, the Workforce Investment Act of 1998.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this newly enacted legislation have not been determined at this time, but will be at a later date. It is anticipated, however, that successful implementation of this legislation will result in changes in the way this country's employment and training programs do business, and will ensure that Americans have the training they need to qualify for good jobs and successfully manage their careers. The Act consolidates more than 60 Federal programs. It will significantly enhance the ability of State and local areas to effectively implement welfare reform and move welfare recipients from welfare to work. It establishes a single delivery system for adult employment and training and for dislocated worker employment and training that maximizes choice in the selection of occupations and training providers. Under the Act, individuals with disabilities will have access to a comprehensive job training system capable of serving all. Unemployed individuals with disabilities will have broader job opportunities allowing them to re-enter or in some cases enter the workforce for the first time.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/15/99	64 FR 18662
Interim Final Rule Effective	05/17/99	
Interim Final Rule Comment Period End	07/14/99	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, State, Local, Tribal

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DOL—Pension and Welfare Benefits Administration (PWBA)

PROPOSED RULE STAGE

70. NATIONAL MEDICAL SUPPORT NOTICE

Priority:

Other Significant

Legal Authority:

PL 105-200, section 401(b); 29 USC 1135; 29 USC 1169

CFR Citation:

29 CFR 2565

Legal Deadline:

Other, Statutory, May 16, 1999, Interim Final Rule.

Final, Statutory, May 16, 2000.

Abstract:

The purpose of this rulemaking is to develop regulations which establish a model qualified medical child support order for use by State child support agencies to facilitate the extension of health care coverage to children under their jurisdiction. This initiative is mandated by the Child Support Performance and Incentive Act of 1998 (CSPIA), P.L. 105-200.

Statement of Need:

These regulations are needed to provide guidance to the public concerning the application of the provisions of section 401 of the Child Support Performance and Incentive Act of 1998 and section 609 of ERISA, which require, respectively, the promulgation of a National Medical Support Notice to be used by State child support agencies to order health care coverage for children under their jurisdiction, and that such notice is to be deemed a qualified medical child support order for purposes of section 609 of ERISA.

Summary of Legal Basis:

Promulgation of these regulations is mandated by section 401 of CSPIA, and authorized by sections 505 and 609 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 401 of CSPIA and section 609 of ERISA. Section 401 of CSPIA mandates the promulgation of a National Medical Support Notice.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits of the regulatory actions found necessary to implement the new provisions 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 State child support agencies with the new standards established by section 401 of CSPIA and by group health plans with the requirements of section 609 of ERISA for the extension of health care coverage to children of plan participants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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DOL—PWBA

FINAL RULE STAGE

71. REVISION OF THE FORM 5500 SERIES AND IMPLEMENTING AND RELATED REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Priority:

Economically 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 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:

29 CFR 2520

Legal Deadline:

None

Abstract:

Under title I of ERISA, title IV of ERISA, and the Internal Revenue Code, as amended, pension and other employee benefit plans are generally required to file returns/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 have undertaken 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.

Statement of Need:

This project was included in prior PWBA regulatory plans. 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 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.

Summary of 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. Sections 104(a)(2), 104(a)(3) and 110 of ERISA provide the Secretary with the authority to prescribe simplified reports, 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 the annual report regulations implementing the revisions to the Form 5500 Series are in development.

Anticipated Cost 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. These measures will eliminate reporting requirements for information that is not needed for the discharge of the Department's 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, 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 46556
Proposed Forms Comment Period End	11/03/97	
NPRM Implementing/ Related Regulations	12/10/98	63 FR 68370
NPRM Comment Period End	02/08/99	
Final Action	11/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

Public hearing held November 17, 1997. Hearing comment period ended 12/03/97.

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DOL—PWBA

72. 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:

29 CFR 2590

Legal Deadline:

Other, Statutory, April 1, 1997, Interim Final Rule.

Per Section 734 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.

Summary of 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, in conjunction with other concerned agencies with regard to the scope and nature of the final regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Cost 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	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
Final Rule	07/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—PWBA

73. 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

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 sections 707 and 734 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. The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) also amended ERISA's SPD and related reporting and disclosure provisions. 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.

Summary of Legal Basis:

Promulgation of these regulations is authorized by sections 104(b), 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 carry out the new provisions.

Anticipated Cost and Benefits:

There is estimated to be no capital/start-up cost. Total burden cost for operating/maintenance is estimated to average $73,000,000 annually for the years 1997, 1998, and 1999. However, the Department believes that the regulation assures that participants have better access to more complete information about their benefit plans.

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	
Interim Final Rule Second	09/09/98	63 FR 48372
Interim Final Rule Effective	11/09/98	
Comment Period End	11/09/98	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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DOL—PWBA

74. AMENDMENTS TO EMPLOYEE BENEFIT PLAN CLAIMS PROCEDURES REGULATION

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

29 USC 1133; 29 USC 1135

CFR Citation:

29 CFR 2560.503-1

Legal Deadline:

None

Abstract:

The Department has proposed to amend the regulation governing the establishment and maintenance of benefit claims procedures by employee benefit plans covered by title I of the Employee Retirement Income Security Act (ERISA). The proposal would establish new standards for the processing of group health and other employee benefit plan claims filed by participants and beneficiaries. In the case of group health plans, as well as certain plans providing disability benefits, the new standards are intended to ensure more timely benefit determinations, improved access to information on which a benefit determination is based, and greater assurance that participants and beneficiaries will be afforded a full and fair review of denied claims.

Statement of Need:

This regulation is necessary to insure more timely benefit determinations, improve access to information on which a benefit determination is made, and provide greater assurance that participants and beneficiaries will be afforded a full and fair review of denied claims.

Summary of Legal Basis:

Promulgation of this regulation is authorized by sections 503 and 505 of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the amendments necessary to update the rules that implement section 503 of ERISA.

Anticipated Cost and Benefits:

On the basis of available data, the Department believes that the projected benefits of this proposed regulation would outweigh its projected costs. In particular, updating the existing regulation to address recent changes in the delivery and financing of health care services would improve health care quality by averting harmful, inappropriate delays and denials of health benefits thereby yielding substantial social benefits.

Risks:

Failure to issue this regulation would deprive many plan participants and beneficiaries of the benefits of an improved claims review process.

Timetable:

Action	Date	FR Cite
Request for Information--Amendment of Regulations on Plan Claims Procedures	09/08/97	62 FR 47262
Comment Period End	11/07/97	
NPRM	09/09/98	63 FR 48390
NPRM Comment Period End	11/09/98	
Notice of Public Hearing Held on Feb. 17,18 & 19, 1999	01/04/99	64 FR 65
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—PWBA

75. 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:

29 CFR 2590.711

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. This rulemaking will provide further 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 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 Cost 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	10/27/98	63 FR 57546
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

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), 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. AMENDMENTS TO SUMMARY PLAN DESCRIPTION REGULATIONS

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1024; 29 USC 1135

CFR Citation:

29 CFR 2520.102-3; 29 CFR 2520.102-5

Legal Deadline:

None

Abstract:

These amendments to the regulations governing the contents of summary plan descriptions (SPD) ensure that all participants in group health plans are provided, consistent with the recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, understandable information concerning their plan; provider network composition; preauthorization and utilization review procedures; whether, and under what circumstances, coverage is provided for existing and new drugs; and whether, and under what circumstances, coverage is provided for experimental drugs, devices, and procedures. These amendments repeal special rules limiting the information that must be included in summary plan descriptions with respect to certain health maintenance organizations. In addition, the amendments include provisions that update or clarify the application of certain SPD content requirements affecting both pension and welfare benefit plans.

Statement of Need:

This regulation is necessary to improve the disclosure of group health plan benefit information, consistent with the recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, as set forth in its November 20, 1997, report. The amendments will also update the general SPD content requirements and update other relevant regulatory provisions.

Summary of Legal Basis:

Promulgation of this regulation is authorized by sections 101(a), 102(b), and 505 of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the amendments which are necessary to improve the disclosure of benefit information to participants and beneficiaries of group health plans under the applicable ERISA regulations.

Anticipated Cost and Benefits:

The Department estimates that the aggregate additional costs associated with the regulation would average approximately $125 million per year for the years 2000, 2001, and 2002. However, the Department believes that the regulation would assure that participants have better access to more complete information on their benefit plans. Better information will lead both participants and plan sponsors to make more economically efficient decisions regarding benefit plans. This enhanced value and efficiency from better information constitute the benefits of the regulation.

Risks:

Failure to issue the regulation would deprive participants, beneficiaries, and plan sponsors of the improvements in health care market efficiency which would be generated by the regulatory amendments specified therein.

Timetable:

Action	Date	FR Cite
NPRM	09/09/98	63 FR 48376
NPRM Comment Period End	11/09/98	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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DOL—Mine Safety and Health Administration (MSHA)

PROPOSED RULE STAGE

77. VERIFICATION OF DUST CONTROL PLAN AND CONTINUOUS MONITORING

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 812

CFR Citation:

30 CFR 70; 30 CFR 75; 30 CFR 90

Legal Deadline:

None

Abstract:

Our current regulations require that all underground coal mine operators develop and follow a mine ventilation plan that we approve. However, we do not have a requirement that provides for in-mine verification of the plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust. The proposed rule will require mine operators to verify a plan's adequacy in controlling respirable dust. The proposed rule will address the issue of the use of continuous monitoring for sampling.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were two decades 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. Our regulations require that all underground coal mine operators develop and follow a mine ventilation plan approved by us. The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. Although such plans are required to be designed to control respirable dust, there is no current requirement that provides for in-mine verification of the proposed plan's effectiveness under typical mining conditions. Consequently, plans may be implemented that may later be shown as inadequate to control respirable dust.

Therefore, we are considering regulatory action which would require

mine operators to verify the adequacy of the dust control provisions in new or revised plans by demonstrating that the plan will be effective under typical mining conditions.

Alternatives:

In developing the proposed rule, we will consider alternatives related to typical production levels and the use of appropriate dust control strategies.

Anticipated Cost and Benefits:

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of over-exposures to respirable coal dust on each and every production shift, the key to eliminating lung disease as a risk to coal miners. Enhanced protection of miners from disease will reduce the cost of future black lung benefits and lead to lower operator insurance premiums. We are in the early stages of developing proposed rules and do not have cost estimates. As we proceed, however, we will develop estimates and make them available for public review.

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. We are pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and the reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

This rulemaking is related to RIN 1219-AB18.

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RIN: 1219–AB14

DOL—MSHA

78. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 90

Legal Deadline:

None

Abstract:

The National Institute for Occupational Safety and Health and the Mine Safety and Health Administration jointly determined that a single, full-shift measurement (''single-shift sample'') will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule will address the U.S. Court of Appeals' final decision and order in National Mining Association v. Secretary of Labor, issued September 4, 1998.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were over two decades 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. For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems range from mild impairment of respiratory function to more severe diseases, such as silicosis and pulmonary massive fibrosis. For some miners, the impairment of their respiratory systems is so severe, they die prematurely. There is a clear relationship between a miner's cumulative exposure to respirable coal mine dust and the severity of the resulting respiratory conditions.

Although dust levels in underground coal mines are significantly lower than they were in the past, we believe that miners' health can be further protected from the debilitating effects of occupational respiratory disease by further limiting their exposures to respirable coal mine dust. On each and every workshift, it is essential to prevent miners from being exposed to respirable coal mine dust concentrations that exceed the mandated exposure limits.

Alternatives:

The requirements of this rule (''single-shift sample'') will work in tandem with those of the proposed rule on verification of dust control plans and continuous monitoring - RIN 1219-AB14. We believe that the fine-tuning of the latter rule will lessen the impact of the single-shift sample requirements.

Anticipated Cost and Benefits:

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of over-exposures to respirable coal dust on each and every production shift, the key to eliminating lung disease as a risk to coal miners. Enhanced protection of miners from disease will reduce the cost of future black lung benefits and lead to lower operator insurance premiums. We are in the early stages of developing a proposed rule and we do not have cost estimates. As we proceed, however, we will develop estimates and make them available for public review.

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 potentially disabling and can cause death. Occupational lung disease associated with coal mine dust exposure typically arises after many years of cumulative exposure. Even after eliminating or substantially reducing individual shift overexposures, reductions in lung disease prevalence are not expected to materialize immediately. We are pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

This rulemaking is related to RIN: 1219-AB14 (Verification of Dust Control Plans and Continuous Monitoring).

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RIN: 1219–AB18

DOL—MSHA

FINAL RULE STAGE

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79. DIESEL PARTICULATE MATTER (EXPOSURE OF UNDERGROUND COAL MINERS)

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813; 30 USC 957; 30 USC 961

CFR Citation:

30 CFR 72; 30 CFR 75

Legal Deadline:

None

Abstract:

Epidemiological studies indicate that diesel exhaust presents potential health risks to workers ranging from headaches and nausea to respiratory disease and cancer. The National Institute for Occupational Safety and Health considers whole diesel exhaust to be a potential occupational carcinogen. The International Agency for Research on Cancer found that diesel engine exhaust is probably carcinogenic to humans.

The rule as proposed for underground coal mines requires the use of filtration to remove diesel particulate matter and requires the use of engineering and work practice controls to reduce diesel particulate matter.

Statement of Need:

The use of diesel-powered equipment in underground mines has increased significantly and rapidly during the past decade. We estimate that approximately 13,000 miners are occupationally exposed to diesel exhaust emissions in underground coal mines.

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 decreased 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, we are concerned about the potential health risk to miners.

Alternatives:

In the fall of 1995, we 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.

We considered establishing a PEL for diesel particulate in coal mines, but found that technology for measuring it in the presence of coal mine dust is not currently feasible. Therefore, the use of filtration to remove diesel particulate matter is required by the proposed rule.

Anticipated Cost and Benefits:

We estimate that the per year compliance costs are just over $10 million, of which underground coal mine operators would incur about $10 million and manufacturers of diesel engines and equipment would incur about $14,000.

The proposed rule would reduce a significant health risk to underground miners, reducing the potential for acute sensory irritations and respiratory symptoms, lung cancer, and premature death, along with the attendant suffering and costs thereof to the miners, their families, and society. In addition to savings related to acute health effects, we estimate that some lung cancers would also be avoided.

Risks:

Several epidemiological studies have found that exposure to diesel exhaust presents potential health risks to workers. Laboratory tests have shown diesel exhaust to be carcinogenic in rats, as well as toxic and mutagenic. 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. We believe that the health evidence forms a reasonable basis for reducing 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	04/09/98	63 FR 17492
Notice Significant Environment Impact	07/14/98	63 FR 37796
Extension of Comment Period; Notice of Hearings; Close of Record	08/05/98	63 FR 41755
Notice of Hearings; Close of Record	10/19/98	63 FR 55811
Extension of Comment Period; Availability of Studies; Close of Record	02/12/99	64 FR 7144
Extension of Comment Period; Close of Record	04/27/99	64 FR 2259
Corrections	07/08/99	64 FR 36826
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—MSHA

80. DIESEL PARTICULATE MATTER (EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS)

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813; 30 USC 961; 30 USC 957

CFR Citation:

30 CFR 57

Legal Deadline:

None

Abstract:

Epidemiological studies indicate that diesel exhaust presents potential health risks to workers ranging from headaches and nausea to respiratory disease and cancer. The National Institute for Occupational Safety and Health considers whole diesel exhaust to be a potential occupational carcinogen. The International Agency for Research on Cancer found that diesel engine exhaust is probably carcinogenic to humans.

The rule as proposed for underground metal and nonmetal mines establishes a concentration limit for diesel particulate matter and requires the use of engineering and work practice controls to reduce diesel particulate matter.

Statement of Need:

The use of diesel-powered equipment in underground mines has increased significantly and rapidly during the past decade. We estimate that about 7,500 miners working in production or development areas are occupationally exposed to diesel exhaust emissions in underground metal and nonmetal mines.

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 activity, and decreased 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.

Alternatives:

In the fall of 1995, we 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.

Anticipated Cost and Benefits:

We estimate that the compliance costs for underground metal and nonmetal operators would be approximately $19 million. The compliance costs to manufacturers are assumed to be passed through to underground metal and nonmetal operators and therefore, they would not incur any direct costs as a result on the rule.

The proposed rule would reduce a significant health risk to underground miners, reducing the potential for acute sensory irritations and respiratory symptoms, lung cancer, and premature death, along with the attendant suffering and costs thereof to the miners, their families, and society. In addition to savings related to acute health effects, we estimate that some lung cancer would also be avoided.

Risks:

Several epidemiological studies have found that exposure to diesel exhaust presents potential health risks to workers. Laboratory tests have shown diesel exhaust to be carcinogenic in rats, as well as toxic and mutagenic. 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. We believe that the health evidence forms a reasonable basis for reducing 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	10/29/98	63 FR 58104
Extension of Comment Period; Availability of Studies; Close of Record	02/12/99	64 FR 7144
Comment Period End	02/26/99	63 FR 58104
Notice of Hearings; Close of Record	03/24/99	64 FR 14200
Corrections	07/08/99	64 FR 36826
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—Occupational Safety and Health Administration (OSHA)

PROPOSED RULE STAGE

81. ERGONOMICS PROGRAMS: PREVENTING 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

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 magnitude of the problem, a regulatory approach was appropriate to ensure that the largest possible number of employers and employees become aware of the problems and ways of preventing work-related musculoskeletal disorders. 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. Agency representatives have delivered numerous outreach presentations to people who are interested in this subject and consulted professionals in the field to obtain expert opinions on the options considered by the Agency. Information obtained from these activities is undergoing Agency review.

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 Agency, therefore, is currently developing a proposed rule for ergonomics. The National Institute for Occupational Safety and Health (NIOSH) has 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 work-related musculoskeletal disorders in the United States account for over 600,000 injuries and illnesses that are serious enough to result in days away from work (34 percent of all lost workday injuries reported to the Bureau of Labor Statistics (BLS)). These disorders now account for one out of every three dollars spent on workers' compensation. It is estimated that employers spend as much as $15-$18 billion a year on direct costs for MSD-related workers' compensation, and up to three to four times that much for indirect costs, such as those associated with hiring and training replacement workers. In addition to these monetary effects, MSDs often impose a substantial personal toll on affected workers who can no longer work or perform simple personal tasks like buttoning their clothes or brushing their hair.

Scientific evidence associates MSDs 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 a job may cause persistent pain and lead to deterioration of the affected joints, tissues, and muscles. The longer 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 ''ergonomic risk factors,'' and the scientific literature demonstrates that exposure to these risk factors, particularly in combination, significantly increases an employee's risk of developing a work-related musculoskeletal disorder. Jobs involving exposure to ergonomic 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 1996, employers reported 281,000 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. When the data are adjusted to reflect changes in the size of the employee population, they indicate that such cases have increased more than 7-fold in the last ten years. In industries such as meatpacking and automotive assembly, approximately 10 out of 100 workers report work-related MSDs from repeated trauma each year. 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 technologically and economically feasible measures are available to significantly reduce exposures to ergonomic 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 to reduce MSDs. Many of these interventions are simple and inexpensive, but nevertheless have a significant effect on the occurrence of work-related musculoskeletal disorders. Benefits include substantial savings in workers' compensation costs, increased productivity, and decreased turnover.

Summary of Legal Basis:

The legal basis for this proposed rule is a preliminary finding by the Secretary of Labor that workers in workplaces within OSHA's jurisdiction are at significant risk of incurring work-related musculoskeletal disorders.

Alternatives:

OSHA is considering many different regulatory alternatives. These include variations in the scope of coverage, particularly with regard to industrial sectors, work processes, and degree of hazard. The agency is still developing

and refining its regulatory alternatives, including those recommended by the SBREFA Panel.

Anticipated Cost and Benefits:

Implementation costs of an ergonomics program standard 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, decreased numbers of workers' compensation claims, 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 significant risk of developing or aggravating musculoskeletal disorders due to exposure to risk factors in the workplace. In addition, information from site visits, the scientific literature, the Agency's 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	
SBREFA Panel	03/02/99	
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Undetermined

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DOL—OSHA

82. SAFETY AND HEALTH PROGRAMS (FOR GENERAL INDUSTRY AND THE MARITIME INDUSTRIES)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 651; 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918

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 Programs, and many proactive employers in all industries recognize the value of worksite-specific safety and health programs in preventing job-related injuries, illnesses, and fatalities. The reductions in job-related injuries and illnesses, workers' compensation costs, and absenteeism that occur after employers implement such programs dramatically demonstrate the effectiveness of these programs. In 1989, OSHA published nonmandatory guidelines to help employers establish safety and health programs (54 FR 3904). Those guidelines 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 has decided to expand on these guidelines by developing a safety and health programs rule because occupational injuries, illnesses, and fatalities are continuing to occur at an unacceptably high rate. For example, an average of about 17 workers were killed each day in 1997. This number does not include an estimated 137 daily deaths associated with job-related chronic illnesses.

The safety and health programs required by 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 significant safety and health hazards of all types; and eliminating or controlling those hazards in an effective and timely way. In response to extensive stakeholder involvement, OSHA has, among other things, focused the rule on significant hazards and reduced burdens on small business to the extent consistent with the goals of the OSH Act.

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 dramatic. In addition, all of the companies in OSHA's Voluntary Protection Programs 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.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary finding by the Secretary of Labor that unacceptably high injury, illness, and fatality rates can be substantially reduced by getting employers to systematically comply with their existing duty to control hazards under sections 5(a)(1) and 5(a)(2) of the OSH Act.

Alternatives:

In the last few years, OSHA has considered both nonregulatory and regulatory alternatives in the area of safety and health program management. First, in 1989, OSHA published a set of voluntary management guidelines designed to help employers set up and maintain safety and health programs. Although these guidelines have received widespread praise from many employers and professional safety and health associations, they have not been adequately effective in reducing job-related deaths, injuries, and illnesses, which have continued to occur at unacceptably high levels. Many States have also recognized the value of these programs and have mandated that some or all employers establish them; this has led to inconsistent coverage from State to State, with many States having no coverage and others imposing stringent program requirements.

Anticipated Cost and Benefits:

OSHA preliminarily estimated the overall program costs of the draft proposed standard provided to the SBREFA Panel for this rule for all covered employers to be about $2.3 billion per year. The Agency also estimates that 580,000 to 1,300,000 injuries and illnesses and 416 to 918 fatalities will be avoided each year as a result of the rule. OSHA anticipates that employers will have direct cost savings associated with this reduction in the number of injuries and illnesses of approximately $7.3 to $16.5 billion per year.

Risks:

Workers in all major industry sectors in the United States continue to experience an unacceptably high rate of occupational fatalities, injuries, and illnesses. For 1996, the Bureau of Labor Statistics reported that 6.2 million injuries and illnesses occurred within private industry. For 1997, BLS reported that 6,218 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: about $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. Because the proposed rule addresses significant job-related hazards, the rule will be effective in ensuring a systematic approach to the control of long-recognized hazards, such as lead, which are covered by existing OSHA standards, and emerging hazards, such as lasers and violence in the workplace, where conditions in the workplace would require control under the General Duty Clause of the Act.

Timetable:

Action	Date	FR Cite
NPRM	04/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

Additional Information:

A separate rule is being developed for the construction industry (29 CFR 1926). OSHA will coordinate the development of the two rules.

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DOL—OSHA

83. 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; 29 CFR 1915.1000; 29 CFR 1917.1(a)(2)(ii); 29 CFR 1918.1(b)(a); 29 CFR 1929.55

Legal Deadline:

None

Abstract:

OSHA enforces hundreds of permissible exposure limits (PELs) for toxic air contaminants found in U.S. workplaces. Most of the air contaminant limits were adopted by OSHA in 1971 from recommendations 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 many cases, these early limits are outdated and insufficiently protective of worker health. To correct this situation, OSHA issued a final rule in 1989 (54 FR 2332); it lowered the existing PELs 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 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 quantifying the risk and analyzing the feasibility that are required to support revised and new air contaminant limits. 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 name of the 20 substances from which the proposed new PELs for the first update were chosen: 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 and skin irritation and sensitivity, and cardiovascular disease, etc. Using the same criteria as those used in the Priority Planning Process, OSHA has evaluated for each substance: the 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, and the 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.

Although OSHA has evaluated factors for the twenty substances and plans to develop more PELs in the future, for this first stage in the current rulemaking process OSHA has decided to propose new PELs for four chemicals - carbon disulfide, glutaraldehyde, hydrazine, and trimellitic anhydride - that have different adverse health effects, both carcinogenic and non-carcinogenic, requiring different risk assessment approaches. For these four chemicals, OSHA has modified or developed new quantitative risk assessment approaches for cancer, respiratory sensitization and irritation, cardiovascular disease and neurotoxicity effects. Publication of the proposal will allow OSHA to continue to develop a mechanism for updating and extending its air contaminant limits, that 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 and timeliness of the process. The agency may consider using an advisory committee to review issues related to the PELs process.

Statement of Need:

OSHA has permissible exposure limits for approximately 470 toxic substances, 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 the contaminants at these levels. 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 to establish limits for some currently unregulated substances. The first step in achieving this goal is to publish an air contaminants proposal for a number of 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 Legal Basis:

The legal basis for the proposed PELs for selected air contaminants is a preliminary determination by the Secretary of Labor that the substances for which PELs are being proposed pose a significant risk to workers and that the new limits will substantially reduce that risk.

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 Cost 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 overexposures 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.

Risks:

Risk assessments for the substances under consideration for this first phase of the air contaminants updating and revision process have not yet been completed.

Timetable:

Action	Date	FR Cite
NPRM	04/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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

FINAL RULE STAGE

84. 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:

In 1992, OSHA announced that it would develop a proposal for revising steel erection safety requirements using the negotiated rulemaking process. In negotiated rulemaking, OSHA, industry and employee representatives meet as an advisory committee and attempt to forge a consensus on a proposed standard. An advisory committee for this rule was formed in 1994. Its work resulted in the publication of a proposed rule on August 13, 1998.

The written comment period ended November 17, 1998. A public hearing was held in Washington, D.C. on December 1-11, 1998. The post-hearing comment period closed April 12, 1999. OSHA is now working to complete a final rule.

Statement of Need:

In 1989, the Ironworkers International Union and National Erectors Association petitioned OSHA to revise the steel erection standard through negotiated rulemaking. In light of the significant number of steel erection fatalities and injuries and concerns that the Agency's existing rule fails to adequately address a number of factors affecting safety, OSHA determined that the current rule needed to be revised.

Summary of Legal Basis:

The legal basis for the proposed steel erection rule is a preliminary finding that workers engaged in steel erection work are at significant risk of serious injury or death as a result of that work.

Alternatives:

OSHA considered continuing to rely on the existing rule. The Agency also considered issuing a proposed rule without negotiated rulemaking. Leaving the existing rule unchanged was rejected because of the apparent inadequacies of the standard. Negotiated rulemaking was chosen to help resolve conflicts and produce a proposal sooner.

Anticipated Cost and Benefits:

OSHA expects compliance with the proposal to impose annualized costs of about $50 million per year. Benefits are expected to include the prevention of about 14 fatalities and 824 lost workday injuries per year.

Risks:

OSHA estimates that at least 28 workers die each year while engaged in steel erection. Falls continue to be the leading cause of job-related deaths among construction workers, and steel erection involves a significant degree of exposure to fall hazards.

Timetable:

Action	Date	FR Cite
Notice of Committee Establishment	05/11/94	59 FR 24389
NPRM	08/13/98	63 FR 43451
NPRM Comment Period End	11/17/98	
Public Hearing	12/01/98	
Final Rule	07/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—OSHA

85. 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:

OSHA requires employers to keep records of occupational illnesses and injuries. These records are used by OSHA and the Bureau of Labor Statistics (BLS), among others, to develop data on workplace safety and health by industry and across industries. Over the years concerns about the reliability and utility of these data have been raised by Congress, the National Institute for Occupational Safety and Health (NIOSH), the National Academy of Sciences, the Office of Management and Budget (OMB), the General Accounting Office, business and labor, as well as BLS and OSHA. In the late 1980's, OSHA contracted with the 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. In 1995, OSHA held several meetings with stakeholders from business, labor and government to obtain feedback on a draft OSHA recordkeeping proposal and to gather related information.

OSHA published a Notice of Proposed Rulemaking (NPRM) in the February 2, 1996 Federal Register that contained revised recordkeeping requirements and recordkeeping forms. The original 90-day public comment period was extended another 60 days and ended July 2, 1996. During that comment period, the public submitted over 450 written comments to OSHA Docket R-02. In addition, OSHA held two public meetings in Washington, DC (March 26-29 and April 30-May 1) resulting in 1,200 pages of transcripts from nearly 60 presentations. OSHA is now planning to issue a final rule that incorporates changes based on an analysis of the public comments and testimony.

Statement of Need:

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 identify 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.

All of these uses of the data are affected by the quality of the records employers maintain. Higher quality data lead to higher quality analyses, which in turn lead to better decisions about occupational safety and health matters. To improve the quality of the records and enhance the use of the information, OSHA needs to provide clearer regulatory guidance to employers, simplify the recordkeeping forms and provide employees with access to the information.

Summary of Legal Basis:

The legal basis for issuance of this final rule is Section 8(c)(1) of the OSH Act, which requires employers to record and report such records as are necessary for the enforcement of the Act and for developing information on the causes and prevention of occupational accidents and illnesses, as required by regulation and section 24(a) of the Act, which requires OSHA to develop an effective program of occupational safety and health statistics to further the purposes of the Act.

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 to expand its coverage and scope (i.e., eliminate the current rule's small employer and Standard Industrial Classification exemptions). The first alternative is unacceptable because it does not address the problems with the current system identified by participants in the Keystone dialogue and other OSHA stakeholders. The second alternative is also unacceptable because it would require many employers, especially small-business employers, in low hazard industries to keep OSHA injury and illness data. This could impose a substantial paperwork burden on those employers without commensurate benefit.

Anticipated Cost and Benefits:

OSHA has not determined the cost and benefits of the final rule.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	02/02/96	61 FR 4030
NPRM Comment Period End	07/02/96	
Final Action	04/00/00	
Final Action Effective	01/00/01	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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RIN: 1218–AB24

DOL—OSHA

86. 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 Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers against the transmission of tuberculosis (TB). The Coalition stated that although the Centers for Disease Control and Prevention (CDC) had developed guidelines for controlling the spread of TB, many of the TB outbreak investigations conducted by CDC showed that many employers were not fully implementing the CDC guidelines. After reviewing the available information, OSHA preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard.

To assist in the development of the proposed standard, OSHA consulted with parties outside the Agency. The preliminary risk assessment was peer-reviewed by four experts with specific knowledge in the areas of TB disease and risk assessment. In addition, OSHA conducted stakeholder meetings with representatives of various groups that might be affected by the proposed standard. The draft proposed standard was also reviewed and commented on by affected small business entities under the Small Business Advocacy Review Panel requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and by the Office of Management and Budget (OMB) under Executive Order 12866.

On October 17, 1997 OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would cover workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings where workers are at significant risk of becoming infected with TB while caring for their patients or clients or performing certain procedures. The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees.

After the close of the written comment period for the proposed standard on February 17, 1998, informal public hearings were held in Washington, DC (April 7-17), Los Angeles, CA (May 5-7), New York City, NY (May 19-21), and Chicago, IL (June 2-4). At the end of the public hearings a post-hearing comment period was established. The post-hearing comment period closed on October 5, 1998. On June 17, 1999 OSHA re-opened the rulemaking record to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post-hearing comment period. During this limited re-opening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis.

Statement of Need:

TB is a contagious disease caused by the bacterium Mycobacterium tuberculosis. Infection is acquired by the inhalation of airborne particles carrying the bacterium. These airborne particles, called droplet nuclei, can be generated when persons with pulmonary TB in the infectious stage of the disease cough, sneeze, or speak. In some individuals who inhale the droplet nuclei, TB bacteria establish an infection. In most cases, the bacteria are contained by the individual's immune system. However, in some cases, the bacteria are not contained by the immune system and continue to grow and invade the tissue, leading to the progressive destruction of the organ involved. In most cases, this organ is the lung, although other organs may also become infected.

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 cases to 22,255 cases. However, this steady decline did not continue. Instead, from 1985 to 1992, the number of reported cases increased 20.1 percent. TB control efforts were re-initiated in some areas of the country and from 1993 to 1998, the number of cases in the United States again declined. A large portion of the decrease occurred in high incidence areas, such as New York City, where intervention efforts were focused. However, despite the recent decrease in active cases, there were still 18,371 reported TB cases in 1998. Outbreaks of TB continue to occur and multidrug-resistant forms of TB disease continue to spread to new states. In addition, more than 10 to 15 million persons in the United States have latent TB infection and are at risk of developing TB disease sometime in the future. Moreover, the factors that led to the resurgence from 1985 to 1992 (e.g., increases in homelessness, HIV infection, immigration from countries with high rates of infection) still exist.

Providing health care for individuals with TB increases the risk of occupational exposure among healthcare workers. Many of the outbreaks of TB have occurred in health care facilities, resulting in the transmission of TB to both patients and health care workers. CDC found that the factors contributing to these outbreaks included delayed diagnosis of TB, delayed initiation of effective therapy, delayed initiation and inadequate duration of TB isolation, inadequate ventilation of isolation rooms, lapses in TB isolation practices, and lack of adequate respiratory protection. CDC analyzed data from several of the outbreaks and found that the transmission of TB decreased significantly when recommended TB control measures were implemented. Workers outside health care also provide services to patient or client populations that have an increased rate of TB disease. For example, occupational transmission of TB has been documented in correctional facilities, and the standard would cover such workers.

Summary of 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 a 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 Cost 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 work-related TB transmissions and infections, and a corresponding reduced risk of exposure among the general population. OSHA estimates that more than 5 million workers are exposed to TB in the course of their work. The Agency estimates that the proposed provisions will result in annual costs of 245 million dollars. Implementation of the standard is estimated to reduce the number of work-related cases of TB by 70-90 percent in the work settings covered, thus preventing approximately 21,400 to 25,800 work-related infections per year, 1,500 to 1,700 active cases of TB resulting from these infections, and approximately 115 to 136 deaths resulting from these active cases.

Risks:

From 1985 to 1992, the number of reported cases of TB in the United States 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. Fourteen states showed an increase or no change in the number of reported cases in 1998, and the factors that contributed to the resurgence continue to exist, along with exposure of certain workers to patient or client populations with an increased rate of TB. In addition, TB outbreaks continue to occur and multidrug-resistant strains of TB continue to spread to new states. Therefore, employees in work settings such as health care or correctional facilities, who have contact with infectious individuals, are at high risk of occupational transmission of TB. OSHA estimates that the average lifetime occupational risk of TB infection ranges from 30-386 infections per 1000 workers exposed to TB on the job and that the average lifetime occupational risk of TB disease ranges from 3-39 cases of active TB disease per 1000 workers exposed to TB. 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 result in serious respiratory illness or death.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/17/97	62 FR 54160
NPRM Comment Period End	02/17/98	62 FR 65388
Post Hearing Comment End	10/05/98	
Record Reopening	06/17/99	64 FR 32447
Reopening Comment Period End	08/02/99	
Final Rule	07/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

During this rulemaking, OSHA met with small business stakeholders to discuss their concerns, and conducted an initial Regulatory Flexibility Analysis to identify any significant impacts on a substantial number of small entities. In addition, OSHA conducted a special study of homeless shelters and set aside certain hearing dates for persons who wished to testify on homeless shelter issues.

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DOL—OSHA

87. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

Priority:

Other Significant

Legal Authority:

29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation:

29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

Legal Deadline:

None

Abstract:

Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation ''PPE'' to cover both personal protective equipment and other protective equipment. The Agency is proposing to revise its PPE standards to clarify who is required to pay for required PPE and under what circumstances. According to the proposal, employers would be required to provide all OSHA-required PPE at no cost to employees, with the following exceptions: the employer would not need to pay for safety-toe protective footwear or prescription safety eyewear if all three of the following conditions are met: (1) the employer permits such footwear or eyewear to be worn off the job-site; (2) the footwear or eyewear is not used in a manner that renders it unsafe for use off the job-site (for example, contaminated safety-toe footwear would not be permitted to be worn off a job-site); and (3) such footwear or eyewear is not designed for special use on the job. Employers are also not required to pay for the logging boots required by 29 CFR 1910.266(d)(1)(v).

Statement of Need:

The regulatory language used in OSHA standards has generally clearly stated that the employer must provide PPE and ensure that employees wear it. However, the regulatory language regarding the employer's obligation to pay for the PPE has varied.

OSHA attempted to clarify its position on the issue of payment for required PPE in a compliance memorandum to its field staff dated October 18, 1994.

The memorandum stated that it was the employer's obligation to provide and pay for PPE except in limited situations.

Recently, the Occupational Safety and Health Review Commission declined to accept this interpretation (Secretary of Labor v. Union Tank Car, OSHRC No. 96-0563). The Commission vacated a citation against an employer who failed to pay for OSHA-required PPE, finding that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several inconsistent earlier letters of interpretation from OSHA. Therefore, the Agency needs to clarify who is to pay for PPE under what conditions, to eliminate any confusion and unnecessary litigation.

Summary of Legal Basis:

The legal basis for this proposed rule is the need to clarify OSHA's intent with regard to the payment for protective equipment required by OSHA standards promulgated under section 6 of the OSH Act.

Alternatives:

OSHA has considered several alternative approaches to resolving this issue, including leaving this as a labor-management issue, issuing compliance directives to identify what PPE the employer must pay for, or requiring the employer to pay for all PPE. OSHA believes that, in this case, revising the standard to clarify who is to pay for the PPE is the most appropriate way to proceed. It is the only approach that will assure significant public participation in the resolution of this issue, and the codification of that resolution.

Anticipated Cost and Benefits:

It is estimated that this rule will shift, at most, annualized costs to employers of no more than $62 million across all affected industries. It is also estimated that the proposed rule will prevent over 47,000 injuries and seven fatalities that occur annually as a result of the non-use or misuse of personal protective equipment by employees required to pay for their own PPE.

Risks:

Substantive requirements for protective equipment are included in other OSHA standards. This proposed rule is designed solely to clarify OSHA's intent as to what protective equipment must be paid for by the employer. Accordingly, no assessment of risk is required for this proposal.

Timetable:

Action	Date	FR Cite
NPRM	03/30/99	64 FR 15401
NPRM Comment Period End	06/14/99	
Informal Public Hearing End	08/13/99	
Final Rule	07/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

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DEPARTMENT OF TRANSPORTATION (DOT)

Statement of Regulatory Priorities

The Department of Transportation (DOT) consists of ten operating administrations, and the Office of the Secretary, 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's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules.

For virtually all DOT rules, the initiating office must prepare an analysis that includes a discussion of the problem being 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 effects. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that legislation does not impose unreasonable mandates.

DOT continually seeks to improve its regulatory process. The creation of an electronic, Internet-accessible docket for the Department; the use of direct final rulemaking; and the use of regulatory negotiation are three examples of this.

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.

Throughout the Department, we are also actively engaged in the review of existing rules to determine whether they need to be revised or revoked. These reviews are in accordance with section 610 of the Regulatory Flexibility Act, the Department's regulatory policies and procedures, Executive Order 12866, and/or the President's directive to ''consider writing existing regulations in plain language....'' Appendix D to our Regulatory Agenda highlights our new, organized approach in this area.

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 significance among the various elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for use by personnel throughout the Department. This past year, OST also led Departmental efforts in conducting roundtable discussions with the public on how to improve our economic analyses, risk assessment, and regulatory flexibility analyses. OST is also leading DOT's effort to implement the President's plain language initiatives.

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 continually incorporating new technology into its rulemaking process. OST initiated the effort that resulted in the consolidation of nine Departmental rulemaking (and adjudicatory) docket facilities into one, centrally-managed facility. The new docket system stores electronic images in unalterable form. It includes all rulemaking and support documents, public comments, and other documents included in the public docket. This electronic docket is accessible via the Internet, and now accepts electronic filing of comments. OST redesigned its Internet home page and the General Counsel's Office now includes hyperlinks to other useful DOT regulatory web sites, including the public rulemaking dockets, and contacts for many issues of special interest to the public (http://regs.dot.gov/).

United States Coast Guard (USCG)

The United States Coast Guard's statutory responsibilities include protecting the marine environment; enforcing U.S. laws and international

treaties; performing search and rescue; and ensuring marine safety and security.

The majority of the regulatory actions issued by the Coast Guard are classified as routine and frequent because they take effect for a limited time and at specific locations. These temporary actions allow local Coast Guard units to ensure safety during marine events. The Coast Guard issues approximately 30 regulations annually that set national standards or respond to specific statutory mandates. The Marine Safety Council, a board of senior Coast Guard Leaders, approves each of these rulemaking projects, monitors the Coast Guard's regulatory program, and advises the Commandant on regulatory matters. The following are significant aspects of the Coast Guard's regulatory program:

- The Coast Guard is an active member of the Vice President's Plain Language Action Network. It has used plain language, including question/answer format and graphical displays to issue rules directly affecting the public, such as changes to the fee schedule for work credentials and new training requirements for international safety. The Coast Guard issues all new regulations and revisions to whole parts of the CFR in plain language to meet the Presidential Memorandum on Plain Language. Plain language updates will be an important part of the Coast Guard's review of all regulations under the Regulatory Flexibility Act.
- The Coast Guard encourages early public involvement in rulemaking through a variety of public meetings and the ongoing work of nine advisory committees. In addition, public comments are requested on existing rules identified for analysis each year and identified in Appendix D of the fall agenda.
- Recognizing that it should issue only necessary regulations tailored to impose the least burden on society, the Coast Guard has developed a broad Prevention Through People Program, which develops and encourages a wide variety of voluntary actions by industry and individuals to improve marine safety. To support this effort, the Coast Guard has several Quality Partnerships.
- Finally, to ensure that all regulations are necessary, each agenda item specifies how it supports at least one of the goals of the Coast Guard's Strategic Plan. Strategic goals include marine safety, protection of the marine environment, facilitation of maritime commerce, and national defense.

Federal Aviation Administration (FAA)

The FAA issues regulations to provide a safe, secure, and efficient global aviation system for civil aircraft.

In response to the mandate of the Vice President's National Performance Review to streamline the regulatory process, the FAA reengineered its rulemaking process. The new process is more efficient, ensures effective communication and decisionmaking among all parties, is flexible to manage crises, and allows for the effective use of personnel. Other related actions include:

- Supporting the FAA's Safety Agenda on Safer Skies. This agenda is based on a comprehensive review of the causes of aviation accidents and is designed to bring about a five-fold (80 percent) reduction in fatal accidents. The reformed rulemaking process supports this agenda by ensuring that appropriate resources are available to support those rulemaking projects identified as the agency's highest priority. Projects related to controlled flight into terrain, loss of control of an aircraft, uncontrolled engine failures, runway incursions, weather, pilot decisionmaking, and cabin safety are some of the focus areas identified that may result in rulemaking, advisory and guidance materials.
- Continuing to involve the aviation community early in the regulatory process. The FAA obtains input, both on the rule and the economics, from affected parties prior to publishing a proposed regulation by using the Aviation Rulemaking Advisory Committee, which represents members from all aviation interests. It is presently working on the resolution of more than 60 issues. In 1998, the ARAC issued more than 35 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 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. FAA rulemaking actions are continuing in the areas of: 1) revising repair station requirements; and 2) improving Security of checked baggage on flights within the United States.
- Continuing to recognize the needs of small entities by complying with the Small Business Regulatory Enforcement Fairness Act and addressing small entity concerns whenever appropriate in rulemaking documents. In response to the Act, the FAA has established a Small Entity Contact, a web site on FAA's home page, a toll free number, and an e-mail address for receipt of inquiries. To date, the FAA has received more than 10,000 inquiries concerning small entities.
- Ensuring that the congressional mandates for rulemaking deadlines established by the FAA Reauthorization Act of 1996 are met. One mandate is the issuance of a final rule 16 months after the close of the comment period on the proposed rule.

Top regulatory priorities for 1999–2000 include a duty limitations and rest requirements rule to ensure that pilots are sufficiently rested for duty; a terrain awareness and warning system requirement; flight recorder improvements; a transport airplane fleet fuel tank ignition source review; and an overflight of the national parks rulemaking effort to reduce or prevent the negative effects of aircraft noise in our national parks.

Federal Highway Administration (FHWA)

The FHWA anticipates that its priority for fiscal year 2000 will be continuing implementation of the Transportation Equity Act for the 21st Century (TEA–21), which reauthorizes the surface transportation programs administered by the FHWA. The FHWA will continue 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 the ongoing zero-base review of the Federal Motor Carrier Safety Regulations. The goals and objectives of the zero-base review project are to: 1) focus on those areas of enforcement and compliance which are most effective in reducing motor carrier accidents; 2) reduce compliance costs; 3) encourage innovation; 4) clearly and succinctly describe what is required; and 5) 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 prioritizing regulatory initiatives that will enhance the operational safety of commercial motor vehicles. 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 the number of and mitigating the effects of motor vehicle crashes and related fatalities and injuries, providing motor vehicle information to consumers, and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of nonregulatory approaches when feasible in meeting its statutory mandate. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

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 through a number of means, including encouraging initiatives in such areas as safety belt use, child safety-seat use, activities aimed at combating impaired driving and aggressive driving, and consumer information activities.

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, it will continue evaluating Standard 208's new measures to improve the safety performance of air bags, Standard 214's dynamic side-impact requirements, and Standard 108's requirement for reflective marking on heavy truck trailers to enhance their detection at night or under other conditions of reduced visibility. NHTSA will continue evaluating the implementation of the American Automobile Labeling Act, which requires new passenger cars, pickup trucks, vans, and sport utility vehicles to carry labels providing information on their domestic and foreign parts content. It is also evaluating the efficacy of child safety seat registration for increasing consumer response to recalls of defective seats.

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.

Federal Railroad Administration (FRA)

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety.

Fashioning regulations that have favorable benefit-to-cost ratios, and that where feasible, incorporate flexible performance standards, requires cooperative action by all affected parties. In order to foster an environment of collaborative rulemaking, FRA established the Railroad Safety Advisory Committee (RSAC). 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 working groups addressing the following tasks: 1) The development of regulations governing track, motor vehicle, and roadway worker equipment; 2) the revision of the regulations governing locomotive inspection standards for steam-powered locomotives; 3) the review of FRA regulations for their applicability to historic railroads; 4) the development of safety standards for locomotive crashworthiness; 5) the development of safety standards for locomotive working conditions; 6) the development of locomotive event recorder accident survivability standards; 7) the development of regulations governing the use of positive train control (PTC) systems; 8) the revision of regulations governing locomotive engineering certification; and 9) the development of a new accident reporting threshold.

In addition to RSAC, FRA continues to use collaborative rulemaking to address passenger safety issues. FRA established a working group to address Passenger Equipment Safety Standards and published a final rule in the first phase of this rulemaking initiative in May 1999 based on its recommendations. FRA expects to conduct research workshops related to the second phase of the rule in 2000. FRA is also involved in extensive public outreach to develop regulations regarding the use of train whistles, and plans to publish an NPRM in late 1999 or early 2000.

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 that 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 priorities for 1999–2000 are to continue to issue rulemakings required under the Transportation Equity Act for the 21st Century (TEA–21), to amend existing regulations as needed, and to update existing regulations for plain language.

Of particular importance to FTA is the publication of the Major Capital Investment Projects rule which is required by TEA–21 and will detail how the agency will evaluate and rate proposed transit projects as recommended, highly recommended or not recommended. FTA will use these ratings to recommend to Congress which of the more than 190 projects authorized in TEA–21 should be federally funded.

TEA–21 also requires that FTA and FHWA amend the joint Environmental and Planning rules, both of which will be of significant interest to States, transit agencies, local governmental bodies, and environmental groups.

FTA intends to amend the State Safety Oversight of Rail Fixed Guideway Systems rule by proposing to require States to begin overseeing rail fixed guideway systems in the planning, design, and construction phases of a system's cycle. FTA also intends to combine the drug and alcohol rules into one rule. These rules will be rewritten in plain language.

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 reflect the Agency's responsibility of 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 1999, and continuing into 2000, MARAD will give priority to updating existing regulations to reduce unnecessary burden on the public. For example, MARAD will update and streamline existing regulations and administrative practices governing the following areas: 1) the ship financing guarantee process; 2) standards for evaluation and approval of applications; and 3) the process and documentation for closing of commitments to guarantee obligations issued under these regulations.

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 clarify through rulemaking the applicability of 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 tribal governments apply.

A previous priority to revise the requirement for cylinders has been removed from the plan as a result of public comments received to a notice of proposed rulemaking. RSPA will be conducting a full technical review of the proposed specifications and standards.

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 Bureau of Transportation Statistics (BTS) is responsible for collecting, compiling, analyzing, and making accessible information on the Nation's transportation systems; identifying needs for new information and analysis and implementing programs to meet those needs; and enhancing the quality and effectiveness of the Department's statistical programs through research, the development of guidelines, coordination with related information-gathering activities conducted by other Federal agencies, and the promotion of improvements in data acquisition, archiving, dissemination, and use.

BTS's Office of Airline Information (OAI), collects airline financial and operating statistical data, covering both passenger and cargo traffic. 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, market trends, and economic analyses.

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 to meet the needs of DOT and other users in a way that takes advantage of the information revolution and matches the dramatically changing airline industry.

BTS, in conjunction with the Office of the Secretary, is in the preliminary stages of performing a zero-base review of the financial and traffic data to determine what, if any, revisions can be made to the current data collections to ensure that these collections fully support the Department's mandated aviation responsibilities. Moreover, the review will seek to identify potential savings to the affected air carriers and the Government that can be accomplished through the application of advanced information technologies to the collection, processing, validation, and dissemination of aviation data.

BTS's review and modernization of the Passenger Origin and Destination Survey will be incorporated as part of this zero-base review.

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 to ensure the safe transit of commercial and noncommercial vessels through the two U.S. locks and navigation channels of the Saint Lawrence Seaway System. The SLSDC works jointly with its Canadian counterpart to operate and maintain this deep draft waterway between the Great Lakes and the Atlantic Ocean. The SLSDC also works jointly with its Canadian counterpart on all matters related to rules and regulations, overall operations, vessel inspection, traffic control, navigation aids, safety, operating dates, and trade development programs.

The regulatory priority of the SLSDC is to provide its customers with the safest, most reliable, and most efficient Seaway System possible.

DOT—U.S. Coast Guard (USCG)

PROPOSED RULE STAGE

88. +MARINE TRANSPORTATION - RELATED FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (CGD 94-048)

Priority:

Other Significant

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, was developed in tandem with this rulemaking and addresses hazardous response plan requirements for tank vessels. Resources were committed to initially publish an NPRM for the Tank Vessel Response Plans rulemaking. That expertise will now be used to draft the NPRM for this related rulemaking. This project supports Coast Guard strategic goals of marine safety and protection of the marine environment by reducing the amount of chemicals entering the environment, as well as reducing the consequence of pollution incidents. This action is considered significant because of substantial public and industry 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 Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 U.S.C. 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although section 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 33 U.S.C. 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, and transferred to or from marine transportation-related facilities.

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 Cost 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 and enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances. The draft analysis indicates that this project will not be economically significant. A regulatory assessment addressing costs and benefits of this rule will be available in the public docket when the NPRM is published.

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	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Public hearings regarding this rulemaking were held in Washington,

DC on July 30, 1996; Houston, TX on August 5, 1996; and in Houston, TX on February 26 and 27, 1997.

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RIN: 2115–AE87

DOT—USCG

FINAL RULE STAGE

89. +TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG-1998-4354)

Priority:

Other Significant

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 project supports Coast Guard strategic goals by reducing the amount of chemicals entering the environment, as well as reducing the consequences of pollution incidents. This project is considered significant because of substantial public and industry interest.

Statement of Need:

This rulemaking is intended to reduce the impact from hazardous substance spills from vessels.

Summary of Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 U.S.C. 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 Cost 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. A regulatory assessment addressing costs and benefits of this rule is available in the public docket.

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 response 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	03/22/99	64 FR 13734
Notice of Public Hearing	06/15/99	64 FR 31994
NPRM Comment Period Extended	06/15/99	
NPRM Comment Period End	06/21/99	
NPRM Extended Comment Period End	08/30/99	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

A public hearing on this rulemaking was held in Houston, TX on August 12 and 13, 1999.

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RIN: 2115–AE88

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

90. +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 (NPS) 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 met from May to November 1997, and developed a concept paper that was approved by the Aviation Rulemaking Advisory Committee and the NPS Advisory Board in December 1997. A notice of proposed rulemaking has been developed and is now being reviewed by the FAA and NPS. In April 1999, the FAA issued a disposition of comments to the ANPRM. That document summarizes those comments to the ANPRM and provides an update to the public on matters concerning air tours over units of the national park system. 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 parks.

Summary of 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:

During its working sessions, the working group considered a variety of criteria for defining an air tour, various triggering events for determining which parks are at risk, and various means for the NPS and FAA to work together to develop an air tour management plan.

Anticipated Cost 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	
Comment Period End 07/15/94	06/20/94	59 FR 31883
Notice of Public Meeting	06/06/97	62 FR 31187
Notice of Public Meeting	04/07/98	63 FR 17040
Disposition of Comments	04/09/99	64 FR 17293
NPRM	04/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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

ANALYSIS: Regulatory Evaluation, 04/00/2000

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DOT—FAA

91. +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 on duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The changes are necessary to ensure that the rules will continue to provide the minimum level of safety. This

rulemaking responds to public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data. This action is considered significant because of substantial public interest.

Statement of Need:

The aviation community requires 24-hour activities to meet operational demands. Growths 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.

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 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 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 Cost and Benefits:

Undetermined.

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	
Comment Period End 6/19/96	03/20/96	61 FR 11492
SNPRM	08/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Project Number: AFS-94-443R

ANALYSIS: Regulatory Evaluation, 12/20/95, 60 FR 65951

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RIN: 2120–AF63

DOT—FAA

FINAL RULE STAGE

92. +TERRAIN AWARENESS AND WARNING SYSTEM

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44712; 49 USC 44715; 49 USC 44716 to 44718; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316

CFR Citation:

14 CFR 91; 14 CFR 121; 14 CFR 135

Legal Deadline:

None

Abstract:

This rulemaking would issue rules that would prohibit the operation of turbine-powered U.S.-registered civil airplanes of six or more passenger seats, exclusive of pilot and copilot seating, unless that airplane is equipped with an FAA-approved enhanced ground proximity warning system (GPWS). This proposed rule is intended to further reduce the risk of controlled flight into terrain (CFIT) accidents. This rule is significant because of substantial public interest.

Statement of Need:

The TAWS improves on existing GPWS systems by providing the flight crew much earlier aural and visual warning of impending terrain, forward looking capability, and continued operation in the landing configuration. These improvements provide more time for the flight crew to make smoother and gradual corrective action.

Summary of Legal Basis:

49 USC 44701 empowers the Administrator to prescribe regulations and minimum standards in the interest of safety for aircraft and equipment.

Alternatives:

The FAA considered regulatory options to identify the least intrusive and most cost-effective means of achieving the goal of reducing the probability of CFIT accidents. The alternatives considered fall under two general groupings: 1) require different levels of TAWS or GPWS technologies for different subsegments of the regulated population; and, 2) impose different compliance deadlines on different subsegments of the regulated population.

Anticipated Cost and Benefits:

The discounted costs of this rule are estimated at $774 million; the benefits are estimated at $2.8 billion. The benefit/cost ratio is 3.65 to 1. This total includes adding the equipment to all in-service airplanes and to all newly manufactured airplanes over the next 10 years.

Risks:

The purpose of this rulemaking is to expand and enhance the safety benefits of the current ground proximity warning system. TAWS provides an earlier time for verbal warning along with a visual warning (situational display) that will allow the flight crew

to see approaching terrain. The combination of the increased warning times and situational awareness of flight crews decreases the risk of controlled-flight-into-terrain accidents.

Timetable:

Action	Date	FR Cite
NPRM	08/26/98	63 FR 45628
NPRM Comment Period End	11/24/98	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

Project Number: AIR-96-354R.

ANALYSIS: Regulatory Evaluation, 08/26/98, 63 FR 45628

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RIN: 2120–AG46

DOT—Federal Highway Administration (FHWA)

PROPOSED RULE STAGE

93. +HOURS OF SERVICE OF DRIVERS (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

PL 104-88

CFR Citation:

49 CFR 395

Legal Deadline:

Other, Statutory, March 1, 1996, ANPRM.

NPRM, Statutory, November 5, 1997.

Final, Statutory, November 5, 1999.

Abstract:

This action would revise the FHWA's hours of service regulations. It is mandated by the ICC Termination Act of 1995. It also responds to the NTSB's safety recommendations, petitions for rulemaking, and new scientific data. There is substantial public and congressional interest in the regulation of medium-and heavy-duty truck and bus drivers' sleep, off-duty, and working periods of time. The FHWA will propose new rules based upon comments and scientific data submitted to the advance notice of proposed rulemaking docket, an initial regulatory flexibility analysis, a cost-benefit analysis, and an unfunded mandates analysis, and a paperwork reduction analysis. This action is considered significant because of substantial public and congressional interest.

Statement of Need:

The motor carrier industry requires 24-hour activities to meet the operational demands of a healthy U.S. economy. Growth in long-haul, regional, overnight, and local operations is increasing with the growth of the U.S. economy. Therefore, night work, shift work, and irregular work schedules will continue to be commonplace.

With this growth, the scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. One of the purposes of this rulemaking is to incorporate as much of the scientific knowledge as possible into the applicable regulations.

Summary of Legal Basis:

Section 31502 of Title 49, United States Code, authorizes the Secretary of Transportation to prescribe maximum hours-of-service regulations for employees of motor carriers when needed to promote the safety of operations.

Section 408 of the ICC Termination Act of 1995 (Pub. L. 104-88, December 29, 1995) requires the Federal Highway Administration to issue a final rule dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver-alertness).

Alternatives:

One alternative is to continue the current rules. Other alternatives may include replacing the current daily maximum 15-hour on-duty, maximum 10-hour-driving, minimum 8-hour-off-duty periods and weekly 60-hour-in-seven-day sliding week with an alternative set of rules based upon scientific knowledge and submitted comments. The FHWA will consider different regulations for different types of drivers, operations, or classification of vehicles.

The FHWA will also consider modifying the information collection burdens that have been placed upon the motor carrier industry, including the following types of record keeping methods. 1. Reducing the required items on the record of duty status (log book), 2. Adding automated on-board recording devices to commercial motor vehicles, 3. Adding global positioning system on-board recording devices to commercial motor vehicles.
4. Eliminating all FHWA hours-of-service record keeping requirements while relying exclusively on the duplicative hours-of-service record keeping system of records required by the U.S. Department of Labor under the Fair Labor Standards Act of 1938, as amended.

Anticipated Cost and Benefits:

Undetermined. A cost-benefit analysis completed in 1981 and based upon a 1978 notice of proposed rulemaking calculated national costs between $10.6 and $11.5 billion with possible societal benefits of about $450 million, a benefit to cost ratio under one. (In 1997 dollars, this would be national costs between $20.67 and $22.43 billion with possible societal benefits of about $878 million.) A new cost-benefit analysis is underway and will be conducted and reported in compliance with OMB Circular A-94, ''Discount Rates to be Used in Evaluating Time-Distributed Costs and Benefits.''

Risks:

The Department's National Highway Traffic Safety Administration's databases show fatigue as a contributing factor in 306 to 1,163 annual police-reported crashes for all vehicles nationally. Some scientific research suggests the number may be closer to 364 to 4,070 of all crashes (police-reported and non-police-reported).

Timetable:

Action	Date	FR Cite
ANPRM	11/05/96	61 FR 57251
Notice of Meeting	02/11/97	62 FR 6161
ANPRM Comment Period End	03/31/97	
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

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DOT—National Highway Traffic Safety Administration (NHTSA)

FINAL RULE STAGE

94. +ROLLOVER PROTECTION

Priority:

Other Significant

Legal Authority:

49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322

CFR Citation:

49 CFR 571

Legal Deadline:

None

Abstract:

The agency has initiated research to focus on exploring whether it can develop a practicable, repeatable and appropriate dynamic emergency handling test that assesses a vehicle's propensity for involvement in an on-road, un-tripped rollover crash. The agency also has granted a petition for rulemaking on this subject. This action is considered significant because of substantial public interest.

Statement of Need:

Rollover crashes account for over 9,000 traffic fatalities annually. Currently, there is a requirement that most sport utility vehicles of under 10,000 pounds gross vehicle weight rating (GVWR) have a warning label. On March 9, 1999 (64 FR 11724 - RIN 2127-AG53), in a separate rulemaking, the agency upgraded the label with better graphics and stronger wording. However, there is no safety standard or rating test for rollovers.

Summary of Legal Basis:

Section 30111, Title 49 of the United States Code states that the Secretary shall prescribe motor vehicle safety standards. Section 30117, Title 49 of the United States Code states that the Secretary may require each manufacturer of a motor vehicle to provide technical information related to performance and safety to purchasers. Authority to take these actions has been delegated to the NHTSA Administrator by 49 CFR 1.50.

Alternatives:

In addition to a potential safety standard, the rollover prevention effort could result in a consumer information or rating program which would involve notices and public comment. Another alternative might be long-term research on rollover dynamics. Long-term research would be necessary if the current effort indicates that existing test methods are inadequate for measuring rollover propensity.

Anticipated Cost and Benefits:

The anticipated costs and benefits of this action have not yet been estimated.

Risks:

Rollover crashes are the most dangerous collision type for all classes of light vehicles when measured either by fatalities or incapacitating injuries per involved occupant. In terms of fatalities per registered vehicle, rollovers are second only to frontal crashes in their level of severity. Expressed another way, rollovers accounted for 5.9 percent of light vehicle tow-away crashes in NHTSA's 1997 NASS-CDS data, less than 1/6 of the combined level of side and rear tow-away crashes. However, rollovers accounted for 29.4 percent of light vehicle occupant fatalities in 1997 FARS data, more deaths than the combined total of light vehicle occupant deaths in side and rear crashes. In addition, the rollover problem is generally more serious for light trucks and vans (LTV's) than for passenger cars. State crash data indicate that although the involvement rate for LTV's in all types of collisions is only 68 percent of that for passenger cars, their involvement rate in rollover accidents is 127 percent of that for passenger cars.

Timetable:

Action	Date	FR Cite
ANPRM	01/03/92	57 FR 242
ANPRM Comment Period End	04/03/92	
NPRM	06/28/94	59 FR 33254
Correction	07/26/94	59 FR 38038
NPRM Comment Period End	08/05/96	
Petition Grant	05/20/97	62 FR 27578
Agency Decision	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

A notice of availability of a planning document for this rulemaking was published 09/29/92 (57 FR 44721). As part of its comprehensive efforts to address the problem of light vehicle rollover, the agency proposed a new consumer information regulation that would require that passenger cars, and light multipurpose passenger vehicles and trucks be labeled with information about their resistance to rollover. In the NPRM, the agency terminated rulemaking to establish a vehicle stability standard. The agency denied petitions for reconsideration of this termination on 06/05/96 (61 FR 28560). The comment period for the NPRM was reopened after publication of a related study by the National Academy of Sciences (NAS). (This notice was inadvertently published under RIN 2127-AC54.) At the same time the agency published the grant notice on the petition for rulemaking, NHTSA published, in a separate notice, its response to the NAS study and requested comments by 08/18/97 (05/20/97 62 FR 27578). See RIN 2127-AG53 for related information on warning labels for sport utility vehicles.

ANALYSIS: Regulatory Evaluation, 06/28/94, 59 FR 33254

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DOT—NHTSA

95. +ADVANCED AIR BAGS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation:

49 CFR 571.208

Legal Deadline:

Final, Statutory, March 1, 2000.

Abstract:

On September 18, 1998, the agency proposed to upgrade its occupant protection standard to require advanced air bags. This proposal included performance tests for advanced air bags, requiring that advancements be made in the ability of air bags to protect occupants of different sizes, belted and unbelted, and requiring air bags to be designed to minimize risks to infants, children, and other occupants. In light of its review of the comments and other new information, the agency is presenting a modified proposal in an SNPRM. This action is considered significant because of the degree of congressional and public interest in this subject and because of potential costs.

Statement of Need:

While current air bags have been shown to be highly effective in reducing overall fatalities, they sometimes cause fatalities to out-of-position occupants, especially children. 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, 1999, the agency was aware of 80 children and 61 adults who had been killed by current air bags. The agency has already required more graphic warning labels on all new air-bag-equipped vehicles, enhanced manufacturers' flexibility to quickly reduce the aggressivity of current-design air bags, allowed consumers in certain defined risk groups to install retrofit on-off switches for 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: air bags incorporating advanced technologies.

Summary of Legal Basis:

Section 30111, Title 49 of the United States Code, states that the Secretary shall prescribe motor vehicle safety standards. Section 7103 of the National Highway Traffic Safety Administration Reauthorization Act of 1998 requires the Secretary to issue amendments to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags. Authority to prescribe such standards is delegated to the Administrator by 49 CFR 1.50.

Alternatives:

The agency has been 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 has been utilizing the resources of this partnership in identifying alternatives for this proposed rulemaking. Moreover, the agency joined with the National Aeronautics and Space Administration in a comprehensive state-of-the-art assessment for near-term air bag technology. As a result of these partnerships and due to its own internal research efforts, the agency is aware of the various advanced air bag technologies currently being seriously considered by the vehicle manufacturers. The proposed rule would permit the use of these technologies which include: suppression systems that could include weight sensors and/or proximity or positioning sensors, low-risk air bags that could include dual or multi-stage inflators, added or redesigned crash sensors, and/or modified fold patterns.

Anticipated Cost and Benefits:

The agency estimates that the costs of the proposed rule would be in the range of $22 to $162 per vehicle, for an estimated total of up to $2.5 billion for 15.5 million vehicles per year. Property damage savings could exceed $2.4 billion annually depending on the extent to which manufacturers use air bag suppression systems. Several hundred lives could be saved annually, as well as a currently-unquantified number of serious injuries.

Risks:

Air bags have been shown to substantially reduce fatalities in traffic crashes. When fully implemented, NHTSA estimates that air bags will save 3,000 lives per year and prevent about 34,000 moderate-to-critical injuries. However, current air bags deploy the same way for all occupants, regardless of their size or location at the time of deployment and regardless of crash severity. As a result of the designs of current air bags, there have been adult and child fatalities caused by the air bag. 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	09/18/98	63 FR 49957
Notice of Public Meeting	10/26/98	63 FR 57091
NPRM Comment Period End	12/17/98	
Notice of Technical Workshop	03/23/99	64 FR 13947
SNPRM	11/05/99	64 FR 60556
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

A technical workshop was held February 11 and 12, 1997, in Washington, DC. The NPRM responded to the petitions received for reconsideration on the final rule published for Depowering of Air Bags, RIN 2127-AG59 and Passenger-Side Manual Cutoff Switch for Air Bags, RIN 2127-AG60.

Public meetings to discuss technical issues relating to this NPRM were held

on November 23 and 24, 1998. Also, biomechanics meetings were held on April 20 and 21, 1999.

ANALYSIS: Regulatory Evaluation, 09/18/98, 63 FR 49957

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RIN: 2127–AG70

DOT—Federal Railroad Administration (FRA)

PROPOSED RULE STAGE

96. +WHISTLE BANS AT HIGHWAY-RAIL GRADE CROSSINGS

Priority:

Other Significant

Legal Authority:

49 USC 20153

CFR Citation:

49 CFR 222

Legal Deadline:

Final, Statutory, November 2, 1996.

Abstract:

This action would govern when and how train whistles at grade crossings must be sounded. FRA has found that failing to use the locomotive horn can significantly increase the number of collisions with motorists using the crossing. This action is considered significant because of substantial public interest. This action is being taken pursuant to statutory mandate. FRA studied the consequences of the proposed action and prepared a draft environmental impact statement (EIS) for the proposed rule.

Statement of Need:

This rule is required by the Swift Development Act of 1994 (Act). The Act requires the use of locomotive horns at every public highway-rail grade crossing but gives FRA the authority to make reasonable exceptions. Congress amended this law in 1996 to require that FRA take into account the interest of the communities with pre-existing restrictions on locomotive horns.

Summary of Legal Basis:

Issuance of this rule is required by 49 USC 20153.

Alternatives:

There was no alternative to initiating this rulemaking, as it is required by statute. However, the rule would provide a list of supplementary measures the FRA has determined to be effective substitutes for the locomotive horn in the prevention of highway-rail grade crossing casualties. The rule would also allow for whistle bans if there are alternative safety measures that compensate for the lack of a locomotive horn.

Anticipated Cost and Benefits:

The problems considered by this rule are collisions and their associated casualties and property damage involving vehicles on public highways and the front ends of trains at whistle-ban grade crossings. Although accident severity and the probability of a fatal accident is most strongly related to train speed, every grade crossing where locomotive horns are not sounded is a potential accident site. In 1996, there were 79 collisions at whistle-ban crossings which resulted in 2 fatalities, 39 injuries to non-railroad employees, and 2 injuries to railroad employees. The estimated safety benefits of the proposed rule are derived from the prevention of collisions and the resulting fatalities and injuries. Benefits also exist for railroads in terms of reduced train delay, debris removal and repairs.

The costs of this rulemaking will be incurred predominantly by communities. However, there are also costs to railroads and to the Federal government. At this time, FRA does not know how many businesses would be impacted or the severity of the impact if a community elects to follow the mandate and become subject to whistleblowing at crossings. Nevertheless, the benefits in terms of lives saved and injuries prevented will exceed the costs imposed on society for the proposed rule. Even under the best case scenario (falling collision rates over time) the safety benefits alone, excluding any benefit to railroads, exceed the most costly realistic scenario for community safety enhancements.

Risks:

As a result of studies conducted on accident rates at crossings at which locomotive horns are banned, FRA has concluded that such crossings generally result in a higher risk of accident than at crossings at which horns are sounded. FRA has compared the number of collisions occurring within ten different groups of crossings grouped by risk and found that the risk of a collision was 62 percent greater at crossings equipped with automatic gates and flashing lights than at similarly equipped crossings across the nation without bans. FRA analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. Congress requires that FRA issue a regulation requiring the sounding of locomotive horns at all public highway rail grade crossings. However, an exception to the requirement is permissible in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or supplementary safety measures fully compensate for the absence of the warning provided by the horn. Issuance of the rule would lower the increased collision risk associated with crossings at which no locomotive horns are sounded.

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local

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DOT—FRA

FINAL RULE STAGE

97. +REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, ACQUISITIONS OF CONTROL AND START-UP OPERATIONS

Priority:

Other Significant

Legal Authority:

49 USC 20103; 49 USC 20107; 49 USC 21301; 28 USC 2461

CFR Citation:

49 CFR 244; 49 CFR 1.49

Legal Deadline:

None

Abstract:

This proposed rule would require a railroad to file a Safety Integration Plan with the Federal Railroad Administration (1) whenever a Class I railroad, the National Railroad Passenger Corporation, or a railroad providing commuter service proposes to merge, consolidate or acquire control of one another; (2) whenever an entity proposes to start operations as a railroad; (3) whenever a Class II railroad proposes to consolidate, merge, or acquire control of another Class II railroad with which it would directly interchange freight, or (4) whenever a railroad merger, consolidation or acquisition of control would result in operations that generate revenue in excess of the Class I threshold. The proposed rule would prescribe content and subject matter areas that must be addressed in each plan before FRA may approve of such plan. FRA is working with the Surface Transportation Board to conduct coordinated rulemaking actions covering these transactions within the framework of each agency's jurisdiction.

Statement of Need:

This rule is necessary to ensure advance planning of operations to promote rail safety. Given the safety problems encountered in previous transactions and the need for the merging or acquiring railroad to integrate and harmonize information systems, training, operational practices and safety procedures on a massive scale, the need to require detailed plans setting forth the manner in which the parties intend to safely implement integration plans became apparent to FRA.

Summary of Legal Basis:

Because this rule concerns rail safety, FRA is vested with statutory authority to issue regulations governing these regulated transactions. See 49 USC 20101 et seq.

Alternatives:

The proposed rule would authorize a railroad carrying out a regulated transaction to petition for a waiver of compliance. The railroad would have to follow the procedures prescribed in 49 CFR 211 in filing such a petition. FRA may grant the petition if waiver of compliance is consistent with the public interest and railroad safety. FRA does not intend to regulate Class III railroads for the purposes of this rule. Nevertheless, the agency solicited comments from interested parties about this proposal, or whether the rule should cover any Class III railroad seeking to carry out a regulated transaction.

Anticipated Cost and Benefits:

In this rulemaking action, FRA addressed the costs and benefits of issuing the proposed rule. See 63 FR 72225, 72235 (December 31, 1998). For Class I railroads, the agency estimates that a SIP would cost between $300,000 and $800,000 to prepare, but will prevent $1.5 million to $12 million in accident costs. For Class II railroads, FRA estimates that a SIP would cost between $50,000 and $200,000 to prepare, but will prevent between $60,000 and $1.2 million in accident costs. The agency adds that the safety planning process may save railroads from experiencing substantial service difficulties that correspond to these complex transactions.

Risks:

The problems that surfaced after the merger of the Union Pacific and the Southern Pacific indicated that safety could be significantly compromised in implementing a consolidation unless the parties addressed the safety issues specifically, formally and systematically, particularly if the merger was large and complex. To address safety-related problems stemming from a merger, FRA needed a projection into the future of the safety consequences of consolidating the systems. To accomplish this, in response to the proposed acquisition of Conrail by Norfolk Southern and CSX Transportation, FRA suggested, and the STB required, that the merger applicants develop and submit well-defined Safety Integration Plans (SIPs) as part of the merger application process. The proposed rule would require, as a matter of FRA regulations, that such Plans be filed by certain railroads in the context of proposed mergers and acquisitions and similar circumstances.

Timetable:

Action	Date	FR Cite
NPRM	12/31/98	63 FR 72225
Public Hearing - Notice	04/21/99	64 FR 19512
Comment Period Extended	04/21/99	
NPRM Comment Period End	05/04/99	
Final Action	01/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

A public hearing on this rulemaking was held on May 4, 1999.

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DOT—Research and Special Programs Administration (RSPA)

PROPOSED RULE STAGE

98. +APPLICABILITY OF THE HAZARDOUS MATERIALS REGULATIONS TO LOADING, UNLOADING, AND STORAGE

Priority:

Other Significant

Legal Authority:

49 USC 5101 to 5127

CFR Citation:

49 CFR 106 to 107; 49 CFR 171 to 180

Legal Deadline:

None

Abstract:

This rulemaking proposes to better define the applicability of the Federal Hazardous Materials Regulations (HMR) in order to clarify the relationship among Federal, state, local, and tribal agencies in the regulation of hazardous materials. Under circumstances specified in Federal statutes, the regulations of other Federal agencies (EPA and OSHA) and non-Federal governments (States, localities, and Indian tribes) must be consistent with or defer to RSPA's regulation of the transportation of hazardous materials in commerce. However, other Federal and non-Federal requirements are generally not limited where hazardous materials are not in transportation. Activities relating to loading, unloading, and storage of hazardous materials have become areas of particular uncertainty and concern to both industry and non-Federal governments. This action is significant because of the substantial public interest in reducing uncertainty and avoiding conflicting regulations.

Statement of Need:

In recent years, RSPA has issued interpretations and administrative decisions on a case-by-case basis about whether particular activities are in ''transportation'' and therefore subject to regulation under the HMR. Because of increasing State and local regulation of hazardous materials, RSPA concluded that an overall rulemaking is appropriate, rather than just case-by-case decisions. RSPA believes that better overall definitions of the applicability of the HMR will reduce uncertainty by the regulated community and other regulatory agencies (both Federal and non-Federal) as to which agency has regulatory authority. Greater certainty in this regard should promote improved compliance with the HMR and also with the requirements of other regulatory agencies.

Summary of 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 applicable to, among others, any person who offers hazardous materials for transportation or who transport hazardous materials in commerce. In addition, section 5125 of title 49 U.S.C. sets forth the circumstances under which differing non-Federal requirements are preempted.

Alternatives:

Commenters to the ANPRM and SANPRM suggested alternative ways to describe the applicability of the HMR. One suggestion is to describe the applicability of the HMR in relationship to specific transportation functions. Another is to describe the applicability of the HMR over specific regulated entities, such as those who offer hazardous materials for transportation or those who transport hazardous materials. RSPA is considering each of the alternatives proposed.

Anticipated Cost and Benefits:

The potential costs and benefits of this action have not been determined. A preliminary regulatory evaluation will be developed.

Risks:

Clarifying the applicability of the HMR should reduce uncertainty as to which regulatory agency's requirements apply to any particular activity involving hazardous materials and improve compliance with the HMR, the requirements of EPA and OSHA, and non-Federal requirements. This should result in improved compliance with the applicable regulatory requirements, and improve hazardous materials transportation safety, reduce risks to the environment from hazardous materials, and promote workplace safety at facilities that manufacture or handle hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	07/29/96	61 FR 39522
ANPRM Comment Period End	11/30/96	
SANPRM	04/27/99	64 FR 22718
Extension Comment Period Published for SANPRM	07/26/99	
SANPRM Comment Period End	08/25/99	
NPRM	02/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

Docket No. HM-223. As a result of comments received to the ANPRM, we have upgraded this rulemaking to significant.

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BILLING CODE 4810–25–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; developing domestic and international economic policy; 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 Fund and its programs; protecting the President, Vice President, certain foreign diplomatic personnel, and others; 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.

During FY 2000 the Department will continue to implement the President's June 1, 1998 memorandum directing agencies to use ''plain language'' in new proposed and final rulemaking 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. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2000, the IRS will accord priority to the following regulatory projects:

- Reporting Requirements for U.S. Persons with Respect to Certain Foreign Partnerships. The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The IRS intends to issue comprehensive final regulations relating to the tax return requirements for United States persons owning interests in foreign partnerships. The final regulations will be issued under section 6038 (reporting with regard to controlled foreign partnerships), section 6038B (reporting with regard to certain transfers to foreign partnerships), and section 6046A (reporting with regard to certain ownership changes in foreign partnerships) of the Internal Revenue Code (Code). These regulations will provide guidance to United States persons who must file the relevant information returns.
- Credit for Increasing Research Activities. Section 41 of the 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 final regulations under section 41 of the Code will explain the term ''qualified research'' and the exclusions from research credit eligibility.
- Relief from Joint and Several Liability. The Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, repealed former section 6013(e) of the Code and added section 6015, which provides individuals who filed a joint return the opportunity for three types of relief from joint and several liability with respect to the return. Section 6015 is effective for liabilities unpaid as of July 22, 1998, and for liabilities that arise after that date. Section 6015(g) directs the Secretary to prescribe regulations necessary to carry out the provisions of section 6015, including: (1) providing alternative methods for allocation of items; and (2) providing a ''nonrequesting spouse'' with notice of, and an opportunity to participate in, any administrative proceeding with respect to an election for relief made under section 6015(b) or 6015(c) by the ''requesting'' spouse. The IRS expects to issue proposed regulations that will provide guidance on these and other issues relating to the new relief provisions.
- Third Party Contacts Under Section 7602(c). The Internal Revenue Service Restructuring and Reform Act of 1998 added section 7602(c) to the Code. Section 7602(c) creates a new taxpayer right that prohibits IRS employees from contacting any person, other than the taxpayer, with respect to the determination or collection of tax without first giving the taxpayer notice. Section 7602(c) also requires that the IRS make a record of any contacts made and provide that record to the taxpayer.
- Sourcing of Income From Communications Activities. The IRS and Treasury intend to issue proposed regulations to determine the source of income from ocean and space activities and international communications. These proposed regulations are of particular importance to taxpayers engaged in such emerging technologies as data transmission, the Internet, and satellite communications.
- Excise Taxes on Excess Benefit Transactions. Section 4958 imposes excise taxes on non-fair market value transactions between certain tax-exempt organizations and persons in positions to exercise substantial influence over those organizations

(disqualified persons). Disqualified persons who benefit economically from the excess benefit transactions (and in certain instances, the organization managers) are liable for the taxes. The IRS expects to issue final regulations that will clarify various definitions and rules contained in section 4958.

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.

The OCC's regulatory workload and plans are affected directly by new statutes. For example, if the 106th Congress enacts financial modernization legislation the OCC would be required to devote substantial time and resources to implementing the new law. That legislation and other possible statutory changes are not otherwise addressed in this Regulatory Plan, but may affect some of the planned rules directly, and likely would affect how the OCC prioritizes its regulatory workload.

Important final and interim rules issued during fiscal year 1999 (or expected to be issued before publication of this Regulatory Plan) include:

- Capital Amendments (12 C.F.R. Part 3). This rule, issued jointly with the other federal banking agencies, amended the capital adequacy rules with respect to second mortgages on certain residential properties; construction loans on certain presold residential properties; bank investments in mutual funds; and the leverage capital ratio. This rule implemented section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), which requires the banking agencies to work jointly to make uniform regulations that implement common statutory or supervisory policy. These changes were conforming in nature and were designed to make the capital requirements of the banking agencies more uniform.
- Release of Nonpublic OCC Information (12 C.F.R. Part 4). This rule clarified that the OCC may make non-public OCC information available to a supervised entity and to other persons, as the Comptroller deems necessary or appropriate, without a request.
- Management Official Interlocks (12 C.F.R. Part 26). This rule, issued jointly by the federal banking agencies, amended their regulations to conform to the 1996 amendments to the Depository Institutions Management Interlocks Act (DIMIA). Those amendments (1) permitted the agencies to grant exemptions to the interlocks prohibition for any interlock that would not result in a monopoly or substantial lessening of competition and (2) raised the asset thresholds for the ''major assets'' prohibition to apply only to interlocks involving a depository institution having assets of at least $2.5 billion and an unaffiliated depository institution having assets of at least $1.5 billion.
- Y2K Standards for Safety and Soundness (12 C.F.R. Part 30). The OCC and the other banking agencies issued interim guidelines establishing Year 2000 standards for safety and soundness for insured depository institutions pursuant to section 39 of the Federal Deposit Insurance Act. The banking agencies previously issued several guidance papers on important aspects of Year 2000 readiness. The guidelines complement these guidance papers by establishing minimum safety and soundness standards for achieving Year 2000 readiness.

The OCC's regulatory priorities for fiscal year 2000 include projects in the following areas:

- Community Banks. The OCC published an advance notice of proposed rulemaking on May 12, 1999, inviting comment on ways to eliminate unnecessary burdens on community banks. In particular, the OCC requested comment on ways to reduce burden in the areas of capital, lending limits, corporate governance, and applications processing.
- Community Development Corporations, Community Development Projects, and Other Public Welfare Investments (12 C.F.R. Part 24). This rule would (1) make community benefit information optional in self-certification letters and investment proposals, (2) remove the local community investment requirement for self-certification, and (3) provide that eligible community banks may self-certify all public welfare investments. The rule also would request comments on whether the requirements for community involvement in a national bank's public welfare investments should be modified.
- Interpretive Rulings (12 C.F.R. Part 7). This rule would codify recent OCC interpretations concerning messenger services, visitorial powers, ownership of stock by a director, acquisition and retention by a bank of its shares, the power to guaranty liabilities for foreign activities, and the ability of national banks to have ATMs without being subject to geographic restrictions.
- Minimum Security Devices and Procedures (12 C.F.R. Part 21). This rule would address a problem inadvertently created when the Economic Growth and Regulatory Paperwork Reduction Act of 1996 removed automated teller machines (ATMs) from the definition of ''branch'' in 12 U.S.C. 36(j).
- Conservatorship and Receivership Rules for Uninsured Entities. This rule will develop rules governing the conduct of a conservatorship or receivership for an uninsured national bank.
- Y2K. The OCC also expects to publish guidelines in the following two areas affecting banks' efforts to become Year 2000 compliant:
- Year 2000 Transfer Agent/Broker-Dealer Safety and Soundness Guidelines. This rule will complement the Year 2000 Safety and Soundness Guidelines by establishing

steps that national bank transfer agents and broker-dealers must take to ensure the Year 2000 readiness of transfer agent and broker-dealer automated systems.

- Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness. The OCC intends to finalize, with changes if appropriate, the interim guidelines discussed above.
- Risk-Based Capital Standards (12 C.F.R. Part 3). The OCC will continue to work with the other federal banking agencies to update the risk-based capital standards to maintain, and, where necessary, improve consistency in the agencies' rules. Regulatory projects in this area may include the following:
- Risk-Based Capital Treatment of Recourse and Direct Credit Substitutes. Among other things, this rule would (1) treat recourse obligations and direct credit substitutes comparably; (2) use credit ratings to assign risk weights to credit enhancements and asset-backed securities; and (3) permit the use of bank internal risk ratings for certain limited purposes.
- Collateralized Transactions. The rule would conform the rules of the other banking agencies to the OCC's rule regarding the risk-based capital treatment of loans collateralized in cash or OECD government securities. The rule would assign a zero risk weight for the portion of claims collateralized by cash on deposit in a bank or securities issued or guaranteed by the U.S. government or its agencies or the central government of an OECD country, provided that certain conditions are met.
- Capital Adequacy. The OCC, along with the other banking agencies, plans to issue a joint advance notice of proposed rulemaking inviting comments on ways to simplify the capital adequacy framework for small, noncomplex institutions.

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 a risk-focused, proactive approach to supervision.

Under the auspices of the Federal Financial Institutions Examination Council (FFIEC) the, OTS will continue to work with the other federal banking agencies to make uniform all regulations and guidelines implementing common statutory provisions or supervisory policies. These include:

- Risk-Based Capital Standards. The OTS will continue to work with the other federal banking agencies to update the risk-based capital standards to maintain, and, where necessary, improve consistency in the agencies' rules. Regulatory projects in this area may include the following:
- Risk-Based Capital Treatment of Recourse and Direct Credit Substitutes. Among other things, this rule would (1) treat recourse obligations and direct credit substitutes comparably; (2) use credit ratings to assign risk weights to credit enhancements and asset-backed securities; and (3) permit the use of bank internal risk ratings for certain limited purposes.
- Collateralized Transactions. The rule would conform the rules of OTS and the other banking agencies to the OCC's rule regarding the risk-based capital treatment of loans collateralized in cash or OECD government securities. The rule would assign a zero risk weight for the portion of claims collateralized by cash on deposit in a bank or securities issued or guaranteed by the U.S. government or its agencies or the central government of an OECD country, provided that certain conditions are met.
- Capital Adequacy. This rulemaking would simplify capital adequacy framework for small, non-complex institutions.
- Miscellaneous Capital Revisions. OTS plans to issue a proposed rule making miscellaneous amendments to update its capital rules.
- Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness. During fiscal year 1999 the OTS and the other banking agencies issued interim guidelines establishing Year 2000 standards for safety and soundness for insured depository institutions pursuant to section 39 of the Federal Deposit Insurance Act. The OTS intends to finalize, with changes if appropriate, the interim guidelines discussed above.

The OTS also plans to issue a proposed rule revising its conversion regulations, to finalize a rule concerning multiple holding companies claiming unitary status based on acquisitions, and to issue a proposed rule that would require certain holding companies to notify OTS before they engage in significant new activities.

- During fiscal 2000, the OTS intends to publish a number of proposed rules as part of its ongoing effort to review and streamline its regulations. These proposals, which will be drafted in ''plain language'' format, include:
- Applications Processing. The OTS plans to revise its procedures governing the submission of certain applications, notices, and other filings to OTS.
- Offices. The OTS will review and update its regulations on types of offices, including existing provisions on home, branch, and agency offices. The project is designed to ensure that OTS rules reflect how modern thrifts conduct their operations.
- Directors and Officers. This rule would streamline regulatory provisions concerning matters such as indemnification, savings association boards of directors, compensation, employment contracts, extensions of credit to insiders, conflicts of interest, and corporate opportunity.

The regulatory workload and plans of the OTS are affected directly by new statutes. For example, if the 106th Congress enacts financial modernization legislation the OTS will be required to devote substantial time and resources to implementing the new law. That legislation and other possible statutory changes are not addressed in this Regulatory Plan, but may affect some of the planned rules directly, and likely would affect how the OTS prioritizes its regulatory workload.

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, over-seeing 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 2000 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 1999, 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 (''Customs Mod Act''). Customs' reinvention efforts, in accordance with the principles of E.O. 12886, have involved and will continue to involve significant input from the importing public. Two final rules implementing the Customs Mod Act were published during the past fiscal year. One set forth Customs procedures regarding the detention of merchandise and the other concerned recordkeeping for merchandise transported by pipeline and for duty-free withdrawals of aircraft turbine fuel from customs bonded warehouses. Customs also proposed a major revision of its regulations concerning the licensing and conduct of customs brokers in the performance of customs business on behalf of others. This proposal is integral to implementation of the Customs Mod Act and was issued after consultation with the concerned public.

During fiscal year 2000 Customs will continue to move forward with amendments implementing the Customs Mod Act. Customs plans to publish a proposal to revise the procedures by which Customs will issue administrative rulings responding to requests from prospective importers concerning how Customs will treat their transactions. Customs also plans to finalize the proposed regulation concerning customs brokers.

During the fiscal year 2000, 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 projects focusing on the development of a more automated environment to expedite the entry, processing, and release of imported commercial merchandise, and the clearance of merchandise for export. These regulations will benefit the importing and exporting public by reducing paperwork and administrative costs, improving the efficiency of Customs operations, and streamlining the work of the trade community. Among these projects 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 allowing 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. This 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.
- 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 to assist State, local and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the alcohol, tobacco, firearms and explosives industries, including the issuance of licenses and permits;
- Assure the collection of all alcohol, tobacco, firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries;
- Suppress commercial bribery, consumer deception and other prohibited practices in the alcoholic beverage industry; 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 intends to streamline its regulations applying to the brewing industry by simplifying its brewery reports and operations and eliminating obsolete regulatory provisions. Also, ATF will propose minimum production standards for beer, thereby reducing formula filings and a revised statement of net contents requirement for certain container sizes.

ATF will continue, as a priority during Fiscal Year 2000, the multi-faceted regulatory project governing various modifications to its regulations governing commerce in explosives. ATF is further analyzing its regulations governing storage requirements for explosives, including fireworks explosive materials, and plans to issue the notice of proposed rulemaking described in detail in Part II of this Regulatory Plan.

Financial Crimes Enforcement Network

The regulations of the Financial Crimes Enforcement Network (FinCEN) constitute the core of Treasury's anti-money laundering initiatives and are 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 cornerstone 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 2000, FinCEN will continue to review and revise its existing regulations. FinCEN will continue to work with the financial community to reduce administrative burdens associated with complying with

the law 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:

- Suspicious Transaction Reports. FinCEN will issue a final rule based on a 1998 notice of proposed rulemaking requiring the reporting of suspicious transactions by casinos and card clubs. FinCEN may also publish for public comment a proposal to require brokers and dealers in securities to report suspicious transactions.
- Foreign Bank Drafts. In 1997, FinCEN issued a notice of proposed 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 would 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. FinCEN expects to take further action on the notice.

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. BPD also is responsible for administering the regulatory provisions governing the types and valuations of collateral that are acceptable to secure deposits of public monies and other financial interests of the Federal Government.

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 responsibility 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 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.

During fiscal year 2000 BPD will accord priority to finalizing the proposed rule issued in August 1999 that would establish the mechanism by which the Treasury can buy back marketable Treasury securities held by the public. This regulation will be an important potential debt management tool for the Federal Government in the future.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, and debt collection and government-wide accounting programs. During this fiscal year, FMS will continue to implement provisions of the Debt Collection Improvement Act of 1996. FMS, in conjunction with the Department of Justice, will finalize the rule containing the Federal Claims Collection Standards. This rule establishes standards for government-wide debt collection. Additionally, FMS will promulgate regulations to implement amendments to section 6402 of the Internal Revenue Code, authorizing the Secretary of the Treasury to offset tax refund payments to collect delinquent State income tax debt.

Also in fiscal year 2000, FMS will revise its rule that implements the Cash Management Improvement Act of 1990 (CMIA). The CMIA requires the head of each executive agency, under regulations prescribed by the Secretary of the Treasury, to provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary of the Treasury. FMS issued an implementing regulation, affecting billions of dollars in Federal payments, on December 21, 1992. Since that date, many changes have been identified that require public comment. FMS intends to issue a notice of proposed rulemaking concerning CMIA in late 1999, with publication of a final rule targeted for several months later.

Finally, FMS plans to revise certain of its rules that pertain to Treasury checks. FMS plans to revise its rule that governs the processing of claims on Treasury checks that are lost or stolen, and then paid over forged or unauthorized endorsements. FMS also plans to revise its rule that governs the issuance of settlement checks for forged checks that are drawn on designated depositaries.

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 2000 is to continue to streamline the application and review process for the CDFI and BEA programs. The Congress is currently considering legislation known as the ''Program for Investment in Microentrepreneurs Act of 1999,'' which would establish a program to provide financial grants for the purpose of encouraging microenterprise development. If this legislation is enacted, the Fund will also accord priority to promulgating regulations to implement this program.

TREAS—Financial Management Service (FMS)

PROPOSED RULE STAGE

99. RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

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:

5 USC 301; 31 USC 321; 31 USC 3335; 31 USC 6501; 31 USC 6503

CFR Citation:

31 CFR 205

Legal Deadline:

None

Abstract:

This regulation governs the transfer of Federal assistance funds to State governments and implements the Cash Management Improvement Act of 1990, as amended. Revisions to the regulation will address concerns raised by both States and Federal agencies about intergovernmental financing. Rules and procedures for funds transfers will be revised to provide more options and greater flexibility.

Statement of Need:

The Cash Management Improvement Act (CMIA), Public Law 101-453, October 24, 1990, requires the head of each Executive agency, under regulations prescribed by the Secretary of the Treasury, to provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary of the Treasury. FMS issued a final implementing regulation, impacting billions of dollars in Federal payments, on December 21, 1992. Since that date, many changes have been identified that require public comment. This CMIA regulation affects all States and territories receiving Federal funds.

Summary of Legal Basis:

This regulation is authorized by the Cash Management Improvement Act of 1990, Public Law 101-453, October 24, 1990. The substantive provisions of this law are codified at 31 U.S.C. 3335 and 6503; other applicable provisions of law are codified at 5 U.S.C. 301 and 31 U.S.C. 321.

Alternatives:

Not applicable.

Anticipated Cost and Benefits:

This proposed revision of the regulation implementing the Cash Management Improvement Act of 1990 is anticipated to improve the efficiency of funds transfers between the Federal Government and the States. No increase in costs is anticipated for the Federal Government or the States. Administrative burdens on the Federal Government and the States are anticipated to decrease.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	
Final Action	03/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, State

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TREAS—Bureau of Alcohol, Tobacco and Firearms (BATF)

PROPOSED RULE STAGE

100. 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 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 Cost 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	12/00/99	
Interim Final Rule	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

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TREAS—BATF

101. 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 1999.

Statement of Need:

This notice of proposed rulemaking will address many of the issues in part 55 - Commerce in Explosives, especially the issues in 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 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 measures 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 Cost 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	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

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) administers benefit programs that recognize the important public obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their beneficiaries. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The basic goal of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The National Cemetery Administration'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.

BILLING CODE 8320–01–F

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Regulatory and Deregulatory Priorities

An Era of Opportunity

During the past 29 years, the Nation has made great headway in cleaning up the air, water, and land. But as the next century approaches, we are finding that many problems remaining are more complex than those of the past, and they require more sophisticated, tailor-made remedies. EPA has undertaken 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 an unprecedented opportunity to develop tough but flexible, 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 five areas: Greater public access to information; more regulatory flexibility to obtain better results; stronger partnerships with States, Tribes, and industries; more compliance assistance; and less paperwork and red tape. 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 entities. These are innovative alternatives that are less costly but which still meet environmental and public health protection goals.

Externally, EPA is bringing together stakeholders from businesses, State, local, and Tribal governments, as well as labor and public interest groups so that all interested parties can participate in the design of environmental and public health protections. 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 goals. And, as compliance with today's environmental laws comes to be regarded as a floor to maintain rather than a ceiling to be reached, EPA is offering flexibility that encourages facilities to go beyond the minimum baseline requirements and continuously improve environmental performance.

EPA has sharpened its focus on protecting the health of children by evaluating data to take into account their unique characteristics and vulnerabilities. In November 1998, the Agency published the final EPA Rule Writer's Guide to Executive Order 13045. This Guidance advises EPA rule writers and risk assessors in considering risks to children during the establishment of public health-based and risk-based standards. The Guidance has resulted in an evaluation of children's environmental health for economically significant rules. It further provides rule writers with additional guidance on considering children's health in all applicable EPA rules, even those that are not categorized as economically significant, consistent with EPA's 1995 policy on Evaluating Health Risks to Children. Since 1997, EPA has conducted an inclusive public process through the Children's Health Protection Advisory Committee (established under the Federal Advisory Committee Act.) The Committee recommended to the Administrator the following existing standards for reevaluation to ensure that they protect children's health: the chloralkali NESHAP; pesticide tolerances for atrazine; the MCL for atrazine; pesticide tolerances for dimethoate, chlorpyrifos, methyl parathion; and the (Farm) Worker Protection Standard. EPA is currently in various stages of work to evaluate these standards.

Providing Greater Public Access to Information

To enhance the ability of the regulated community to comply with environmental requirements the Agency committed itself to make available its policy and guidance documents through the Internet. The Agency also set the end of FY 2000 as the date by which this would be achieved. With that goal in sight, the Agency expects to provide the public and in particular, the regulated community, with a single location on the EPA web site where Agency documents which interpret statutory and regulatory requirements can be located regardless of issuing organization.

With more than 40 million visits to EPA's Web site every month, public demand for high-quality environmental information has never been greater. To meet this and other related demands, EPA is establishing its first internal organization to deal comprehensively with environmental information. In addition to improving data quality and streamlining reporting, this move will advance community right-to-know opportunities for citizens and improve our ability to analyze environmental conditions.

Recognizing the effect that public disclosure can have on environmental performance, the Agency took action to make more environmental information publicly available. We recently expanded reporting under the Toxic Release Inventory for persistent, bioaccumulative chemicals, such as dioxin and mercury, by almost 25 percent. Other actions will give Americans access to information about the hazards from lead-based paint when renovating or remodeling their homes, whether their drinking water meets federal public health standards, and the potential risks from facilities in their neighborhoods that produce, use, or store chemical products.

A new program announced by Vice President Gore challenges the chemical industry to provide needed information on about 2,800 of the nation's most widely used toxic chemicals. By agreeing to conduct any necessary toxicity testing and to report the results publicly, companies can help resolve remaining questions about risk levels and avoid the need for further regulation.

More Regulatory Flexibility

To obtain better results, EPA is also giving businesses, communities, and Tribes more flexibility in how they fulfill their responsibilities to protect public health and the environment. For example, a rule for the pulp and paper industry — the Agency's first-ever integrated, multimedia rulemaking — allows companies to delay compliance with new water-pollution control requirements if they commit to go beyond compliance and installing more advanced technologies.

Through a program called Project XL, EPA encourages companies to use flexible alternative regulatory strategies if they agree to go beyond compliance — and involve stakeholders along the way.

Stronger Partnerships with States, Tribes, and Industry

EPA recognizes that a new and improved system of environmental protection must include stronger partnerships between the public and private sectors, and among the States, Tribes and the Federal Government. It would also include a greater role for citizens in 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. In addition, by providing better public access to environmental data, as discussed above, EPA is working to empower citizens so that they can be informed participants in environmental decisionmaking processes at national, State, Tribal, or local levels.

EPA, States, and Tribes 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 32 States. NEPPS is designed to give States greater flexibility to direct resources where they are needed most, based on environmental conditions and program needs, and to tailor EPA's oversight and technical assistance to each State's particular situation. As part of the partnership effort, EPA and States are collaborating in the development of core performance measures that should strengthen EPA's ability to measure environmental progress over the long term. The core measures include a mix of activity and environmental measures and will be refined over time, particularly to increase the focus on environmental results as environmental indicators become more available. In another move to strengthen State/EPA partnerships EPA and the States have approved a formal agreement on how to manage testing of innovative environmental management strategies within the current regulatory framework.

To strengthen the relationship between the private and public sectors, EPA is consulting with regulated industries earlier in its rule development processes. EPA sometimes employs formal consensus-based rulemaking, such as regulatory negotiation. More frequently, however, the Agency depends on less formal 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 vigorously carries out the Small Business 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.

More Compliance Assistance

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 established sector-specific compliance assistance centers to serve as direct, readily available sources of information on the latest regulatory requirements. EPA has established nine centers to support the following sectors: printed wiring board manufacturing; auto service and repair; printing; agriculture; metal finishing; transportation; local government; chemical manufacturing; and paints and coatings.

EPA is also offering to reduce or eliminate penalties for violations if small businesses establish programs to detect, publicly disclose, and fix problems—if 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.

Streamlining Regulatory and Paperwork Burdens

The Agency continues to examine existing environmental regulations and paperwork to simplify and streamline compliance for the regulated community. This is consistent with the President's announcement in February l995 that all Federal agencies must conduct line-by-line reviews of their regulations and eliminate those that are obsolete or redundant. In March 1995, EPA set a goal of reducing by 25 percent paperwork burden associated with requirements in effect on January 1, 1995. By September 30, 1995, EPA had achieved six million hours in reductions from this baseline. Following reauthorization of the Paperwork Reduction Act starting in October 1995, EPA revised its goal while reaffirming its commitment to the reduction of paperwork burdens. During the 3-year period from October 1, 1995, through September 30, 1998, EPA completed reductions of over 22 million hours and another 4 million hours is projected by the September 30, 2000. Reductions during this period will be offset by the addition of approximately 49 million burden hours from new regulations and upward revisions of previous burden estimates. More than two-thirds of this offset is due to strengthening of the community right-to-know initiative.

Some examples of regulatory and paperwork streamlining are:

- Proposed Consolidated Air Rule for Chemical Manufacturers

A proposed rule that consolidates 16 federal air regulations into a single guideline could save the average U.S. chemical plant about 1,700 hours or $80,000 a year in the future. The proposal, which represents the first consolidated rule ever under the Clean Air Act, would be voluntary. Plant managers could opt to comply with the consolidated rule or continue operating under the 16 existing rules.

- Streamlined Certification Process for Auto Makers

A streamlined process for certifying that new passenger cars and trucks meet federal standards for air pollution emissions is expected to save automobile manufacturers an estimated $55 million a year. Under the proposed process, testing would be performed on vehicles actually in use on the nation's highways rather than on brand new vehicles. In addition to cutting burden, the new process creates an incentive for manufacturers to produce more durable emissions control equipment and gives EPA better data for managing real-world air quality programs.

- Simplified Hazardous Waste Management Requirements

The Agency addressed several barriers that have prevented common sense practices in managing hazardous wastes. Reforms to the 20-year-old program for managing polychlorinated biphenyls, or PCBs, are expected to produce cost savings estimated at between $178 million and $736 million each year. New treatment standards for land disposal of hazardous waste will facilitate cleanups of contaminated sites. Another regulation simplifies the

cleanup and closure of hazardous waste disposal facilities.

Highlights of EPA's Regulatory Plan for 1999

EPA's regulatory plan for 1999 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 highlights of our upcoming rules:

Office of Air and Radiation Highlights

One of the most significant events for the Office of Air and Radiation (OAR) since the publication of the last Regulatory Plan was an adverse court decision regarding EPA's air quality standards. As summarized below, EPA is appealing this decision, and is re-evaluating its implementation program while it awaits legal resolution of this situation. To assure air quality progress in the interim, EPA has reinstated the one hour ozone standard in areas where it had previously been revoked. Meanwhile, EPA remains 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 low-cost approaches. The following paragraphs summarize the most significant of OAR's activities.

- In 1997, EPA established new, more stringent air quality standards for ozone and particulate matter based on new scientific and technical information. The new standards were designed to offer increased protection for public health and the environment, and EPA began pursuing a commonsense implementation strategy that would give States and industry flexibility with which they can meet these air quality goals. However, on May 14, 1999, a three-judge panel of the D.C. Circuit found that the Clean Air Act provision authorizing the new standards is unconstitutional as EPA applied it. This decision did not call into question the scientific basis for the new standards, only the procedure by which they were established. EPA has appealed this decision and intends to vigorously defend the standards in court. However, until the matter is resolved in court, EPA must defer to the panel's decision, and is re-evaluating this implementation strategy to decide which parts of it can continue and which parts must be put on hold during the litigation.
- To achieve further emission reductions mandated by the Clean Air Act, EPA is developing the Tier II rulemaking which will propose the next generation of emission standards for light-duty vehicles and light-duty trucks. The primary focus of this action will be reducing emissions of nitrogen oxides and non-methane hydrocarbons, pollutants which contribute to ozone pollution. The rulemaking will also propose limitations on the sulfur content of gasoline available nationwide. Sulfur in gasoline has a detrimental impact on catalyst performance and could be a limiting factor in the introduction of advanced technologies on motor vehicles.
- In accordance with Section 801 of the Energy Policy Act of 1992, EPA is developing health and safety standards for protection of the public from releases from radioactive materials stored or disposed of by the Department of Energy in the nuclear waste repository being constructed at Yucca Mountain in Nevada.
- 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. A final rulemaking is expected late in 1999.
- EPA, building on successful State programs, has been working with stakeholders to develop a more streamlined way for facilities to 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.
- In August of 1997, EPA completed a comprehensive revision to streamline its regulations on transportation conformity. On March 2, 1999, the U.S. District Court for the District of Columbia overturned parts of that 1997 revision, including the provisions governing which projects can proceed without a conforming transportation plan and when States can use State Implementation Plans that EPA has not approved. The Administration's initial response to this court decision was to issue guidance from EPA and the Department of Transportation dealing with the issues in question. EPA is now developing a rule to respond to these court decisions that will formalize this guidance and deal definitively will all the issues raised by the court.
- From discussions with affected industries, EPA has learned that many companies find it difficult to know what we expect of them given the growing complexity of the regulatory system during the last 29 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, in October 1998 EPA proposed 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, we will expand it to cover other industries. The final rule on the pilot program is expected by the end of 1999.
- To date, our air toxics program has focused primarily on getting broad emission reductions from large industrial sources through technology-based standards. Since 1990, EPA has issued standards affecting 77 different industries, such as petroleum refineries and chemical manufacturing plans. When fully implemented, these standards will reduce more than one million tons of toxic air emissions per year. Additionally, through other efforts such as the phase-out of lead in gasoline, we have significantly reduced air toxics from cars and trucks. We are continuing to set technology-based standards for large industries, and will complete more than 80 additional standards over the next few years. The rule listed in this year's Regulatory Plan — industrial boilers, institutional/commercial boilers — is among the most significant remaining categories to be regulated under this program. While working on these standards, we are beginning to evaluate those sources with standards already in place to determine if the remaining risk from these sources warrants additional regulation. We are also implementing our Urban Air Toxics Strategy, which focuses on 33 air toxics that pose the greatest risk in the largest number of urban areas and presents our plan, both nationally and more locally, to reduce those toxics. Finally, to better understand and measure risks from air toxics, we are also conducting important health research and improving our emissions inventories, modeling capability, and monitoring network.
- 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 help States in addressing short-term peaks of sulfur dioxide. The new implementation strategy - the Intervention Level Program - was proposed on January 2, 1997. In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the U.S. Court of Appeals for the D.C. Circuit for a judicial review of EPA's decision not to establish a new 5-minute NAAQS. On January 30, 1998, the court found that EPA did not adequately explain its decision and remanded the case so EPA could explain its rationale more fully. EPA published a schedule for responding to the remand in the May 5, 1998 **Federal Register**. The schedule calls for a final response to the remand by December 2000. Any final action on the intervention level program would occur no sooner than December 2000.

- On April 15, 1998, the EPA promulgated an integrated regulation for the pulp and paper industry that includes both effluent guidelines and air emission standards to control the release of pollutants to both the water and the air from the most important emission sources at pulp and paper facilities. At the same time, the EPA proposed air emission standards for a final group of combustion sources at these facilities. These air standards are scheduled to be completed by the end of the year 2000.

Office of Water Highlights

On August 6, 1996, President Clinton signed the Safe Drinking Water Act (SDWA) Amendments of 1996 which laid out requirements to strengthen the nations drinking water program. These amendments directed EPA to further improve the quality of drinking water and protect public health by requiring the following actions:

- The National Primary Drinking Water Regulation (NPDWR) for Radon will reduce exposure to radon in homes. The regulation recognizes that the public health problem from radon in indoor air typically far exceeds the health risks of breathing radon released to the air from showers, sinks, or drinking water . The rule, therefore, lays out a unique framework that allows States and/or systems to adopt multimedia programs which reduce radon risks from indoor air and drinking water in combination. States and systems that choose this option will focus risk reduction on the greatest threat (indoor air), while spending much less money to comply with these rules than if they focused on drinking water alone.
- The NPDWR for Ground Water sets in place an increasingly targeted strategy to identify ground water systems that are vulnerable to microbial contamination. The multiple barrier approach, of this rule relies on 4 major components (inspections, monitoring, corrective action, and treatment) which, in combination, EPA believes strikes an appropriate balance between the intensity or burden of protective measures against microbial contamination and follow-up action to the risk being addressed.
- The NPDWR for Arsenic is another rule mandated by the 1996 SDWA Amendments. Presently, the arsenic standard is 50 ug/l. The National Academy of Science, however, issued a report in March 1999 that urged EPA to lower the drinking water standard, based on conclusive evidence that inorganic arsenic causes bladder, lung and skin cancer in humans. EPA will decide what that appropriate level is, balancing health risk reduction benefits and the costs.
- The Long Term 1 Enhanced Surface Water Treatment/Filter Backwash Rule contains provisions that require surface water treatment for public water systems serving 10,000 or fewer people and that govern the recycle of filter backwash within the treatment process of all public water utilities. EPA believes that implementing the provisions contained in this rule will improve public health protection in three ways. First, it will reduce the level of Cryptosporidium in finished drinking water supplies through improvements in filtration and recycle practices. Second, the reduced level of Cryptosporidium will reduce the likelihood of outbreaks of cryptosporidiosis, which usually causes symptoms such as abdominal discomfort and nausea in healthy individuals and possibly death to sensitive populations such as children and the immunocompromised. Third, the filtration provisions of the rule are expected to increase the level of protection from exposure to other pathogens (i.e., Giardia or other waterborne bacterial or viral pathogens).

The amendments also set forth new public notification provisions for EPA to better inform customers of the quality of their drinking water. The new provisions require EPA to tailor the frequency and content of the public notice to the relative risks to public health and otherwise streamline the process currently in place. The 1996 amendments (1) require notice within 24 hours for violations posing a serious public health risk from short term exposure and give EPA discretion to set the timing of the notification for all other violations; (2) give EPA discretion to set the method of delivery of the notices as long as the public notice reaches all persons served; (3) establish a specific requirement for EPA consultation with the States in issuing revised regulations and (4) allow the primary States to specify alternative notification requirements (by rule) with respect to the form and content of the notice. One other new requirement was for public water systems to prepare an annual consumer confidence report which was implemented as part of a separate rulemaking (published August 19, 1998). In addition to streamlining the existing requirements, this rule will provide quicker and more effective notification of violations that have a serious adverse effect and better inform customers of the risk to their health.

The National Water Quality Inventory, 1996 Report to Congress indicates that storm water discharges are major causes of water quality impairment, roughly 45 percent of the identified cases of water quality impairment of estuarine square miles surveyed, for example, are attributable to storm sewer runoff. Pollutants in discharges from municipal separate storm sewer systems (MS4s) include sediment, floatables, oil and grease, as well as toxic pollutants, metals and raw sewage from illicit discharges. Studies indicate that erosion rates from construction sites are typically an order of magnitude larger than from other land uses. Sediment and erosion from these sites have been shown to severely impact water quality and aquatic life. Storm water runoff has also been the cause of many beach closings and caused increase gastrointestinal illnesses in swimmers who swim adjacent to storm drains. To protect public health and the aquatic environment EPA issued the National Pollutant Discharge Elimination System (NPDES) existing storm water program (Phase I) in 1990. The Phase I regulation addresses storm water discharges from specific industrial categories, MS4s serving populations over 100,000, and construction sites that disturb 5 or more acres. To further protect American families and the environment EPA proposed the Storm Water Phase II rule and we will issue the final rule by October 29, 1999. Phase II will expand the existing national program to smaller municipalities and construction sites

that disturb 1 to 5 acres. In this expansion, EPA is proposing an exemption for certain sources to be excluded from the national program based on the lack of impact on water quality, as well as to pull in other sources not regulated on a national basis based on localized adverse impact on water quality.

EPA believes that the implementation of the six minimum measures for small MS4s should significantly and cost-effectively reduce pollutants in urban storm water. Similarly, EPA believes that implementation of best management practices (BMPs) at small construction sites will cause a significant reduction in pollutant discharges and an improvement in surface water quality. EPA expects significant monetized financial, recreational and health benefits, as well as benefits that EPA has been unable to monetize. These include reduced scouring and erosion of streambeds, improved aesthetic quality of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, tourism benefits, biodiversity benefits and reduced costs for siting reservoirs.

On August 12, 1990, Environmental Protection Agency Administrator Carol Browner signed proposed revisions to the Total Maximum Daily Load (TMDL) regulations (40 CFR part 130) for implementing state, territorial, authorized tribal, and EPA responsibilities under section 303(d) of the Clean Water Act. Administrator Browner also signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) and Water Quality Standards regulations to facilitate implementation of TMDLs and to improve water quality in impaired waters before TMDLs are established. These proposed regulatory revisions address issues of fundamental importance to cleaning up our Nation's polluted waters. States and territories have identified over 20,000 individual river segments, lakes, and estuaries across America as polluted. These polluted waters include approximately 300,000 miles of river and shoreline and approximately 5 million acres of lakes — polluted mostly by sedimentation, nutrients, and harmful microorganisms. With the overwhelming majority of the population living within 10 miles of these polluted waters, these proposed regulatory revisions will have a profound impact on the environment and health of communities across the country.

The proposed revisions to the TMDL regulations provide states with clear, consistent, and balanced direction for listing waters and developing TMDLs, resulting in restoration of waterbodies not meeting water quality standards. Listing impaired and threatened waters and establishing TMDLs are fundamental tools for identifying remaining sources of water pollution and achieving water quality goals. Clean-up plans developed under this regulatory proposal will help to restore the health of thousands of miles of river and shoreline and make millions of lake acres safe for fishing, swimming and other activities.

The proposed revisions to the NPDES and water quality standards regulations (40 CFR parts 122, 123, 124 and 131) are designed to achieve reasonable further progress toward attainment of water quality standards in impaired waterbodies after listing and pending TMDL establishment, and to provide reasonable assurance that TMDLs, once completed, will be adequately implemented. Federal implementation through NPDES permits, in the absence of State, Territorial, or Tribal implementation, will ensure that the clean-up plans will work.

Pollution from concentrated animal feeding operations (CAFOs) potentially can reach waters of the United States through discharges from waste storage and containment areas and from areas where waste is applied to the land as a nutrient or soil amendment. The potential for polluted discharges from these areas is especially high during periods of heavy rain when waste storage and disposal systems and the soil's assimilation capacity are likely to be overwhelmed. Discharges from CAFOs can lead to degradation of surface waters due to the addition of nutrients, micronutrients, salts, BOD, various pathogens and other pollutants.

Currently, certain CAFOs are regulated through permits issued under the National Pollutant Discharge Elimination System (NPDES). These permits specify appropriate discharge standards based on either promulgated effluent limitation guidelines and/or permit writers' best professional judgment. EPA promulgated the regulations describing the NPDES regulatory process for CAFOs in 1976. It also promulgated effluent limitation guidelines applicable to feedlots in 1974 and 1975.

EPA is re-examining and plans to revise the existing NPDES and effluent guideline regulations related to CAFOs due to: Changes within the animal agriculture industry since the rules were promulgated in the 1970s; new animal and waste management techniques; improved understanding of the water quality impacts associated with CAFO waste management; and issues associated with implementing the existing regulations. The types of changes that are being considered, but may not necessarily be adopted, include: requirements to develop and implement nutrient management plans; requirements regarding land application of manure; requirements regarding treatment of manure, litter and wastewater to reduce manure constituent concentrations; installation of controls to contain animal waste; Best Management Practices; establishing numeric discharge limitations; additional sampling and monitoring, reporting and record keeping; and revising the regulatory scope.

Office of Prevention, Pesticides, and Toxic Substances Highlights

The Food Quality Protection Act (FQPA) overhauled U.S. pesticides laws, enhancing protections related to pesticide residues in food by requiring aggregate and cumulative risk assessments, with a special emphasis on children and infants. EPA currently has underway the Pesticide Tolerance Reassessment Program, a 10-year program to reevaluate the safety of all pesticide residues in food. Under this program, EPA has now completed reassessment of the first third of the pesticide residues in foods. In addition, the Agency is establishing an Endocrine Disruptor Screening and Testing Program based on the recommendations of the advisory committee established by EPA to consider human health and ecological effects; estrogenic, androgenic, anti-estrogenic, anti-androgenic, and thyroid effects of pesticides, industrial chemicals and drinking water contaminants.

The Chemical Right-to-Know Initiative, which was announced by the Vice President in April 1998, challenges industry and directs the Agency to establish programs and/or promulgate regulations that would provide baseline toxicity information for approximately 3,000 widely used commercial chemicals, additional health effects information for those chemicals to which children are disproportionately exposed; and the listing and lowering of the reporting threshold for persistent, bioaccumlative, toxic chemicals reported under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This information will better enable

communities to understand the nature of toxic releases and potential risks at the local level, as well as decide local priorities.

With almost a million children under 5 with blood-lead levels exceeding the Center for Disease Control's level of concern (10 ug/dl), reducing the opportunities for childhood lead poisoning resulting from activities associated with lead-based paint activities continues to be a priority for the Agency. Elevated blood-lead levels can lead to reduced intelligence and neuro-behavioral problems in young children, and can cause other health problems in children and adults. EPA is working on a final regulation to replace the existing interim guidance that identifies lead-based paint, lead-contaminated dust, and lead-contaminated soil hazards. EPA is considering proposed approaches to address lead risks associated with renovation and remodeling activities. To help reduce the costs related to the abatement of lead-based paint hazards, EPA is working on final rules which would address the disposal of lead-based paint debris.

EPA expects to issue a final rule which would require EPA-approved Pesticide Management Plans (PMPs) for certain pesticides that have a high groundwater contamination potential. Through a PMP, a State or Tribe may commit to both EPA and the public that they will manage the use of a particular pesticide in a way that avoids unreasonable risks to groundwater that would otherwise warrant the cancellation of the use of that particular pesticide. The PMP program was developed in partnership with State and Tribal representatives.

Office of Solid Waste and Emergency Response Highlights

The Office of Solid Waste and Emergency Response (OSWER) is planning 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 regulation 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.

- EPA seeks to streamline the regulation of listed hazardous wastes. Certain regulations may be overly broad in that they apply regardless of the concentrations of chemicals within listed wastes. As a result, they regulate certain low-risk wastes (in particular, treatment residuals) as if they posed high risk. EPA plans to propose concentration-based exemptions that could grant relief to some of these lower risk wastes from the full management requirements designed for higher risk hazardous waste.
- The Agency is revising the RCRA Hazardous Waste Manifest system because of how much paperwork burden is associated with the manifest. Reduction in paperwork burden is part of the Administration's Regulatory Reinvention goal of cutting Government red tape. The Agency wants to standardize the manifest program across the states by introducing a truly uniform manifest tracking form that can be completed either manually or electronically. The chief goal of the manifest system is to facilitate the safe transportation of hazardous waste shipments to appropriate RCRA management facilities.
- The proposed rule on storage, treatment and disposal of mixed waste suggests regulatory flexibility in the management of mixed waste that is dually regulated by EPA and the Nuclear Regulatory Commission. The proposal will take comment on allowing low-level radioactive mixed wastes to be conditionally exempt from the definition of hazardous waste while it is subject to NRC regulations and providing certain conditions are met. When completed, it is expected to reduce worker exposures to radiation, costs, and regulatory requirements.
- Over the past few years, the Agency has worked with stakeholders from state agencies, industry, and the environmental community to develop recommendations to improve the Agency's permitting programs. These stakeholders concluded that permitting activities should be commensurate with the complexity of the activity and that permit programs should be flexible enough to allow streamlined procedures for routine permitting activities. The stakeholders recommended that regulations be developed to allow standardized permits for on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings. As a result of this recommendation, the Agency is proposing to revise the RCRA regulations to allow this type of permit.

Office of Administration and Resources Management Highlights

In 1995, EPA and the States agreed to develop and carry out the National Environmental Performance Partnership System (NEPPS) to: Promote joint planning and priority setting by EPA and the States; give States greater flexibility to direct resources where they need them most; foster use of integrated and innovative strategies for solving water, air, and waste problems; achieve a better balance in the use of environmental indicators and traditional activity measures for managing programs; and improve public understanding of environmental conditions and the strategies being used to address them.

EPA is announcing its intent to establish a new subpart governing Environmental Program Grants to States, Interstate, and Local Agencies (40 CFR 35, subpart A). The regulation includes rules applicable to the Performance Partnership Grant (PPG) program. Under the PPG program, eligible applicants can combine environmental program grants into a single grant in order to improve environmental performance, increase programmatic flexibility, and achieve administrative savings. The proposed rule was published in the **Federal Register** on July 23, 1999. The Agency anticipates that the regulation will be made final in December 1999.

Executive Order 13084 addresses the need for regular and meaningful consultation and collaboration with Indian Tribal governments in developing regulatory policies on federal matters affecting their communities. In accordance with this Executive Order, EPA is announcing its intent to publish a new subpart containing Tribal-specific provisions for environmental program grants and a new Tribal Performance Partnership Grant (PPG) program (40 CFR 35, subpart B). Under the PPG program, eligible Tribes and Intertribal Consortia can combine environmental program grants into a single grant in order to improve environmental performance, increase programmatic flexibility, achieve administrative savings, and strengthen the government-to-government partnership between Indian Tribes and EPA. The proposed rule was presented in the **Federal Register** on July 23, 1999. The Agency anticipates publishing the final regulation in February 2000.

In developing all of these actions, EPA is committed to flexible, cost-effective regulatory programs that offer increased protections for public health

and the environment. EPA welcomes suggestions from the public to help the Agency in this effort.

EPA

PRERULE STAGE

102. TRI; ADDITION OF OIL AND GAS EXPLORATION AND PRODUCTION TO THE TOXIC RELEASE INVENTORY

Priority:

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

Unfunded Mandates:

Undetermined

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 facilities whose primary economic activity was classified as manufacturing. 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 began additional 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 generally not publicly available in the manner provided by EPCRA section 313. 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 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 Cost 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
ANPRM	09/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Federal

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.

Sectors Affected:

211111 Crude Petroleum and Natural Gas Extraction

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RIN: 2070–AD19

EPA

PROPOSED RULE STAGE

103. NAAQS: SULFUR DIOXIDE (RESPONSE TO REMAND)

Priority:

Economically Significant

Legal Authority:

42 USC 7409, CAA sec 109

CFR Citation:

40 CFR 50.4; 40 CFR 50.5

Legal Deadline:

Final, Judicial, December 31, 2000.

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. In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the U.S. Court of Appeals for the D.C. Circuit for a judicial review of EPA's decision not to establish a new 5-minute NAAQS. On January 30, 1998, the court found that EPA did not adequately explain its decision and remanded the case so EPA could explain its rationale more fully. EPA published a schedule for responding to the remand in the May 5, 1998 Federal Register. The schedule calls for a final response to the remand by December 2000. Any final action on the intervention level program would occur no sooner than December 2000.

Statement of Need:

Brief exposures to elevated concentrations of sulfur dioxide, while at exercise, may cause 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.

Summary of Legal Basis:

Title I of the Clean Air Act.

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 Cost 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 Rule NAAQS Review	05/22/96	61 FR 25566
NPRM Revised NAAQS Implementation (Part 51)	01/02/97	62 FR 210
Notice Schedule for Response to NAAQS Remand	05/05/98	63 FR 24782
NPRM Response to NAAQS Remand	11/00/99	
Final Rule Response to NAAQS Remand	12/00/00	
Final Action NAAQS Implementation (Part 51)	01/00/01	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 1002

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RIN: 2060–AA61

EPA

104. 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 51

Legal Deadline:

None

Abstract:

In response to litigation on the operating permits rule regulations, 40 CFR Part 70, to provide more effective

implementation of part 70, and to address comments provided in response to notices of proposed rulemaking, parts 70 and 51 are being revised. The changes streamline the procedures for revising stationary-source operating permits issued by State and local permitting authorities under title V of the Clean Air Act and eliminate public participation requirements for minor new source review actions with little or no environmental impact.

Statement of Need:

These revised rules will allow more streamlined procedures 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:

In response to concerns expressed in comments on the draft final rulemaking, the EPA discussed alternatives with representatives from State and local permitting authorities and industry and environmental groups, and desires public comment on some of the proposed alternatives. EPA will then consider public comments before promulgating a final rule.

Anticipated Cost and Benefits:

The administrative cost of implementing these proposed rules by permitting authorities, EPA, and permitted sources has not yet been estimated, but is expected to be lower than the cost of the current rule. 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.

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
Supplemental NPRM Part 71	04/27/95	60 FR 20804
Supplemental NPRM Part 70	08/31/95	60 FR 45530
NPRM Interim Approval Extension	07/27/98	63 FR 40053
Direct Final Interim Approval Extension	07/27/98	63 FR 40054
NPRM	02/00/00	
Final Action	12/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State

Additional Information:

SAN No. 3412

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RIN: 2060–AF70

EPA

105. 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:

NPRM, 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 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 Cost 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	11/00/99	
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

Additional Information:

SAN No. 3568

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RIN: 2060–AG14

EPA

106. NESHAP: INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL BOILERS

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 7412

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Abstract:

The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). Industrial boilers and institutional/commercial boilers are among the potential source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for these source categories in 1987 and 1990. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology (MACT) as described in section 112 of the CAA.

Statement of Need:

Industrial boilers and institutional/commercial boilers are source categories listed to be regulated under Section 112 of the Clean Air Act.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

Alternatives will be explored as the proposal is developed. At this early stage, no alternatives have yet been identified.

Anticipated Cost and Benefits:

It is expected that this rule will result in significant costs to the affected industry, including costs for recordkeeping and reporting. These costs will be identified as the proposal is developed.

Risks:

The risks from this industry are expected to be those normally associated with combustion, such as exposure to particulate matter and sulfur oxides. These will be addressed as the proposal is developed.

Timetable:

Action	Date	FR Cite
NPRM	11/00/00	
Final Action	11/00/01	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3837

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RIN: 2060–AG69

EPA

107. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 7408; 42 USC 7409

CFR Citation:

40 CFR 50

Legal Deadline:

Final, Statutory, July 1, 2002, Under the Clean Air Act - the next standards review is to be completed July 2002.

Abstract:

On July 18, 1997, the EPA published a final rule revising the national ambient air quality standards (NAAQS) for particulate matter (PM) (62 FR 38652). While retaining the PM10 standard levels, new standards were added for fine particles (PM2.5) to provide increased protection against both health and environmental effects of PM. On the same day, a Presidential Memorandum (62 FR 38421, July 16, 1997) was published that, among other things, directed EPA to complete the next review of the PM NAAQS by July 2002. The EPA's plans and schedule for the next periodic review of the PM NAAQS were published on October 23, 1997 (62 FR 55201). As with other NAAQS reviews, a rigorous assessment of relevant scientific information will be presented in a Criteria Document (CD), and the preparation of this document is currently under way by the EPA's National Center for Environmental Assessment. The EPA's Office of Air Quality Planning and Standards will also prepare a Staff Paper (SP) for the Administrator which will evaluate the policy implications of the key studies and scientific information contained in the CD and additional technical analyses and identify critical elements that EPA staff believe should be considered in reviewing the standards. The SP and CD will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public; both will reflect the input received through these reviews. As the PM NAAQS review is completed, the Administrator's proposal to revise or reaffirm the PM NAAQS will be published with a request for public comment. Input received during the public comment period will be reflected in the Administrator's final decision which will be published in July 2002.

Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for particulate matter are to be reviewed every five years.

Summary of Legal Basis:

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' national ambient air quality standards for pollutants identified under section 108 (the

''criteria'' pollutants). The ''primary'' standards are established for the protection of public health, while ''secondary'' standards are to protect against public welfare or ecosystem effects.

Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for particulate matter are whether to reaffirm or revise the existing standards.

Anticipated Cost and Benefits:

Costs and benefits of revising or reaffirming the national ambient air quality standards for particulate matter cannot be determined at present; a regulatory impact analysis will be conducted along with the review of the standards.

Risks:

The current national ambient air quality standards for particulate matter are intended to protect against public health risks associated with morbidity or premature mortality from cardiopulmonary disease. During the course of this next review, a risk assessment will be conducted to evaluate health risks associated with alternative particulate matter standards.

Timetable:

Action	Date	FR Cite
NPRM	08/00/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 4255

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RIN: 2060–AI44

EPA

108. ● TRANSPORTATION CONFORMITY AMENDMENTS: RESPONSE TO MARCH 2, 1999, COURT DECISION

Priority:

Other Significant

Legal Authority:

42 USC 7401-7671q

CFR Citation:

40 CFR 93

Legal Deadline:

None

Abstract:

The Clean Air Act requires EPA to promulgate rules that establish the criteria and procedures for determining whether highway and transit plans, programs, and projects conform to state air quality plans. ''Conformity'' means that the transportation actions will not cause or worsen violations of air quality standards or delay timely attainment of the standards. The original conformity rule was finalized on November 24, 1993, and most recently amended on August 15, 1997. On March 2, 1999, the U.S. Court of Appeals overturned certain provisions of the 1997 conformity amendments. This rulemaking will amend the conformity rule in compliance with the court decision. The rulemaking will formalize the May 14, 1999 EPA guidance and the June 18, 1999 DOT guidance that was issued to guide action on this issue until a rulemaking could be issued. Specifically, the rulemaking will clarify the types of projects that can be implemented in the absence of a conforming transportation plan. It will also explain EPA's process for reviewing newly submitted air quality plans and when those submissions can be used for conformity purposes.

Statement of Need:

The U.S. Court of Appeals remanded some provisions of EPA's conformity rule. The conformity rule must be amended in compliance with the court decision.

Summary of Legal Basis:

The Clean Air Act requires transportation plans, programs, and projects to conform to state air quality plans. The Clean Air Act also requires EPA to establish rules for how to determine the conformity of transportation actions.

Alternatives:

EPA's alternatives are constrained by the court decision.

Anticipated Cost and Benefits:

This amendment will not change the results of the economic analysis performed for the original transportation conformity rule, which was summarized in the preamble to that rule on 11/24/93 at 58 FR 62214.

Risks:

Transportation conformity is a process designed to help achieve attainment with the National Ambient Air Quality Standards. The risks addressed by the rule are therefore those risks associated with non-achievment of such standards.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	
Final Rule	04/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 434

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RIN: 2060–AI56

EPA

109. ● HEAVY-DUTY ENGINE EMISSION STANDARDS AND DIESEL FUEL SULFUR CONTROL REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rulemaking sets new quality requirements for fuel used in diesel engines in order to bring about large environmental benefits through the enabling of a new generation of diesel emission control technologies. Improving the quality of diesel fuel will enable advanced technologies for diesel emission control. These advanced sulfur-sensitive technologies have the potential to reduce diesel engine NOx emissions by 75% and PM emissions by 80% or more. A key approach taken in developing the ''Tier II'' standards (Tier II Light-Duty Vehicle and Light-Duty Truck Emission Standards and Gasoline Sulfur Standards — see item number RIN 2060-AI23 in this Regulatory Plan) was ''fuel -neutrality'' — applying standards equally to diesel and gasoline vehicles powered vehicles. Reducing sulfur levels in on highway diesel fuel will help facilitate development of diesel powered vehicle that meet these standards. This rulemaking will also tighten heavy duty NOx and PM engine standards. Low sulfur diesel fuel is needed so that advanced technology for diesel engines will be available to meet new more stringent standards. There are also additional air quality benefits such as particulate matter and sulfate reductions associated with reducing sulfur levels in diesel fuel.

Statement of Need:

Ozone and particulate pollution pose a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. This rulemaking will address additional national control measures to reduce emissions, including emissions of nitrogen oxides, hydrocarbons, and particulate matter, from heavy-duty diesel engines, and will also require reduced sulfur levels in diesel fuel, in order to protect the public health and welfare.

Summary of Legal Basis:

42 USC 7521, 42 USC 7545

Alternatives:

Alternatives will be considered as the rulemaking proposal is developed.

Anticipated Cost and Benefits:

Costs and benefits will be assessed as the rulemaking proposal is developed.

Risks:

The risks addressed by this program are primarily those associated with nonattainment of the National Ambient Air Quality Standards for ozone and particulate matter. There are also serious public health and environmental problems associated with toxic air pollution, acid rain, reduced visibility, and nitrogen loading of estuaries.

Timetable:

Action	Date	FR Cite
ANPRM	06/16/99	64 FR 32209
NPRM	01/00/00	
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

Additional Information:

SAN No. 4355

This rule incorporates the work done on Control of Diesel Fuel Quality, RIN 2060-AI32, SAN 4268 which is listed as ''Withdrawn'' in the Completed section of this Agenda.

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RIN: 2060–AI69

EPA

110. TSCA INVENTORY UPDATE RULE AMENDMENTS

Priority:

Other Significant

Legal Authority:

15 USC 2607(a), TSCA 8(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 exposure-related information and the industrial and consumer end uses of chemicals they produce or import. 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; 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 the programs' progress; encourage pollution prevention by identifying potentially safer substitute chemicals for uses of potential concern; and enhance the effectiveness of chemical risk communication efforts. Additionally, EPA will consider other amendments to the IUR. These include removing the inorganic chemicals exemption; providing the information to better assess and manage risks of inorganic chemicals; improving the linkages of IUR data to other data sources to enhance the data's usefulness; and altering the confidential business information (CBI) claim procedures to reduce the frequency of CBI claims, allowing the public greater access to relevant information on toxic chemicals. EPA has held meetings with representatives of the chemical industry, environmental groups, environmental justice leaders, labor groups, State governments and other Federal agencies to ensure public involvement in the TSCA Inventory Update Rule Amendments Project.

Statement of Need:

There are more than 75,000 chemicals in commerce listed on the TSCA Inventory. EPA faces the challenge of sorting through these chemicals to identify the ones of most concern, then taking the appropriate steps to mitigate unreasonable risks of those chemicals. The current IUR collects some key data, such as production volume, used to identify the chemicals of most concern. However, other exposure-related information is essential to more accurately identify the chemicals with the greater risk potential. Information on how a chemical is manufactured, processed, and used is needed to determine possible exposure routes and scenarios of these chemicals. This action will propose to modify the inventory update process to collect the exposure-related data necessary for an effective TSCA Inventory Screening program; the information will be collected in a format that makes the information easy to use to screen thousands of chemicals. A national report will make data collected via the amended IUR publicly available. This report will not contain any information claimed to be confidential.

Summary of Legal Basis:

Toxic Substances Control Act (TSCA) Section 8.

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 Cost 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 identifying those of highest concern; establishing priorities and goals for chemical assessment, risk management and prevention programs and to 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	11/00/99	
Final Action	12/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3301

Sectors Affected:

325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing

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RIN: 2070–AC61

EPA

111. LEAD; OVERVIEW OF RULEMAKINGS UNDER TSCA SECTION 402, LEAD-BASED PAINT ACTIVITIES FOR THE REGULATORY PLAN

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 2603, TSCA title IV

CFR Citation:

40 CFR 745

Legal Deadline:

Final, Statutory, April 28, 1994.

Other, Statutory, October 28, 1996, Section 402(c)(3).

Abstract:

The Residential Lead-Based Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. TSCA section 402, Lead-Based Paint Activities Training and Certification directs EPA to promulgate a number of regulations intended to address the nation's need for a qualified and properly trained workforce to assist in the prevention, detection, and elimination of hazards associated with lead-based paint. EPA is required to promulgate (a) regulations 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 (section 402(a)); (b) a Model State Program which may be adopted by any State which seeks to administer and enforce a State Program for the requirements established under TSCA section 402 (section 404); (c) a rule addressing lead risks from renovation and remodeling activities or state why no regulation is necessary (section 402(c)(3)); and (d) a rule establishing a fee schedule for the lead-based paint training, certification, and accreditation activities addressed in the rules developed under TSCA section 402 (section 402(a)(3)). Additionally, in response to other Federal agencies and several States and advocacy groups who were concerned that the high costs of disposing of lead-based paint debris as a RCRA hazardous waste were discouraging residential lead abatements, EPA is using its authority under TSCA section 402(a) to address the disposal of lead-based paint debris that will result from the lead-based paint activities regulated under TSCA section 402. To minimize duplication of waste management requirements, EPA is developing a companion RCRA rule to suspend temporarily hazardous waste management regulations (i.e., Toxicity Characteristic Rule) applicable to lead-based paint debris which will be

subject to the new TSCA standards. These rules are listed separately in the Regulatory Agenda.

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). 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 continues to be a significant source of childhood lead poisoning. These rules will help insure that individuals and firms conducting lead-based paint activities will do so in a way that safeguards the environment and protects the health of building occupants, especially children under 6 years old.

Summary of Legal Basis:

These regulations are mandated by TSCA section 402.

Alternatives:

Alternatives to each of the mandated activities will be analyzed.

Anticipated Cost and Benefits:

For the section 402(a)/404 (Residential) rule, the costs have been provided in the final economic impact analysis that was prepared in conjunction with the final rule. For the remainder of the section 402 rules, costs will be estimated in the draft economic impact analyses that will be prepared for the proposed rules. 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 qualify.

Risks:

These rules are aimed at reducing the prevalence and severity of lead poisoning, particularly in children.

Timetable:

Action	Date	FR Cite
NPRM Sections 402(a) and 404 (Residential)	09/02/94	59 FR 45872
Final Rule Sections 402(a) and 404 (Residential)	08/29/96	61 FR 45778
Interim Final Rule Section 404(g)	08/04/98	63 FR 41430
Direct Final Rule Sections 402(a)(3)/404(h)	09/02/98	63 FR 46668
NPRM Sections 402(a)(3)/404(h)	09/02/98	63 FR 46734
Direct Final Rule Withdrawn Sections 402(a)(3)/404(h)	10/16/98	63 FR 55547
NPRM Section 402(a) (Debris)	12/18/98	63 FR 70190
Final Rule Sections 402(a)(3)/404(h)	11/00/99	
NPRM Section 402(c) (Remodeling & Renovation)	07/00/00	
NPRM Section 402(a) (Buildings & Structures)	09/00/00	
Final Rule Section 402(a) (Debris)	12/00/00	
Final Rule Section 402(c) (Remodeling & Renovation)	08/00/01	
Final Rule Section 402(a) (Buildings & Structures)	10/00/01	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3243

Also covers SANs 3244, 3557, 3881, 4172, 3506.

Lead-Based Paint Activities Rules: Training, Accreditation and Certification Rule and Model State Plan Rule (sections 402 and 404)(SAN 3244; RIN 2070-AC64); Lead-Based Paint Activities, Training, and Certification: Renovation and Remodeling (section 402(c)(3))(SAN 3557; RIN 2070-AC83); Lead Fee Rule for Lead-Based Paint Activities Training and Certification (section 402(a)(3)) (SAN 3881; RIN 2070-AD11); Lead-Based Paint: Notification of Commencement of Abatement Activities (section 404(h)) (SAN 4172; RIN 2070-AD31); Lead: TSCA Requirements for the Disposal of Lead-Based Paint Debris (section 402(a)) and Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris (RCRA sections 1006(b)(1) and 2002)(SAN 3508; RIN 2070-AC72).

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RIN: 2070–AD06

EPA

112. CHEMICAL RIGHT-TO-KNOW INITIATIVE

Priority:

Other Significant

Legal Authority:

15 USC 4, TSCA; 15 USC 8, TSCA; 7 USC 136, FIFRA; 42 USC 313

CFR Citation:

Not Yet Determined

Legal Deadline:

Final actions must be completed by December 31, 1999.

Abstract:

The Chemical RTK Initiative was announced by the Vice President on EPA's Earth Day 1998 in response to the finding that most commercial chemicals have very little, if any, publicly available toxicity information on which to make sound judgments about potential risks. There are three key components to this initiative, each of which is being implemented by EPA. These are: collecting and making public screening level toxicity data for 2,800 widely used commercial chemicals; additional health effects testing for chemicals to which children are substantially exposed; and the listing and lowering of thresholds for persistent, bioaccumulative, toxic chemicals reported to TRI. This Initiative will involve several separate activities, with any regulatory related actions included as separate entries in the Regulatory Agenda.

Statement of Need:

The Chemical Right to Know Initiative grew out of the finding of an EPA study

that there is very little basic publicly available information on the health and environmental effects of even the most widely used commercial chemicals. Less than 7% of the 2,800 high production volume chemicals have a full set of baseline testing information readily available, while almost 50% have no public information whatsoever. The Chemical Right to Know Initiative is designed to close these information gaps, and to make both new and existing information available to the public.

Summary of Legal Basis:

To the extent that rule-making is required to implement the chemical Right-to-Know Initiative, EPA will utilize the testing authorities available under TSCA and the chemical reporting authorities of EPCRA Section 313 (the Toxics Release Inventory).

Alternatives:

The Chemical Right-to-Know Initiative will rely on a combination of partnership programs and rule-writing to accomplish its goals. For instance, an HPV Challenge Program will ask industry to voluntarily provide both new and existing data on high production volume chemicals, while an HPV test rule would require testing of specific HPV chemicals of concern.

Anticipated Cost and Benefits:

The benefits of the Chemical Right-to-Know Initiative are substantial, as no one in the environmental community — whether in industry, government or the public — can make reasoned risk management decisions in the absence of reliable health and environmental information. The cost of baseline testing is well-established, and runs about $200,000 per chemical for a full set of tests, for those chemicals on which data do not already exist. More detailed testing, as envisioned for the Children's Health testing portion of this initiative, may be more expensive, but has not yet been costed out.

Risks:

None.

Timetable:

Action	Date	FR Cite
Initiative Completion	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 4176

This Initiative includes the following Regulatory Agenda activities: TRI's Reporting Threshold Rule (SAN 3880; RIN 2070-AD09); Test Rule; Multi-Chemicals Test Rule for High Production Volume Chemicals (SAN 3990; RIN 2070-AD16); Children's Health Test Rule (SAN 2865; RIN 2070-AC27).

Sectors Affected:

325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD25

EPA

113. HAZARDOUS WASTE IDENTIFICATION RULE (HWIR): IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

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 RCRA sec 1006; 42 USC 6912(a) RCRA sec 2002(a); 42 USC 6921 RCRA sec 3001; 42 USC 6922 RCRA sec 3002; 42 USC 6926 RCRA sec 3006

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 262; 40 CFR 264; 40 CFR 268

Legal Deadline:

Other, Judicial, October 31, 1999, Reproposal.

Final, Judicial, April 30, 2001.

Abstract:

EPA is proposing to amend its regulations governing solid wastes that are designated as hazardous, because they have been mixed with or derived-from listed hazardous wastes. Specifically, under this action, the Agency is proposing to retain the mixture and derived-from rules promulgated under the Resource Conservation and Recovery Act (RCRA). These rules are currently in effect on an emergency basis and this rulemaking action formally proposes their retention.

The Agency is also proposing two revisions to the mixture and derived-from rules. The first is an exemption for wastes and their residuals listed solely for the ignitability, corrosivity, and/or reactivity characteristics. The second, which EPA is proposing in a separate notice, is a conditional exemption from the mixture and derived from rules for ''mixed wastes'' (that is, wastes that are both hazardous and radioactive).

Because this action is deregulatory, it is not expected to have adverse impacts on small business. This action will be implemented by EPA and authorized States.

Statement of Need:

EPA has proposed to amend its regulations under RCRA for hazardous waste identification. The rule would retain and amend the mixture and derived-from rules. The mixture and derived-from rules ensure that hazardous wastes that are mixed with other wastes and their residuals from treatment, storage or disposal, do not escape regulation and thereby cause harm to human health and the environment.

The proposal also discusses an approach to establish exemption criteria, protective of human health and the environment, for low-risk listed hazardous waste, waste mixtures, and derivatives. Once finalized, this rule will reflect a balancing of the Agency's informational needs for oversight and enforcement with the practical resource considerations of the generator. This rule could reduce demand on Subtitle C landfill capacity, and promote pollution prevention, waste minimization, and development of innovative waste treatment technology.

This notice will also contain the Agency's response to a petition for rulemaking submitted by the Chemical Manufacturers Association in 1989.

Summary of Legal Basis:

This regulation will amend the mixture and derived-from rules, 40 CFR 261.3(a)(2)(iii) and (iv) and (c)(2)(i), and will create an exemption for low-risk waste. EPA is required to revise the mixture and derived-from rules under Public Law No. 102-389, 106 Stat. 1571. The mixture and derived-from rules and the exemption are exercises of EPA's authority under RCRA section 3001, 42 U.S.C. Section 6921.

Alternatives:

A variety of alternatives for establishing the exemption criteria and the implementation requirements were identified by a FACA committee co-chaired by EPA and the States. EPA is forging a strong partnership with the States in the interest of our co-regulator, co-implementor roles. The October 1999 notice discussed two options for a concentration-based exemption: a generic exit option and a contingent management option. Before these options could be finalized, EPA would formally propose the exemption, providing public notice and the opportunity to comment on the revised risk assessment and resulting exemption levels.

Anticipated Cost and Benefits:

EPA estimates that 236 applicable industrial hazardous wast streams, totaling 3.6 million tons in annual generation by an estimated 120 US facilities may be affected by proposed revions to the mixture and derived-from rules. As generated, these waste streams consist of 87% wastewaters and 13% non-wastewaters. After RCRA Subtitle C treatment (mainly incineration), the 236 wastestreams result in the annual disposal of about 57,400 tons of treatment residuals, primarily in the form of incineration ash. Total annual cost savings is estimated at $4.29 to $6.56 million per year.

Risks:

This rule would maintain current levels of risk protection.

Timetable:

Action	Date	FR Cite
NPRM	05/20/92	57 FR 21450
NPRM Withdrawn	10/30/92	57 FR 49280
NPRM Reproposal	12/21/95	60 FR 66344
NPRM Reproposal	11/00/99	
Final Action	05/00/01	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3328

Sectors Affected:

325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing

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RIN: 2050–AE07

EPA

114. HAZARDOUS WASTE MANIFEST REGULATION

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 6922, RCRA sec 3002; 42 USC 6923, RCRA sec 3003; 42 USC 6926, RCRA sec 3006; 42 USC 6924, RCRA sec 3004

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 270; 40 CFR 271

Legal Deadline:

None

Abstract:

The Uniform Hazardous Waste Manifest (Form 8700-22) is a multi-copy form used to identify the quantity, composition, origin, routing, and destination of hazardous waste during its transportation. The manifest system's reliance on paper results in significant paperwork and cost burden to waste handlers and States who collect manifest information. The Agency intends to pursue an optional approach to redesign the manifest system so that it utilizes automated technologies to increase access to manifest related information, and to facilitate the manifest process, including the form's preparation, transmission, and recordkeeping, thereby lessening the total burden on waste handlers and States. In addition, the Agency intends to standardize further the manifest form itself, by eliminating several optional data fields, and by specifying one format that may be used in all states.

Statement of Need:

The Agency is revising the RCRA manifest system because of the amount of paperwork burden associated with the manifest. Reduction in paperwork burden is part of the Administration's Regulatory Reinvention goal of cutting government red tape. The Agency wants to standardize the manifest program across the States by introducing a truly uniform manifest tracking form. The chief goal of the manifest system is to facilitate the safe transportation of offsite shipments of hazardous waste to appropriate RCRA management facilities. Furthermore, the manifest promotes accountability throughout the generation, transportation, and disposal cycle of a hazardous waste shipment; and the manifest also provides essential hazard information to handlers and emergency responders.

Summary of Legal Basis:

RCRA Section 3002(a)(5) authorizes EPA to issue regulations applicable to generators of hazardous waste regarding the use of a manifest system to describe waste, its origin, and its routing to ensure waste arrives at designated off-site facilities. RCRA Sections 3002 and 3004 authorizes EPA to issue

regulations applicable to transportors of hazardous waste and to treatment, storage, and disposal facilitites regarding compliance with the manifest system.

Alternatives:

The Agency has looked at three alternatives to revising the manifest system. The first alternative is to revise and standardize the manifest form itself. The second alternative is to introduce the option of automated technologies (electronic commerce) to reduce paperwork and make the manifest system more efficient. The third alternative is to develop alternative requirements for certain types of hazardous waste handlers which will reduce some of the paperwork burden. The Agency has chosen to combine the three alternatives into one cohesive package which will preserve the positive features of the current manifest system (maintaining the necessary controls to protect human health and the environment) and at the same time substantially reducing the burden on industry.

Anticipated Cost and Benefits:

The overall costs of this action should be minimal to the regulated industry since the new Federal manifest system should reduce the overall number of elements on the manifest form. Additionally, uniformity in data required across the U.S. will benefit the transportation industry by reducing the burden associated with obtaining various state requirements for wastes traveling through multiple states. Other hazardous waste handlers will benefit from having the option to use automation to complete, send, receive, and store manifest information. Some states may have to modify their data systems in response to this action. The Agency is currently conducting an analysis to determine the costs and benefits of the rule.

Risks:

This rule reduces the paperwork burden of the manifest on the public without reducing protectiveness of human health or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3147

Sectors Affected:

2111 Oil and Gas Extraction; 2122 Metal Ore Mining; 2211 Electric Power Generation, Transmission and Distribution; 3221 Pulp, Paper, and Paperboard Mills; 323 Printing and Related Support Activities; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 5621 Waste Collection; 5622 Waste Treatment and Disposal

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RIN: 2050–AE21

EPA

115. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

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; 42 USC 6912; 42 USC 6924; 42 USC 6925; 42 USC 6927; 42 USC 6939; 42 USC 6974

CFR Citation:

40 CFR 124; 40 CFR 267; 40 CFR 270

Legal Deadline:

None

Abstract:

This rulemaking will allow a type of general permit, called a standardized permit, for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. Under the standardized permit, facility owners and operators would certify compliance with generic design and operating conditions set on a national basis. The permitting agency would review the certifications submitted by the facility owners or operators. The permitting agency would also be able to impose additional site-specific terms and conditions for corrective action or other purposes, as called for by RCRA. Ensuring compliance with the standardized permit's terms and conditions would occur during inspection of the facility after the permit has been issued.

Statement of Need:

The Agency convened a special task force in 1994 to look at permitting activities throughout its different programs and to make specific recommendations to improve these permitting programs. This task force, known as the Permits Improvement Team (PIT), spent two years working with stakeholders from the Agency, State permitting agencies, industry, and the environmental community. The PIT stakeholders mentioned, among other things, that permitting activities should be commensurate with the complexity of the activity. The stakeholders felt that current Agency permitting programs were not flexible enough to allow streamlined procedures for routine permitting activities.

Currently, facilities that store, treat, or dispose of hazardous waste must obtain site-specific ''individual'' permits prescribing conditions for each ''unit'' (e.g., tank, container area, etc.) in which hazardous waste is managed. Experience gained by the Agency and states over the past 15 years has shown that not all waste management activities are at the same level of complexity. Some activities, such as thermal treatment or land disposal of hazardous waste, are more complex than storage of hazardous waste. The Agency believes that thermal treatment and land disposal activities continue to warrant ''individual'' permits, prescribing unit-specific conditions. However, the Agency believes that some accommodation can be made for hazardous waste management practices

in standardized units such as tanks, container storage areas, and containment buildings. The Agency's Permit Improvement Team tentatively recommended, among other things, that regulations be developed to allow ''standardized permits'' for on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings. The Agency is proposing to revise the RCRA regulations to allow this type of permit.

Summary of Legal Basis:

Facilities that manage hazardous waste are required under RCRA to obtain a permit and carry out corrective action as necessary (see: RCRA Section 3004, 3005, 3008 and 3010). EPA has discretion under these statutory provisions to apply different permitting procedures to different types of facilities, as EPA is proposing to do here. No aspect of this streamlining action is required by court order.

Alternatives:

Several significant alternatives or options that have been considered concern the scope of the rule and corrective action alternatives. The scope of the proposed rule is expected to be limited to facilities that generate waste and manage it on-site. The Agency considered, however, and plans to ask for comment on, whether coverage of the rule should be expanded to facilities that generate waste at operations in more than one location and want to manage the waste at one location. The Agency also plans to ask for comment on the option of allowing a facility's RCRA corrective action activities to be postponed if corrective action is being carried out under an approved State remedial program.

Anticipated Cost and Benefits:

The following cost/benefit information is based on preliminary estimates and is being provided for informational purposes only; it is subject to change. The RCRA standardized permit proposal is an optional rule designed to streamline the regulatory burden to EPA/states as well as to private sector facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for permit actions (i.e. new permit applications, permit modifications, and permit renewals). Because the rule proposes to streamline existing RCRA regulation, rather than add new RCRA regulation, implementation of the rule by the EPA and by states with EPA-authorized permitting programs is expected to result in economic benefits in the form of national cost savings from reducing both government and private sector resources required for the RCRA permit process. Based on a preliminary economic analysis, the EPA estimates that the potential average annual cost savings to eligible facilities resulting from implementation of this rule, will range from approximately $1,000 to $4,600 per permit action, depending on such things as the type of permit and the type of storage equipment. The expected national cost savings benefit to the private sector for RCRA permitting is between $4.2 and $8.8 million annually. In addition, this rule is expected to produce an average annual cost savings benefit for streamlined EPA/state administrative review of $2.0 million, representing a total annual national cost savings benefit of $6.2 to $10.8 million. Potential cost savings benefits are incremental to the average annual cost associated with the current RCRA permitting program. Compared to the magnitude of potential benefits, the costs to EPA/states of implementing the standardized permit option are considered minimal, and therefore have not been estimated by the EPA.

Risks:

A description of risks is not applicable to the rule. The purpose of this rule is to streamline existing RCRA permit application and issuance procedures. Since facilities covered by this rule are currently already required to obtain RCRA permits, this rule will have minimal effects on incremental risk reduction.

Timetable:

Action	Date	FR Cite
NPRM	04/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 4028

Sectors Affected:

3251 Basic Chemical Manufacturing; 325211 Plastics Material and Resin Manufacturing; 32551 Paint and Coating Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 32411 Petroleum Refineries; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; 32532 Pesticide and Other Agricultural Chemical Manufacturing

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EPA

116. HAZARDOUS WASTE STORAGE AND DISPOSAL REGULATION RELATED TO LOW LEVEL MIXED WASTE; PROPOSED MODIFICATIONS

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; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924; 42 USC 6926

CFR Citation:

40 CFR 261.4; 40 CFR 262.34

Legal Deadline:

NPRM, Judicial, October 31, 1999.

Final, Judicial, April 30, 2001.

Abstract:

EPA is proposing a conditional exemption from the regulatory definition of RCRA hazardous waste for storage, treatment, and disposal of low-level mixed waste (LLMW) which is subject to Nuclear Regulatory Commission (NRC) or NRC Agreement State regulations and licensing provisions. Commercial mixed waste generators, particularly nuclear power plants, contend that dual regulation of mixed waste by EPA and NRC is duplicative, burdensome, and costly. EPA has determined that NRC-licensed storage of LLMW, or disposal of LLMW in low-level radioactive waste disposal facilities that we have evaluated, not only address radiological hazards, but will provide protection of human health and the environment with respect to chemical hazards. The exemption, when finalized, will provide regulatory flexibility for

generators of LLMW for storage, treatment or disposal based on compliance with the required conditions. The storage proposal, when finalized, would allow LLMW generators meeting specified conditions to claim an exemption for stored mixed waste while subject to NRC regulations and licensing provisions. Regulatory flexibility proposed for treatment would be limited to treatment that: is covered in the generator's NRC license; and takes place in a tank or container for the purpose of solidification, neutralization or other stabilization. For the purposes of disposal, EPA is proposing that LLMW, which meets land disposal restriction treatment standards, may be disposed at a low-level waste disposal facility licensed by NRC or its Agreement States if the generator complies with specified conditions. The proposal was signed by the Administrator on October 29, 1999.

Statement of Need:

The Proposed Rulemaking is needed due to: the lack of mixed waste treatment and disposal facilities nationwide; industry concerns regarding the potential for duplication under EPA and NRC regulatory requirements; and follow through on comments relating to mixed waste management received from industry on the Hazardous Waste Identification Rule proposal of December 1995, and the mixed waste storage guidance of August 1995.

Summary of Legal Basis:

The Proposed Rulemaking is required by the settlement agreement reached with the Edison Electric Institute, and other litigants and intervenors, in April 1997.

Alternatives:

EPA is considering a number of alternatives including: 1) use of LDR treatment standards for chemical constituents in conjunction with NRC disposal requirements for LLW; 2) applicability of HWIR exit concentration levels and associated requirements for chemical constituents; 3) a conditional exemption for stored mixed waste subject to NRC regulatory requirements; and 4) allowing decay-in-storage as provided by NRC for some mixed wastes to limit worker exposures to radionuclides.

Anticipated Cost and Benefits:

EPA anticipates that implementation of this rule will result in net cost savings of at least 1-3 million dollars annually; unquantified cost savings from administrative and permitting burdens could be much higher. In addition, EPA anticipates risk reductions from reduced exposure to radionuclides.

Risks:

The purpose of this rule is not risk reduction. The rule will maintain current level of protection as required by NRC for radionuclides under alternatives 1 and 3, and also provide protection for human health and the environment from chemical hazards. For alternative 2 the risk will be similar to HWIR risk benchmarks for carcinogens and non-carcinogens. For alternative 4, there would be a reduction in risk due to reduced exposure of workers to radionuclides mixed with hazardous wastes.

Timetable:

Action	Date	FR Cite
ANPRM	03/01/99	64 FR 10063
NPRM	11/00/99	
Final Action	04/00/01	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 4017

SIC Codes: Nuclear Electric Power Generation (4911); Federal Facilities (9431) and (9511); Mixed Waste Treatment, Storage and Disposal Facilities (4953); Commercial Low Level Radioactive Waste Disposal Facilities (4953); Universities (8221); Medical Facilities (8071); Pharmaceutical Companies (2834); Research Laboratories (8731, 8734)

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RIN: 2050–AE45

EPA

117. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, Local or Tribal Governments.

Legal Authority:

42 USC 300(f), SDWA sec 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

Other, Statutory, February 6, 1999, Publish radon health risk reduction and cost analysis.

NPRM, Statutory, August 6, 1999.

Final, Statutory, August 6, 2000.

Abstract:

EPA is proposing new regulations for radon in drinking water which will provide states flexibility in how to manage the health risks from radon, in both drinking water and in indoor air. States would be able to focus their efforts on the highest radon risks to the public - in indoor air - while reducing the highest risks from radon in drinking water. Breathing indoor radon in homes is the primary public health risk from radon, contributing to about 20,000 lung cancer deaths each year in the United States, according to a landmark report this year by the National Academy of Sciences. That makes radon in indoor air the second leading cause of lung cancer in the United States. Based on a second NAS report, EPA estimates that radon in drinking water causes about 168 cancer deaths per year, of which about 89 percent are lung cancer from breathing radon released from water. The remaining 11 percent of the risk is for stomach cancer from drinking radon-containing water.

The unique framework for the proposed regulations, outlined in the 1996 Safe Drinking Water Act (SDWA), recognizes that the public health problem from radon in indoor air typically far exceeds the health risks from radon in drinking water and that targeting indoor radon exposures is the most cost-effective way for states to reduce radon health risks. The proposed new regulation will provide two options to states and water systems for reducing public health risks from radon. Under the first option, states can choose to

develop enhanced state programs to address the health risks from indoor radon while water systems reduce radon levels in drinking water to the higher, alternative maximum contaminant level (MCL) of 4,000 pCi/L (picoCuries per liter, a standard unit of radiation) or lower, ensuring protection from the highest risks from radon in drinking water. EPA is encouraging the states to adopt this approach as the most cost-effective way to achieve the greatest radon risk reduction. If a state does not elect this option, the second option would require water systems in that state to either reduce radon in drinking water levels to the MCL, or to develop a local indoor radon program and reduce levels in drinking water to 4000 pCi/L. Those systems initially at the MCL or lower will not need to treat their water for radon.

Statement of Need:

Radon in drinking water increases risk to public health, both from inhalation of radon discharged through normal water use, such as showering, and from ingestion of water.

Summary of Legal Basis:

Pursuant to the Safe Drinking Water Act, as amended in 1996 [sec. 1412 (b)(13)], EPA is required to: (1) Withdraw the 1991 proposed radon in drinking water rule; (2) Work with the National Academy of Sciences to conduct a risk assessment for radon in drinking water, and an assessment of the health risk reduction benefits associated with various mitigation methods of reducing radon in indoor air; (3) Publish a radon health risk reduction and cost analysis for possible radon Maximum Contaminant Levels (MCLs) for public comment, by February, 1999; (4) Propose a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) for radon by August, 1999; and (5) Publish an MCLG and Final NPDWR for radon by August, 2000.

In addition, if EPA promulgates an MCL more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, the Agency must establish an alternative MCL (AMCL). The AMCL is to be set at a level which would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If an alternative MCL is established, EPA must publish guidelines and criteria for States to develop multimedia radon mitigation programs. EPA shall approve State multimedia mitigation programs if they are expected to achieve equal or greater health risk reduction benefits than would be achieved through compliance with the MCL. If EPA approves a State multimedia mitigation program, public water supply systems within the State may comply with the AMCL. If a State does not have an approved multimedia mitigation program, any public water system may submit a program for approval by EPA according to the same criteria, conditions, and approval process that would apply to a State program. EPA shall evaluate multimedia mitigation programs every 5 years.

Alternatives:

EPA considered a range of MCL options for radon in drinking water in the Health Risk Reduction and Cost Analysis (HRRCA) (published in February 1999). The primary alternative is for a State or public water system to develop a multimedia mitigation program in order for it to comply with the AMCL. The National Academy of Sciences provided information on key factors (the water to air transfer factor and the national average outdoor radon level) that EPA will use in setting the AMCL.

Anticipated Cost and Benefits:

The total annual costs of compliance with the MCL of 300 pCi/l for radon in drinking water and the associated information collection and reporting requirements is estimated at $407 million. In complying with 300 pCi/l, an estimated 62.0 fatal and 0.2 non-fatal cancer cases are avoided each year. Because EPA expects that most States and systems will choose to comply with the alternative maximum contaminant level (AMCL) of 4,000 pCi/l and implement a Multi-Media Mitigation (MMM) program, EPA expects the total annual costs of compliance with the radon rule to be significantly less than $407 million. If most States and systems comply with the AMCL and implement a MMM program, the total annual costs of compliance are estimated at approximately $86 million. The quantifiable benefits of the health risk reduction are estimated to be $362 million for either implementation scenario. EPA expects compliance with the AMCL and implementation of a MMM program to achieve equal or greater risk reduction than is expected with strict compliance with the MCL.

Risks:

Radon is a naturally occurring volatile gas formed from the normal radioactive decay of uranium. It is colorless, odorless, tasteless, chemically inert, and radioactive. Exposure to radon and its progeny is believed to be associated with increased risks of several kinds of cancer. When radon or its progeny are inhaled, lung cancer accounts for most of the total incremental cancer risk. Ingestion of radon in water is suspected of being associated with increased risk of tumors of several internal organs, primarily the stomach. As required by the SDWA, as amended, EPA arranged for the National Academy of Sciences (NAS) to assess the health risks of radon in drinking water. The NAS released the pre-publication draft of a report on the Risks of Radon in Drinking Water, (NAS Report) in September 1998 and published the report in July 1999. The analysis in this RIA uses information from the 1999 NAS Report. The NAS Report represents a comprehensive assessment of scientific data gathered to date on radon in drinking water. The report, in general, confirms earlier EPA scientific conclusions and analyses of radon in drinking water.

NAS estimated individual lifetime unit fatal cancer risks associated with exposure to radon from domestic water use for ingestion and inhalation pathways. The results show that inhalation of radon progeny accounts for most (approximately 88 percent) of the individual risk associated with domestic water use, with almost all of the remainder (11 percent) resulting from directly ingesting radon in drinking water. Inhalation of radon progeny is associated primarily with increased risk of lung cancer, while ingestion exposure is associated primarily with elevated risk of stomach cancer.

The NAS Report confirmed that indoor air contamination arising from soil gas typically accounts for the bulk of total individual risk due to radon exposure. Usually, most radon gas enters indoor air by diffusion from soils through basement walls or foundation cracks or openings. Radon in domestic water generally contributes a small proportion of the total radon in indoor air. However, NAS recognized that radon in water is the largest source of cancer risk in drinking water compared to other regulated chemicals in water.

The NAS Report is one of the most important inputs used by EPA in its regulatory impact analysis. EPA has used the NAS's assessment of the

cancer risks from radon in drinking water to estimate both the health risks posed by existing levels of radon in drinking water and also the cancer deaths prevented by reducing radon levels.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM	07/18/91	56 FR 33050
Notice	02/26/99	64 FR 9560
NPRM	11/02/99	64 FR 59245
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2281

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EPA

118. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUND WATER RULE

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:

42 USC 300(f), SDWA sec 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

Final, Statutory, May 31, 2002.

Abstract:

The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection as necessary for ground water systems. The intention is to develop a protective public health approach which assures a baseline of protection for all consumers of ground water and sets in place an increasingly targeted strategy to identify high risk or high priority systems that require greater scrutiny or further action. Development and implementation of the rule will involve local, tribal, State and Federal governments. The structure of the rule is a series of barriers to microbial contamination. The multiple-barrier approach relies upon four major components: 1) periodic onsite inspections of ground water systems requiring the evaluation of eight key areas and the identification of significant deficiencies; 2) source water monitoring for systems drawing from sensitive aquifers without treatment or with other indications of risk; 3) a requirement for correction of significant deficiencies; and 4) a requirement for treatment where contamination or significant deficiencies are not or cannot be corrected, and alternative sources of drinking water are not available. EPA believes that the combination of these elements strikes an appropriate regulatory balance which tailors the intensity or burden of protective measures and follow-up action to the risk being addressed.

Statement of Need:

Public water systems (PWSs) that use ground water as their sole source of water, as opposed to surface water PWSs are not subject to treatment technique requirements for the control of pathogens. There is data that indicates that a number of ground water PWSs are contaminated with microorganisms of fecal origin that can and have caused illness.

Summary of Legal Basis:

Section 1412(b)(1)(A) of the Safe Drinking Water Act (SDWA) requires EPA to establish National Primary Drinking Water Regulations for contaminants that may have an adverse public health effect and that present a meaningful opportunity for health risk reduction. This general provision is supplemented with an additional requirement under Section 1412(b)(8) that EPA also develop regulations specifying the use of disinfectants for ground water systems as necessary.

Alternatives:

Not available at this time.

Anticipated Cost and Benefits:

Not available at this time.

Risks:

Not available at this time.

Timetable:

Action	Date	FR Cite
NPRM	03/00/00	
Final Action	11/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2340

Statutory deadline for final: After August 6,1999 but before May 31, 2002.

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RIN: 2040–AA97

EPA

119. NATIONAL PRIMARY DRINKING WATER REGULATIONS: ARSENIC

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:

42 USC 300(f), SDWA sec 1412

CFR Citation:

40 CFR 141(Revision); 40 CFR 142 (Revision)

Legal Deadline:

NPRM, Statutory, January 1, 2000.

Final, Statutory, January 1, 2001.

Abstract:

The Safe Drinking Water Act (SDWA) Amendments of 1996 require EPA to develop and carry out a study plan to reduce the uncertainty in assessing health risks of low levels of arsenic. In addition, EPA must propose a revised drinking water regulation for arsenic by January 1, 2000, and issue a final rule by January 1, 2001. Currently the National Primary Drinking Water Regulation (NPDWR) for arsenic is 50 ppb, or 50 ug/L. The

National Academy of Sciences issued a report in March 1999 that urged EPA to lower the drinking water standard, based on significantevidence that inorganic arsenic causes bladder, lung and skin cancer in humans. The report recommended additional studies to characterize heath effects at low doses for cancers, cardiovascular disease, diabetes, and reproductive effects. The SDWA directs EPA to establish an enforceable maximum contaminant level (MCL) as close to the health-based maximum contaminant level goal (MCLG) as feasible, considering treatment efficacy and costs, unless the benefits of a standard set at this level do not justify the costs, in which case EPA may set a less stringent standard. EPA must list affordable technologies or treatment techniques that achieve compliance with the MCL for three categories of small systems considering the quality of the source water. Furthermore, alternatives to central treatment, such as point-of-use and point-of-entry devices, can be considered for small systems that maintain control over operation and maintenance. At the time of proposal, EPA must seek comment on its analyses of the costs of compliance and health risk reduction benefits likely to occur as the result of treatment to comply with the proposed MCL and any alternatives being considered.

Statement of Need:

The U.S. Public Health Service first established a drinking water standard for arsenic at 50 Fg/L in 1942. The Safe Drinking Water Act of 1974 (SDWA) which amended the Public Health Service Act specified that EPA set drinking water standards. In 1975 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 Fg/L, noting no illness. After EPA's risk assessment approach calculated a much lower arsenic criteria to protect humans from skin cancer for surface water quality criteria under the Clean Water Act, the drinking water program retained its 50 Fg/L standard. EPA did not revise the standard as required by 1986 amendments to SDWA, based on the need to better characterize health effects and assess arsenic removal technologies. At that time, EPA's analysis estimated it would cost $2.1 billion a year to comply with a standard protective of health (skin cancer). The 1996 amendments to the Safe Drinking Water Act require EPA to determine whether the costs of regulation would justify the benefits, including consideration of nonquantifiable benefits. In addition, EPA must determine the incremental costs and benefits of alternatives considered that do not include what would occur from compliance with other proposed or final regulations. If the costs do not justify the benefits, the Administrator may choose to raise the MCL to a level still protective of health at which costs do justify the benefits. As noted in ι17 above, the 1999 report issued by the National Academy of Sciences definitely implicated inorganic arsenic's effects on bladder, lung, and skin cancer althoaugh it was not able to determine the shape of the dose-response curve below 50 ppb. However, based on existing data, and in order to be adequately protective, EPA is urged to lower the drinking water standard as soon as possible.

Summary of Legal Basis:

1412(b)(12) CERTAIN CONTAMINANTS.

(A) ARSENIC.: i) SCHEDULE AND STANDARD.— notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.— Not later than 180 days after the date of enactment of this paragraph, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.— In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.— The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.— Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.— There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

Also see: 1412(b)(4)(E)(ii) for listing small system technologies; 1412(b)(4)(C) for requiring analysis of whether costs justify benefits; 1412(b)(3)(C)(i) for other requirements for the cost-benefit analyses; 1412(b)(15) for small system variance technologies, if, considering the source water, no treatment technology is listed.

Alternatives:

EPA is considering arsenic MCL options of 3, 5, 10, 15, and 20 Fg/L and performing costs and benefits analyses of each of these alternatives, measured as reducing drinking water arsenic from the current standard of 50 Fg/L. This analysis includes flexibility to allow additional technologies for small systems, as allowed by the 1996 amendments to the statute. In addition, depending on the option chosen, EPA may list some small system variance technologies that consider the quality of source water treated which may not reach the MCL but will be protective of health.

Anticipated Cost and Benefits:

Not yet available.

Risks:

According to the report issued by the National Academy of Sciences, the risk of male bladder cancer at the current standard is 1 to 1.5 additional cancers per thousand people, or 1-1.5x10-3, based on a default linear approach.

Timetable:

Action	Date	FR Cite
Plan Arsenic Study	12/24/96	61 FR 67800
NPRM	01/00/00	
Final Action	01/00/01	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2807

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RIN: 2040–AB75

EPA

120. LONG TERM 1 ENHANCED SURFACE WATER TREATMENT/FILTER BACKWASH RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, Local or Tribal Governments.

Legal Authority:

SDWA 1412(b)(2)(C); SDWA 1412(b)(14)

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, August 30, 2000, Filter Backwash Rule Provisions.

Final, Statutory, November 30, 2000, LT1 provisions.

Abstract:

The purposes of the Long Term 1 Filter Backwash rule (LT1FBR) are to: 1) improve control of microbial pathogens in drinking water, including Cryptosporidium, for PWSs serving fewer than 10,000 people; 2) prevent increases in microbial risk while PWSs serving fewer than 10,000 people control for disinfection byproducts, and; 3) require certain public water systems (PWSs) to institute changes to the return of recycle flows within the treatment process to reduce the effects of recycle on compromising microbial control. The rule responds to the statutory requirement to establish a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR) affecting PWSs that serve under 10,000 people. It also addresses the statutory requirement to promulgate a regulation which ''governs'' the recycle of filter backwash within the treatment process of public utilities.

The proposed LT1FBR will contain 5 key provisions for systems serving fewer than 10,000 people: 1) a 2-log Cryptosporidium removal requirement for systems practicing conventional or direct filtration; 2) strengthened combined filter effluent turbidity performance standards and new individual filter turbidity provisions; 3) disinfection benchmark provisions to assure continued microbial protection is provided while facilities take the necessary steps to comply with new disinfection byproduct standards (63 FR 69390, December 16, 1998); 4) inclusion of Cryptosporidium in the definition of ground water under the direct influence of surface water (GWUDI) and in the watershed control requirements for unfiltered public water systems; and 5) requirements for covers on new finished water reservoirs. The proposed LT1FBR will contain three key provisions for all systems: 1) a provision requiring recycle flows be introduced at the head of the plant; 2) a requirement for plants meeting criteria to perform a one-time self assessment of their recycle practice and consult with their primacy Agency to address and correct high risk recycle operations; and 3) a requirement for direct filtration plants to provide information to the State on their current recycle practice.

Statement of Need:

The National Academy of Sciences identified Cryptosporidium as one of the major threats to public Health. This resulted in the requirements for an Interim and Long Term Enhanced Surface Water Treatment Rule, as well as a governing the recycle of filter backwash in the 1996 Safe Drinking Water Act Amendments.

Summary of Legal Basis:

1412(b)(2)(C): ''The Administrator shall promulgate in Interim Enhanced Surface Water Treatment Rule, a Final Enhanced Surface Water Treatment Rule, A Stage I Disinfectants and Disinfection byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information collection rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval or intervals for the rules in the schedule.''

1412(b)(14): RECYCLING OF FILTER BACKWASH - ''The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after the date of enactment of the Safe Drinking Water Act Amendments of 1996 unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.''

Alternatives:

The Long Term 1 Enhanced Surface Water Treatment rule/Filter Backwash used the Interim Enhanced Surface Water Treatment rule (IESWTR) as a template to develop the turbidity and disinfection benchmarking requirements of the rule. The Agency has considered several alternatives in the development of these regulatory provisions. These alternatives include:

Turbidity: The Agency recognized that small system operators are often not present during the full hours of operation at a water treatment plant. The Agency is therefore proposing a monitoring scheme that requires less operator review and record keeping time than was required for the IESWTR.

Disinfection Benchmarking: Again, in an attempt to reduce operators data gathering and record keeping time, as well as reduce cost, the Agency is recommending provisions that will allow the operator to ensure that the plant is achieving satisfactory disinfection, while planning for the reduction in disinfection byproducts.

Filter Backwash: The Agency considered several more stringent alternatives when developing the filter backwash provisions. A lack of data associating the occurrence of Cryptosporidum in filter backwash water and finished water in plants which recycle backwash, has resulted in a recommendation of less restrictive provisions. The Agency considered requiring two types of treatment of filter backwash recycle, but has instead recommended monitoring and reporting of practices to the State.

Anticipated Cost and Benefits:

Costs and benefits still under development.

Risks:

Risk analysis still under development.

Timetable:

Action	Date	FR Cite
NPRM	02/00/00	
Final Action	08/00/00	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 4147

The Filter Backwash Recycling Regulations, previously listed separately in the Regulatory Agenda (RIN 2040-AD17) has been merged into this rule. It is listed as ''completed'' elsewhere in the Agenda.

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RIN: 2040–AD18

EPA

121. EFFLUENT GUIDELINES AND STANDARDS FOR THE FEEDLOTS POINT SOURCE CATEGORY, SWINE AND POULTRY SUBCATEGORIES, AND NPDES REGULATION FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1311, CWA sec 301; 33 USC 1314, CWA sec 304; 33 USC 1316, CWA sec 306; 33 USC 1317, CWA sec 307; 33 USC 1318, CWA sec 308; 33 USC 1342, CWA sec 402; 33 USC 1361, CWA sec 501

CFR Citation:

40 CFR 412; 40 CFR 122.23

Legal Deadline:

NPRM, Judicial, December 31, 1999. Final, Judicial, December 31, 2001.

Abstract:

Feedlot operations are covered by existing effluent guidelines at 40 CFR 412 and concentrated animal feeding operations (CAFOs) are covered by regulations at 40 CFR 122.23. This action will revise the existing regulations for two of the effluent guidelines subcategories to address swine and poultry operations and the NPDES regulation for concentrated animal feeding operations. The existing regulations, which require the largest confined animal feeding operations to achieve zero discharge of wastes to surface waters except for certain storm related discharges, have not been sufficient to resolve water quality impairment from feedlot operations. Swine and poultry operations have been identified as substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and problem algae blooms.

Statement of Need:

Inputs of nutrients, most notably nitrogen and phosphorus, are essential for profitable crop and animal agriculture. However, nitrogen and phosphorus export in watershed runoff can accelerate the eutrophication of surface waters, nitrate leaching through the soil profile can contaminate groundwater aquifers, and ammonia volatilization and odors from manure storage and land application degrade air quality. The rapid growth and intensification of animal production in many areas has created regional imbalances in nutrient inputs from feed and fertilizer, and nutrient output in crops and animals. In many of these areas, nutrients produced in animal manures exceed crop needs and pose risks to the environment.

Summary of Legal Basis:

The Clean Water Act (CWA) requires EPA to establish effluent limitations guidelines and standards to regulate the quality of point source discharges. In addition, EPA is required to periodically review and revise, if appropriate, the existing effluent guidelines and standards and the existing implementing regulations for NPDES permits. EPA is also required to revisit these effluent guidelines to satisfy a provision in a Consent Decree entered in settlement of Natural Resources Defense Council et al v. Reilly, (D.D.C No. 89-2980).

Alternatives:

The CWA requires effluent guidelines to be established on a technology basis. Limitations are to be based on the performance of specific technology levels, such as the best available technology economically achievable. For animal feeding operations, EPA is considering a range of regulatory alternatives that includes management practices, traditional pollution control technologies, and alternative technologies/practices that recover the energy value or alter the handling/marketability characteristics of animal wastes. EPA is also considering whether alternative pollution control requirements should be established for smaller animal feeding operations, recognizing that circumstances at smaller operations may warrant special consideration.

Anticipated Cost and Benefits:

The types of benefits associated with revisions to effluent guidelines for animal feeding operations include improvements to surface water and groundwater. Reduced risks to human health are expected to result from these improvements in environmental quality. Surface water benefits will principally derive from reduced loadings of nutrients in runoff from animal confinement, manure storage, and land application areas. Discharges of metals and pathogens to surface waters will also be reduced. This reduction in pathogens will result in fewer beach and shellfish bed closings. Revisions to effluent guidelines will lessen the degree to which nitrate leaches through the soil and contaminates groundwater. The costs associated with this regulation will include capital expenses to purchase or install facility upgrades to the existing manure storage structures and feedlot stormwater diversions. There may be capital expenditures associated with manure application equipment.

Risks:

The changes under consideration for effluent guidelines will reduce adverse water quality impacts caused by runoff from animal feeding operations, thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	
Final Action	12/00/01	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 4153

Sectors Affected:

11221 Hog and Pig Farming; 11232 Broilers and Other Meat Type Chicken Production; 11231 Chicken Egg Production; 112112 Cattle Feedlots; 11212 Dairy Cattle and Milk Production; 11241 Sheep Farming; 11233 Turkey Production; 11292 Horse and Other Equine Production; 11239 Other Poultry Production

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RIN: 2040–AD19

EPA

122. EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE FEEDLOTS POINT SOURCE CATEGORY, DAIRY AND BEEF CATTLE SUBCATEGORIES

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1311, CWA sec 301; 33 USC 1314, CWA sec 304; 33 USC 1316, CWA sec 306; 33 USC 1317, CWA sec 307; 33 USC 1318, CWA sec 308; 33 USC 1342, CWA sec 402; 33 USC 1361, CWA sec 501

CFR Citation:

40 CFR 412

Legal Deadline:

NPRM, Judicial, December 31, 2000. Final, Judicial, December 31, 2002.

Abstract:

Feedlot operations are covered by existing effluent guidelines at 40 CFR 412. This new regulatory action will revise the existing regulations for two of the subcategories—dairy and beef cattle operations. The existing regulations, which require the largest confined animal feeding operations to achieve zero discharge of wastes to surface waters except for certain storm related discharges, have not been sufficient to resolve water quality impairment from feedlot operations. Beef and dairy cattle operations represent a large segment of the feedlot industry and have been identified as substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and affect drinking water sources in some regions of the country.

Statement of Need:

Inputs of nutrients, most notably nitrogen and phosphorus, are essential for profitable crop and animal agriculture. However, nitrogen and phosphorus export in watershed runoff can accelerate the eutrophication of surface waters, nitrate leaching through the soil profile can contaminate groundwater aquifers, and ammonia volatilization and odors from manure storage and land application degrade air quality. The rapid growth and intensification of animal production in many areas has created regional imbalances in nutrient inputs from feed and fertilizer, and nutrient output in crops and animals. In many of these areas, nutrients produced in animal manures exceed crop needs and pose risks to the environment.

Summary of Legal Basis:

The Clean Water Act (CWA) requires EPA to establish effluent limitations guidelines and standards to regulate the quality of point source discharges. In addition, EPA is required to periodically review and revise, if appropriate, the existing effluent guidelines and standards. EPA is also required to revisit these effluent guidelines to satisfy a provision in a Consent Decree entered in settlement of Natural Resources Defense Council et al v. Reilly, (D.D.C No. 89-2980).

Alternatives:

The CWA requires effluent guidelines to be established on a technology basis. Limitations are to be based on the performance of specific technology levels, such as the best available technology economically achievable. For animal feeding operations, EPA is considering a range of regulatory alternatives that includes management practices, traditional pollution control technologies, and alternative technologies/practices that recover the energy value or alter the handling/marketability characteristics of animal wastes. EPA is also considering whether alternative pollution control requirements should be established for smaller animal feeding operations, recognizing that circumstances at smaller operations may warrant special consideration.

Anticipated Cost and Benefits:

The types of benefits associated with revisions to effluent guidelines for animal feeding operations include improvements to surface water and groundwater. Reduced risks to human health are expected to result from these improvements in environmental quality. Surface water benefits will principally derive from reduced loadings of nutrients in runoff from animal confinement, manure storage, and land application areas. Discharges of metals and pathogens to surface waters should also be reduced. Revisions to effluent guidelines will lessen the degree to which nitrate leaches through the soil and contaminates groundwater. The costs associated with this regulation will include capital expenses to purchase or install facility upgrades to the existing manure storage structures and feedlot stormwater diversions. There may be capital expenditures associated with manure application equipment as well as operation & maintenance costs.

Risks:

The changes under consideration for effluent guidelines will reduce adverse water quality impacts caused by runoff from animal feeding operations, thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	12/00/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State, Tribal, Federal

Additional Information:

SAN No. 4167

Sectors Affected:

112112 Cattle Feedlots; 11212 Dairy Cattle and Milk Production

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RIN: 2040–AD21

EPA

FINAL RULE STAGE

123. REVISION TO 40 CFR 35 SUBPART A AND PROMULGATION OF PERFORMANCE PARTNERSHIP (STATE) GRANT REGULATION

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:

PL 104-134; PL 105-65

CFR Citation:

40 CFR 35

Legal Deadline:

None

Abstract:

This proposed regulation: (1) updates, clarifies, and streamlines requirements governing environmental program grants; (2) establishes requirements for the new Performance Partnership Grant (PPG) program; and (3) establishes requirements for grant programs that began after the original rule was published.

Statement of Need:

Since EPA was formed in 1970, State capacity and responsibility for implementing environmental and public health protection programs has grown steadily. Until 1996, State and Interstate agencies could receive EPA assistance in carrying out their environmental programs only through a variety of categorical environmental grants, such as grants for water pollution control, air pollution control, and hazardous substance control. Meanwhile, environmental problems and their solutions have grew more complex and solutions to these complex problems often crossed EPA program lines. In light of this complexity, State and EPA leaders recognized that continued environmental progress could be best achieved if EPA and States worked together more effectively as partners and environmental programs were made more flexible in terms of their coverage.

In response, EPA asked Congress for new authority that would provide that needed flexibility. In 1996, Congress authorized the award of Performance Partnership Grants (PPGs), in which State and interstate agencies can choose to combine two or more environmental program grants.

This proposed rule will implement the PPG program which promotes State-EPA collaboration; provides opportunities for innovation; and reduces paperwork. EPA expects the rule will foster joint planning and priority-setting by explicitly requiring that State priorities and needs be considered, along with national and Regional guidance, in negotiating grant work plans, consistent with the National Environmental Performance Partnership System (NEPPS). Under this rule, a State can choose to organize its grant work plans in accord with environmental goals and objectives or in other new ways rather than using categories pre-defined by EPA. The length of a grant budget period will be negotiable. These opportunities afforded by the PPG program and this rule are available to all States.

This rule accommodates all potential variations in how EPA and individual States work to build partnerships. The rule is also minimizes duplicative effort by allowing for multiple uses of information or processes wherever appropriate. The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions by providing States with increased flexibility to direct resources where they are needed most to address environmental and public health needs.

Summary of Legal Basis:

Not required by law or court order.

Alternatives:

EPA can continue to award PPGs under guidance prepared by the agency and announced in the Federal Register.

Anticipated Cost and Benefits:

The rule does not result in any new costs. It is expected to allow cost and administrative savings for States by reducing the amount of grant paperwork and by simplifying accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct Federal funds where the recipients need them most to address environmental and public health problems. Recipients can also try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management, that were difficult to fund under traditional categorical grants.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 63731
Final Action	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 3736

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RIN: 2030–AA55

EPA

124. REVISION TO 40 CFR 35 SUBPART A AND PROMULGATION OF PERFORMANCE PARTNERSHIP (TRIBAL) GRANT RULE

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:

PL 104-134; PL 105-65

CFR Citation:

40 CFR 35

Legal Deadline:

None

Abstract:

This proposed regulation will: (1) update, clarify, and streamline requirements governing environmental program grants; (2) establish requirements for the new Performance Partnership Grant (PPG) program; and (3) establish requirements for grant programs that were developed after the original rule was published. (EPA is also issuing a regulation governing environmental program grants to State and Interstate agencies.)

Statement of Need:

This regulation provides a Tribal-specific Subpart which is intended to be easy to use; optimizes the administration of Tribal assistance programs through increased flexibility; and removes procedural impediments to effective environmental programs for Indian Tribes.

Since EPA was formed in 1970, tribal capacity and responsibility for implementing environmental and public health protection programs has grown steadily. Until 1996, Tribes and Intertribal Consortia could receive EPA assistance in carrying out their environmental programs only through a variety of categorical environmental grants, such as grants for water pollution control, air pollution control, and safe drinking water. During that time, environmental problems and their solutions grew more complex and solutions to those complex problems often crossed EPA program lines. In light of this complexity, Tribal and EPA leaders recognized that continued environmental progress could be best achieved if EPA and the Tribes worked together more effectively as partners and environmental programs were made more flexible in terms of their coverage.

In response, EPA asked Congress for new authority that would provide that needed flexibility. In 1996, Congress authorized the award of Performance Partnership Grants (PPGs), in which Tribes and Intertribal Consortia can choose to combine two or more environmental program grants.

This proposed rule will implement the PPG program which promotes Tribal-EPA collaboration; provides opportunities for innovation; and reduces paperwork. EPA expects the rule will foster joint planning and priority-setting by explicitly requiring that Tribal priorities and needs be considered, along with national and Regional guidance, in negotiating grant work plans, consistent with the National Environmental Performance Partnership System (NEPPS). Under this rule, a Tribe can choose to organize its grant work plans in accord with environmental goals and objectives or in other new ways rather than using categories pre-defined by EPA. The length of a grant budget period will be negotiable. These opportunities afforded by the PPG program and this rule are available to all Tribes which receive grants under more than one EPA environmental program.

This rule accommodates all potential variations in how EPA and individual Tribes work to build partnerships. The rule is also minimizes duplicative effort by allowing for multiple uses of information or processes wherever appropriate. The regulation advances ongoing efforts to build more effective Tribal-EPA partnerships and to improve environmental conditions by providing Tribes with increased flexibility to direct resources where they are needed most to address environmental and public health needs.

Summary of Legal Basis:

Not required by law or court order.

Alternatives:

EPA can continue to award PPGs under guidance prepared by the agency and announced in the Federal Register.

Anticipated Cost and Benefits:

The rule does not result in any new costs. It is expected to achieve cost and administrative savings for Tribes by reducing the amount of grant paperwork and by simplifying accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct Federal funds where the recipients need them most to address environmental and public health problems. Recipients can also try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management, that were difficult to fund under traditional categorical grants.

Risks:

There are no known risks.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 63732
Final Action	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

Tribal, Federal

Additional Information:

SAN No. 4128

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RIN: 2030–AA56

EPA

125. 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:

CAA as amended, title I

CFR Citation:

40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline:

None

Abstract:

This action is to revise the CAA 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 NSR regulations. State, local, and tribal permitting agencies will be given more flexibility to implement program requirements in a manner that meets 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 NSR 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).

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 industry's 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 of the Clean Air Act Advisory Committee was formed. 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 (National Park Service and Forest Service, Department of Energy, and the Office of Management and Budget).

Summary of Legal Basis:

There are no applicable statutory or judicial deadlines for the NSR reform rulemaking effort. However, the rule will address three outstanding settlement agreements: CMA Exhibit B, Top-down BACT, and the applicability test for modifications at utilities (''WEPCO'').

Alternatives:

The Subcommittee discussed numerous options for implementing NSR reform. However, EPA's primary focus has been 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. On July 24, 1998, EPA issued another Federal Register Notice seeking comment on two applicability provisions. On February 2-3, 1999, EPA convened a public meeting to listen to new stakeholder proposals for streamlining NSR applicability and control technology requirements. Stakeholder groups submitted written proposals during May and June 1999. Discussions on these proposals will conclude by October 1999.

Anticipated Cost and Benefits:

From a cost perspective, the proposed 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 Action	05/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 325

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RIN: 2060–AE11

EPA

126. NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS (25 HORSEPOWER) (PHASE 2)

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 7547, CAA sec 213

CFR Citation:

40 CFR 90

Legal Deadline:

None

Abstract:

This action will establish the second phase of emissions standards for new nonroad spark-ignition engines at or below 19 kilowatts (25 horsepower), as required by section 213(a)(3) of the Clean Air Act, as amended. The Environmental Protection Agency (EPA) had been developing the second phase of small-engine regulations through a negotiated rulemaking, with representation by engine manufacturers, equipment manufacturers, emissions control manufacturers, equipment dealers, environment and public health interests, and State air programs. The negotiations came to an end on February 16, 1996 with no consensus reached. EPA will now develop the rulemaking through other means.

The affected engines are used in lawn, garden, and utility equipment, such as lawnmowers, string trimmers, chain saws, and small pumps and generators. The first phase was established July 3, 1995 (60 FR 34582), effective for the 1997 model year, and was very similar to the tier 1 small-engine regulations developed by California for the same engines. Regulated pollutants are hydrocarbons, carbon monoxide, and oxides of nitrogen.

Statement of Need:

Nonroad engines contribute significantly to total ozone precursor and CO emissions in areas that have failed to attain the National ambient air quality standards (NAAQS) for ozone and CO. Requirements for emissions reductions will help many areas achieve the NAAQS. The second phase will include additional controls not achievable in the time frame of the first phase, which are necessary for continued attainment of NAAQS.

Summary of Legal Basis:

Clean Air Act Section 213.

Alternatives:

Regulation of this category of engines was split into two phases on the recommendation of the regulated industry, in order to obtain some early reductions quickly while providing sufficient lead-time to develop and implement an appropriate second phase. The regulatory negotiation committee was convened for the second phase to ensure that all possible options for achieving appropriate emissions reductions from this sector were considered.

Anticipated Cost and Benefits:

The regulatory negotiation committee is developing the rule, including setting of emissions standards levels, based on a cost/benefit analysis that considers cost per ton of emissions reduced as well as cost per engine. Until that process is complete, the specific costs and benefits are unknown. The benefits of phase 1 were a 32 percent reduction in hydrocarbons and a 7 percent reduction in carbon monoxide from these engines, at a cost of $266 per ton of hydrocarbons reduced.

Risks:

Over 89 million small engines contribute to unhealthy ozone and carbon monoxide levels in nearly 100 cities across the country. An estimated 6.8 million tons of air pollution are generated from lawn and garden equipment each year. Carbon monoxide is an odorless, colorless poisonous gas. Hydrocarbons and oxides of nitrogen contribute to the formation of ground-level ozone, which is a noxious pollutant that impairs lung functioning and is a key ingredient in smog.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/97	62 FR 14740
NPRM Non-hand-held engines	01/27/98	63 FR 3950
NPRM Hand-held engines	01/27/98	63 FR 3950
Final Action Non-hand-held engines	03/30/99	64 FR 15207
Final Action Hand-held engines	03/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3361

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RIN: 2060–AE29

EPA

127. IMPLEMENTATION OF OZONE AND PARTICULATE MATTER (PM) NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) AND REGIONAL HAZE REGULATIONS

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

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

Legal Authority:

Clean Air Act, title I

CFR Citation:

40 CFR 50; 40 CFR 51; 40 CFR 52; 40 CFR 81

Legal Deadline:

None

Abstract:

On July 18, 1997, EPA issued new, updated air quality standards for ozone (62 FR 38856) and particulate matter (PM) (62 FR 38652). Pursuant to President Clinton's implementation strategy as outlined in a July 16, 1997 memorandum to EPA Administrator Carol Browner, EPA had been developing guidance and rules for sensibly and cost-effectively meeting the new standards. For ozone, the implementation plan will emphasize a regional, State-sponsored approach that addresses the long-distance transport of ozone. On October 27, 1998, EPA published a final rule (sometimes referred to as the NOx SIP Call) to require broad regional emissions reductions of NOx gases which contribute to the formation of ozone (63 FR 57356, October 27, 1998). On November 17, 1998, EPA made available for comment proposed implementation guidance on implementing the revised ozone and PM NAAQS and regional haze program. On May 14, 1999, however, the U.S. Court of Appeals for the D.C. Circuit issued an opinion concerning the

revised ozone and particulate matter NAAQS (American Trucking Assoc., Inc. et al. v. USEPA, No. 97-1440 (May 14, 1999)) in which the Court stated, among other things, that the revised 8-hour ozone standard ''cannot be enforced.'' The Court also vacated the revised PM10 NAAQS and remanded the PM2.5 NAAQS. On June 28, 1999, EPA requested a rehearing of the case before the Court on three issues, including enforcement of the 8-hour standard. Until the appeals process is exhausted, EPA does not intend to issue final guidance for implementation of the standards affected by the Court's decision. In final rules promulgated on June 5, 1998 (63 FR 31013), July 22, 1998 (63 FR 39432), and June 9, 1999 (64 FR 30911), EPA identified areas that have air quality meeting the 1-hour ozone standard and revoked that standard for those areas.

Statement of Need:

Development of programs for ozone and PM are necessary to implement any revised NAAQS under title 1 of the Clean Air Act.

Summary of Legal Basis:

Title I of the Clean Air Act.

Alternatives:

This entry comprises the set of actions the Agency plans to take to implement the new ozone and fine particulate standards. The major alternative facing the Agency was whether to implement the standards strictly on a state-by-state basis, as has been the norm in the past, or to take Federal action to address the fact that emissions from one State affect the ability of other States to achieve the standards. The Agency chose the latter course, embodied in the NOx Regional Strategy described above. The other major set of alternatives involved various possible strategies for infrastructure design, such as the designations of nonattainment areas and the requirements that will apply to them. The major issues in this area were settled by the July 1997 issuance of a Presidential Directive setting out a flexible implementation policy, the elements of which are summarized in the abstract above.

Anticipated Cost and Benefits:

EPA prepared a regulatory impact analysis (RIA) for the final ozone and PM NAAQS, as well as the regional haze reduction program.

Risks:

The risks addressed by this implementation plan are those of not attaining the National Ambient Air Quality Standards for Ozone and Particulate Matter.

Timetable:

Action	Date	FR Cite
ANPRM	12/13/96	61 FR 65764
Notice Proposed Policy	12/13/96	61 FR 65752
NPRM Regional Haze	07/31/97	62 FR 41138
Notice Review Schedule for PM2.5 Standard	10/23/97	62 FR 55201
NPRM NOx Regional Strategy SIP Call	11/07/97	62 FR 60318
Supplemental NPRM NOx SIP Call Supplemental NPRM	05/11/98	63 FR 25902
Final Rule Areas meeting 1-hour ozone standard	06/05/98	63 FR 31013
Final Rule Additional areas meeting 1-hour ozone standard	07/22/98	63 FR 39432
Final Rule NOx Regional Strategy SIP Call	10/27/98	63 FR 57356
Draft Guidance Implementation Planning	11/17/98	63 FR 65593
Final Rule Regional Haze	07/01/99	64 FR 35713
Final Guidance	To Be	Determined

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Local, Tribal

Additional Information:

SAN No. 3553

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RIN: 2060–AF34

EPA

128. 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, recordkeeping, and reporting requirements.

These requirements may be duplicative or overlapping.

All existing Federal air rules applicable to an industry sector will be reviewed to determine whether their provisions can be consolidated into a single new rule. Affected industries, State agencies, and other stakeholders will be consulted to identify duplicative provisions. 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 may be expanded to air rules for other industry sectors.

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.

Summary of Legal Basis:

Clean Air Act Section 111, 112.

Alternatives:

The main alternative is to do nothing and let the many rules with their many provisions remain the only compliance mechanism.

Anticipated Cost 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	10/28/98	63 FR 57748
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3748

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RIN: 2060–AG28

EPA

129. TIER II LIGHT-DUTY VEHICLE AND LIGHT-DUTY TRUCK EMISSION STANDARDS AND GASOLINE SULFUR STANDARDS

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 7521; 42 USC 7545

CFR Citation:

40 CFR 86 (Revision); 40 CFR 80

Legal Deadline:

None

Abstract:

EPA is mandated by the Clean Air Act Amendments of 1990 to study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required through lowering tailpipe emissions standards. EPA submitted a report to Congress on July 31, 1998. The report provided evidence that there was a need for further reductions in emissions and that cost-effective technology is available to meet more stringent standards. This rulemaking will propose the next generation of emission standards for light-duty vehicles and light-duty trucks. The primary focus of this action will be reducing emissions of nitrogen oxides and non-methane hydrocarbons, pollutants which contribute to ozone pollution. Highway vehicles are significant contributors to ozone pollution, though tighter standards will also have additional air quality benefits. The light-duty vehicle and light-duty truck standards cannot go into effect before the 2004 model year, as per Clean Air Act requirements. The rulemaking will also propose limitations on the sulfur content of gasoline available nationwide. Sulfur in gasoline has a detrimental impact on catalyst performance and could be a limiting factor in the introduction of advanced technologies on motor vehicles.

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. This rulemaking will address additional national control measures to reduce emissions, including emissions of nitrogen oxides and hydrocarbons, from new motor vehicles, and sulfur levels in gasoline in order to protect the public health and welfare.

Summary of Legal Basis:

New motor vehicle controls, effective no earlier than model year 2004, are authorized under section 202 of the Clean Air Act. Controls on gasoline sulfur levels are authorized under Clean Air Act Section 211.

Alternatives:

EPA considered various alternatives for control levels, gasoline sulfur levels, and timing of the rule. These are discussed in the proposed rule, published on May 13, 1999 in the Federal Register at 64 FR 26003.

Anticipated Cost and Benefits:

The benefits of the rule are the emission reductions described below. The cost estimates presented in the proposed rule are an average cost increase of less than $100 per passenger car, less than $200 per light truck, and an increase of less than 2 cents per gallon of gasoline.

Risks:

The risks addressed by this program are primarily those associated with nonattainment of the National Ambient Air Quality Standards for ozone. This rule will help States achieve the emission reductions needed to achieve these standards. The proposed rule projected a reduction in oxides of nitrogen emissions of nearly 800,000 tons per year by 2007 and 1,200,000 by 2010. Emission reductions would continue increasing for many years, reaching almost 2,200,000 tons per year in 2020. In addition, the proposed program would reduce the contribution of vehicles to other serious public health and environmental problems, including particulate matter pollution, regional visibility problems, toxic air pollution, acid rain, and nitrogen loading of estuaries.

Timetable:

Action	Date	FR Cite
NPRM	05/13/99	64 FR 26004
Supplemental NPRM	06/30/99	64 FR 26053
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 4211

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RIN: 2060–AI23

EPA

130. GROUND WATER AND PESTICIDE MANAGEMENT PLAN

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, Local or Tribal Governments.

Legal Authority:

7 USC 136(a), FIFRA sec 3; 7 USC 136(w)

CFR Citation:

40 CFR 152.170

Legal Deadline:

None

Abstract:

This regulation would establish Pesticide Management Plans (PMPs) as a new regulatory requirement for certain pesticides. Unless a State or tribal authority has an EPA-approved Plan specifying risk-reduction measures, use of the chemical would be prohibited. The rule would also specify procedures and deadlines for development, approval and modification of plans by States and tribal authorities.

Statement of Need:

EPA proposed to make specific pesticides subject to the provisions of EPA-approved Pesticide Management Plans (PMPs) because of their strong ground-water contamination potential. The rule will establish PMPs as an other regulatory restriction and define the minimum requirements and procedures for developing, approving and managing PMPs. Upon promulgation of this rule, the labels of the designated pesticides will be changed to require use in conformance with EPA-approved PMPs, and to prohibit sale and use in States or Indian Country without such approved Plans (after a period allowed for development and EPA review of these Plans). A PMP is a State's or tribe'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 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 Cost and Benefits:

EPA anticipates four categories of costs entailed in requiring PMPs. Federal Program Costs are those of administering ground-water protection activities, such as the review of State or Tribal proposals. State Program Costs entail both capital and annual costs. Registrant and 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, State and Tribal 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 (sometimes 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. Because the Food Quality Protection Act (FQPA) requires that EPA consider drinking water as part of dietary exposure, the Agency is analyzing implications for this regulation.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33259
Final Action	02/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Tribal, State, Local

Additional Information:

SAN No. 3222

Sectors Affected:

9241 Administration of Environmental Quality Programs

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RIN: 2070–AC46

EPA

131. LEAD; TSCA SECTION 403; IDENTIFICATION OF DANGEROUS LEVELS OF LEAD

Priority:

Economically Significant

Legal Authority:

15 USC 2683

CFR Citation:

40 CFR 745

Legal Deadline:

NPRM, Judicial, May 26, 1998.

Final, Judicial, December 22, 2000.

Abstract:

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. TSCA section 403 requires EPA to promulgate regulations that identify lead-based paint hazards, lead-contaminated dust and lead-contaminated soil for the purposes of TSCA Title IV as well as for the entire Title X. EPA developed an interim guidance document in July 1994, to provide public and private decision-makers with guidance on identifying and prioritizing lead-based paint hazards for control. This interim guidance, which was subsequently published in 1995 (60 FR 47248, 9/11/95), will continue to serve as EPA's official policy until the final TSCA section 403 rule is promulgated.

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. This regulation is a focal point of the Federal lead program and supports the implementation of regulations already promulgated (e.g., lead hazard disclosure in real estate transactions) as well as others under development (e.g., renovation and remodeling). By supporting the implementation of the national lead program, this rule would help prevent lead poisoning in children under the age of six.

Summary of Legal Basis:

This action is mandated by TSCA section 403.

Alternatives:

Alternatives were discussed in the proposed rule. Alternatives will be further considered as part of the proposed rule's comment review.

Anticipated Cost and Benefits:

Although this action doesn't require any action, the costs associated with the establishment of these levels were estimated in a draft economic impact analysis that was 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. During its review of the NPRM under EO 12866, OMB attributed the potential impact of all of the lead regulations to this rule and determined that this action should be classified as economically significant.

Risks:

This rule is aimed at reducing the prevalence and severity of lead poisoning, particularly in children.

Timetable:

Action	Date	FR Cite
NPRM	06/03/98	63 FR 30301
Notice Comment Period Extended to 10/01/98	07/22/98	63 FR 39262
Notice Comment Period Extended to 11/30/98	10/01/98	63 FR 52662
NPRM Correction	12/18/98	63 FR 70087
Notice Reopens Comment Period to 03/01/99	01/14/99	64 FR 2460
Final Action	12/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3243

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RIN: 2070–AC63

EPA

132. TRI; REPORTING THRESHOLD AMENDMENT FOR CERTAIN PERSISTENT AND BIOACCUMULATIVE TOXIC CHEMICALS (PBTS)

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:

42 USC 11013, EPCRA 313; 42 USC 11023; 42 USC 11048; 42 USC 11076

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.

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 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 Cost and Benefits:

EPA has proposed to lower the EPCRA section 313 reporting thresholds to 10 pounds for 13 chemicals/chemical categories, to 100 pounds for 5 chemicals, and to .01 grams for 1 chemical category. Under this proposal the estimated aggregate industry cost in the first year would be $145 million and in subsequent years would be $80 million. 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
NPRM	01/05/99	64 FR 688
Notice of Availability and Clarification of Proposed Rule	02/23/99	64 FR 8766
Final Action	10/29/99	64 FR 58370

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3880

OTHER DEADLINE: Vice-President directed the Agency to finalize any necessary regulatory changes by December 1999.

AFFECTED SECTORS: 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); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and, Solvent Recovery Services (SIC code 7389).

Sectors Affected:

42269 Other Chemical and Allied Products Wholesalers

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RIN: 2070–AD09

EPA

133. TRI; LOWERING OF EPCRA SECTION 313 REPORTING THRESHOLDS FOR LEAD AND LEAD COMPOUNDS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 11001 et seq

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 pounds 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 certain persistent bioaccumulative toxic (PBT) chemicals and has issued a proposed rule that sets out the criteria EPA intends to use for determining if a chemical is persistent and bioaccumulative under EPCRA section 313. EPA is currently conducting analysis to determine if lead and lead compounds meet the proposed criteria for persistence and bioaccumulation and whether the EPCRA section 313 reporting thresholds should be lowered. EPA is also evaluating the environmental fate of lead.

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 lead and lead compounds that may persist and bioaccumulate in the environment. Even small releases of lead and lead compounds 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 public's right to know what is happening to the environment near their homes, schools, and businesses.

Summary of Legal Basis:

42 USC 11023(f)(2); 42 USC 11048; EPCRA sec 313; EPCRA sec 328.

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 Cost and Benefits:

EPA has proposed to lower the EPCRA section 313 reporting thresholds for Lead and Lead Compounds to 10 pounds. Under this proposal the estimated aggregate industry cost in the first year would be $116 million and in subsequent years would be $60 million. The information reported in TRI increases the knowledge levels of lead and lead compounds 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 lead and lead compounds 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 lead and lead compounds the public will be able to determine if these chemicals are being released into their communities and whether any action should be taken to reduce potential risks.

Timetable:

Action	Date	FR Cite
NPRM	08/03/99	64 FR 42222
Comment Extension to 12/16/1999	10/29/99	64 FR 58370
Final Action	04/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 4259

By Statute and Regulation, this rule will affect SIC codes 20-39, 10 (except SIC codes 1011, 1081, 1094), 12 (except SIC code 1241), 4911, 4931, 4939, 4953, 5169, 5171, and 7389.

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RIN: 2070–AD38

EPA

134. NPDES COMPREHENSIVE STORM WATER PHASE II REGULATIONS

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:

33 USC 1311, CWA sec 301; 33 USC 1314, CWA sec 304; 33 USC 1318, CWA sec 308; 33 USC 1342, CWA sec 402; 33 USC 1361, CWA sec 501

CFR Citation:

40 CFR 122; 40 CFR 123

Legal Deadline:

Final, Statutory, October 1, 1993.

NPRM, Judicial, December 15, 1997.

Final, Judicial, October 29, 1999.

Abstract:

The Phase II NPDES storm water regulations expand the existing national program to storm water discharges from small municipal separate storm sewer systems (MS4s) and construction sites

that disturb 1 to 5 acres. The rule includes waiver provisions based on the lack of impact on water quality and allows designation of other sources based on a likelihood of localized adverse impact on water quality. The regulations also exclude from the NPDES program storm water discharges from industrial facilities that have ''no exposure'' of industrial activities or materials to storm water. This rule establishes a cost effective, flexible approach for reducing environmental harm by storm water discharges from currently unregulated storm water point sources. EPA believes that the implementation of the six minimum measures for small MS4s should significantly and cost-effectively reduce pollutants in urban storm water. Similarly, EPA believes that implementation of best management practices (BMPs) at small construction sites will cause a significant reduction in pollutant discharges and an improvement in surface water quality. EPA expects significant monetized financial, recreational and health benefits, as well as benefits that EPA has been unable to monetize. These include reduced scouring and erosion of streambeds, improved aesthetic quality of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, tourism benefits, biodiversity benefits and reduced costs for sitting reservoirs. In addition, the costs of industrial storm water controls will decrease due to the exclusion of storm water discharges from facilities where there is ''no exposure'' of storm water to industrial activities and materials.

Statement of Need:

Data collected under sections 305(b) and 402(p)(5) of the CWA indicate that uncontrolled storm water discharges from municipalities serving population 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 storm water regulations would address these currently unregulated storm water discharges. The proposed changes would also provide needed regulatory relief to Phase I facilities that have no exposure to storm water and do not cause water quality use impairment.

Summary of Legal Basis:

CWA sec. 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 sec. 402(p)(6) by September 1, 1997, and finalize these rules by October 29, 1999 (NRDC v. Browner, Civ. No. 95-634 PLF (D.D.C., April 6, 1995)).

Alternatives:

The proposed changes to the NPDES storm water regulations were developed with significant input from the FACA subcommittee. Alternative options, as well as successive drafts of the proposed rule was distributed to FACA members for comment. The language of the proposed changes are the result of extensive stakeholder input. The Agency solicited comments on alternative approaches in the preamble to the proposed rule.

Anticipated Cost and Benefits:

EPA estimates that the rule would result in an annual cost of $803 million, with expected annual monetized benefits from implementation of the requirements of $814 million to $1.62 billion. EPA also estimated that the ''no exposure'' waiver for Phase I industrial facilities would result in expected annual cost savings of $317 million to $1.86 billion.

Risks:

The proposed changes to the NPDES storm water regulations will reduce adverse water quality impacts from storm water, thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	01/09/98	63 FR 1535
Final Action	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 3785

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RIN: 2040–AC82

EPA

135. PUBLIC WATER SYSTEM PUBLIC NOTIFICATION REGULATION

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 300(f) et seq

CFR Citation:

40 CFR 141.32; 40 CFR 142.14; 40 CFR 142.15; 40 CFR 142.16; 40 CFR 143.5

Legal Deadline:

None

Abstract:

This action revises an existing regulation to incorporate the new public notification provisions of the Safe Drinking Water Act. A Public Water System is required to provide notification to its customers whenever: (1) a violation of certain drinking water regulations occurs (including MCL, treatment technique, and monitoring/reporting requirements); (2) a variance or exemption to those regulations is in place or the conditions of the variance or exemption are violated; or (3) required results from unregulated contaminant monitoring are received. The Administrator is required to prescribe by regulation the manner, frequency, form, and content for giving notice. States are required to adopt this rule to retain primacy. The 1996 amendments (1) require notice within 24 hours for violations posing a serious public health risk from short term exposure and give EPA discretion to set the timing of the notification for all other violations; (2) give EPA discretion to set the method of delivery of the notices as long as the public

notice reaches all persons served; (3) establish a specific requirement for EPA consultation with the States in issuing revised regulations; (4) allow the primary States to prescribe alternative notification requirements by rule with respect to the form and content of the notice. One other new requirement — for public water systems to prepare an annual consumer confidence report — is being implemented under a separate regulatory action. The benefits of the revised public notification regulations will be to streamline the existing requirements, provide quicker and more effective notification of violations that have a serious adverse effect, and better inform customers of the risk to their health from the drinking water.

Statement of Need:

The public notification rule is being revised to incorporate the legislative changes contained in the 1996 SDWA amendments under Section 1414(c)(1) and (2). The new provisions require EPA to tailor the frequency and content of the public notice to the relative risks to public health and otherwise streamline the process currently in place. The statute requires EPA to promulgate regulations, after consultation with the states, to implement this section.

Summary of Legal Basis:

The 1996 SDWA amendments require EPA to promulgate public notification regulations to implement new Sections 1414(c)(1) and (2). There is no statutory deadline.

Alternatives:

Within the statutory obligation to issue revised public notification regulations, EPA is developing regulatory options that balance the need to protect public health with the need to provide flexibility in local implementation and a reduced reporting burden. Options are being considered related to the frequency of notices for violations not posing a risk to health from short term exposure, how best to ensure that notices reach all persons served, what the notice should contain to be most effective, and how the public notice provisions could be integrated into the parallel requirement for an annual consumer confidence report.

Anticipated Cost and Benefits:

The preliminary cost estimate of the proposed rule for public water systems (PWS) and State primacy agencies is $17,956,117 per year, or $351.96 per violating PWS and $27,944 per primacy State. This would be a decrease of $9,100,000 (or 33 percent) per year from the costs under the existing public notification rule. There are no capital costs associated with this rulemaking. The benefits would be more effective public notices allowing consumers to make more informed choices about protecting their public health from drinking water.

Risks:

The public notification regulations require water systems to notify all persons served of any violation of drinking water standards. Consumers not notified of violations may put themselves at risk from drinking the water and otherwise will be unable to make informed choices about whether to continue drinking the water. Risks are largest when the violation is for a contaminant that poses a risk from short-term exposure or for subpopulations vulnerable to the contaminants in the drinking water. Compliance with the public notification rule allows consumers, at their option, to make timely choices about the risk from their drinking water. Public notification is one of several federal barriers protecting consumers from exposure to harmful contaminants from their drinking water.

Timetable:

Action	Date	FR Cite
NPRM	05/13/99	64 FR 25963
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

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RIN: 2040–AD06

EPA

136. TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REGULATIONS REVISIONS

Priority:

Other Significant

Legal Authority:

33 USC 1313

CFR Citation:

40 CFR 130.7

Legal Deadline:

None

Abstract:

EPA is proposing changes to the Total Maximum Daily Load (TMDL) regulations for implementing State, Territorial, authorized Tribal (collectively referred to as ''States''), and EPA responsibilities under Section 303(d) of the Clean Water Act. The purpose of Section 303(d) is to identify remaining sources of pollution, after technology-based controls have been required, and to allocate pollutant reductions at a level that will ensure attainment and maintenance of water quality standards. These allocations are contained in a TMDL, which is the maximum amount of a pollutant that a waterbody can absorb and still meet water quality standards. The proposed revisions provide States with clear, consistent, and balanced direction for listing waters and developing TMDLs, resulting in restoration of waterbodies not meeting water quality standards.

Statement of Need:

Listing impaired and threatened waters and establishing TMDLs are fundamental tools for identifying remaining sources of water pollution and achieving water quality goals. In 1996, EPA determined that there was a need for a comprehensive evaluation of EPA's and the States' implementation of their Section 303(d) responsibilities. EPA convened a committee under the Federal Advisory Committee Act to make recommendations for improving such implementation, including recommended changes to the TMDL regulations and guidance. The committee, comprised of 20 individuals with diverse backgrounds, submitted its final report to EPA on July 28,1998. The report contained more than 100 consensus recommendations, a subset of which would require regulatory changes. The committee's recommendations helped to guide the development of the proposed revisions.

The proposed regulatory revisions address issues of fundamental importance to cleaning up our Nation's polluted waters. States and territories have identified over 20,000 individual river segments, lakes, and estuaries across America as polluted. These polluted waters include approximately 300,000 miles of river and shoreline and approximately 5 million acres of lakes — polluted mostly by sedimentation, nutrients, and harmful microorganisms. With the overwhelming majority of the population living within 10 miles of these polluted waters, these proposed regulatory revisions will have a profound impact on the environment and health of communities across the country.

Summary of Legal Basis:

Section 303(d) of the Clean Water Act requires the identification of waters not meeting water quality standards and the establishment of the TMDSs for such waters. Section 303(d) gives States responsibility for listing impaired waterbodies and establishing TMDLs. In addition, Section 303(d) authorizes EPA to review and approve or disapprove State lists and TMDLs within 30 days of final submission. If EPA disapproves lists or TMDLs, EPA has 30 days to establish lists and TMDLs. Section 501 authorizes the Administrator to prescribe regulations as necessary to carry out the purposes of the Clean Water Act.

Alternatives:

The preamble to the proposed revisions explains the various options that EPA considered on each of the major issue areas as part of the rule development process. These alternatives generally include maintaining the existing regulatory requirements, as well as options other than those selected for the proposed rule language. In the proposal, EPA explicitly solicits comments on the approach set out in the proposed rule and on the other options considered.

Anticipated Cost and Benefits:

The supporting economic analysis found that the proposed TMDL regulation is expected to increase the costs to States by approximately $10.3 - $24.4 million annually from the present through 2015. The bulk of the additional costs ($10.1 - $23.8 million) are associated with the proposed rule's provisions addressing TMDL development. The increased costs associated with the proposed revisions to the listing requirements are estimated to be $0.23 million annually — these increased costs might be offset if the listing cycle is lengthened. The analysis also found that EPA's costs associated with the listing and TMDL requirements of the proposed regulation are likely to increase by $18,000 annually. The estimated increased costs to States associated with the proposed TMDL changes represent only three to eight percent of the amount of support provided annually by the Federal government to States for water quality management programs, and undoubtedly a much smaller proportion of the total State spending for these activities. Moreover, the intent of many of the proposed regulatory changes is to improve efficiency and national consistency by establishing uniform formats, eliminating ambiguities, encouraging prudent planning, and improving information for public participation. The benefits from the proposed revisions will be sizeable. Clean-up plans developed under the proposal will help to restore the health of thousands of miles of river and shoreline, and make millions of acres safe for fishing, swimming, and other activities.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	08/23/99	64 FR 46011
Final Action	05/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Tribal, Federal

Additional Information:

SAN No. 4145

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EPA

137. ● TOTAL MAXIMUM DAILY LOAD (TMDL) - NPDES AND WQS REGULATIONS REVISIONS

Priority:

Other Significant

Legal Authority:

33 USC 1311 CWA sec 301; 33 USC 1313 CWA sec 303; 33 USC 1314 CWA sec 304; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation:

40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 131

Legal Deadline:

None

Abstract:

On August 12, 1999, Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the Total Maximum Daily Load (TMDL) regulations (40 CFR Part 130) for implementing state, territorial, authorized tribal, and EPA responsibilities under Section 303(d) of the Clean Water Act. Administrator Browner also signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) and Water Quality Standards regulations to facilitate implementation of TMDLs and to improve water quality in impaired waters before TMDLs are established.

The Federal Advisory Committee (FACA) on the Total Maximum Daily Load Program recommended a number of ways to improve the effectiveness and efficiency of EPA, State, Territorial and Tribal programs under section 303(d) of the CWA. These recommendations address many of the TMDL program's complex technical and policy issues, and include recommendations on several new policy and program directions some of which are included in the proposed revisions to the NPDES and water quality standards regulations. These proposed revisions are aimed at achieving reasonable further progress toward attainment of water quality standards in impaired waterbodies pending TMDL establishment and providing reasonable assurance that TMDLs, once completed, will be adequately implemented. EPA may also, in the future, promulgate federal water quality standards for states, pursuant to section 303(c)(2)(B), to ensure consistent, nationwide application of the new requirements in

the period between listing and TMDL establishment. Federal implementation through NPDES permits, in the absence of State, Territorial, or Tribal implementation, will ensure that the clean-up plans will work.

Statement of Need:

These proposed regulatory revisions address issues of fundamental importance to cleaning up our Nation's polluted waters. States and territories have identified over 20,000 individual river segments, lakes, and estuaries across America as polluted. These polluted waters include approximately 300,000 miles of river and shoreline and approximately 5 million acres of lakes — polluted mostly by sedimentation, nutrients, and harmful microorganisms. With the overwhelming majority of the population living within 10 miles of these polluted waters, these proposed regulatory revisions will have a profound impact on the environment and health of communities across the country.

Summary of Legal Basis:

The Clean Water Act establishes the goal to '' .... restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' CWA section 101(a). EPA believes extending Tier 1 of the federal antidegradation policy to include a provision aimed at promoting reasonable further progress toward restoring water quality in impaired waterbodies is both consistent with the goals of the Act, and is a logical means for meeting those goals. The current antidegradation requirements were establishedpurusant to section 303.

The language in today's proposal about the Agency's intention and authority to designate unregulated animal production sources in authorized States and silvicultural operations both in authorized and unauthorized States — where EPA establishes a TMDL— supports the fulfillment of the CWA goals to attain and maintain water quality standards. The proposal also supports EPA's authority, as specified in CWA section 303(d)(2), to establish TMDLs (including all required elements) for waterbodies for which the State fails to do so. The same purposes are served by the proposal for EPA to object to State-issued permits that are administratively extended. EPA is implementing its authorities under sections 402 and 501 in this proposal.

Alternatives:

The FACA recommended an optional stabilization plan that would identify mechanisms that might allow for exceptions from point source discharge restrictions upon demonstration that the optional stabilization plan results in parameter specific net progress in water quality through means other than those restrictions. EPA considered these optional stabilization plans as a means to achieve parameter specific net progress but instead, chose to propose an offset requirement under the federal antidegradation policy for certain dischargers as a means to achieve parameter specific net progress. In implementing the offset requirement, EPA is considering a wide range of regulatory alternatives to address: enforceability issues; how offsets are implemented through different permitting schemes; the magnitude, duration and location of the offset; and who is subject to the requirements. EPA is also soliciting comments on alternatives to the proposed revisions aimed at facilitating the implementation of established TMDLs.

Anticipated Cost and Benefits:

EPA estimated that the costs to State, local and tribal governments, in the aggregate, or the private sector in any one year to implement the requirements in today's proposal are not expected to exceed $65.2 million in any one year. The total cost to State, local and tribal governments is not expected to exceed $0.96 Million in any one year, with a majority of these costs born by State government. The remaining $64.24 million is expected to be born by the private sector.

The types of benefits associated with the proposed revisions include improvements to the water quality of waters that are not meeting water quality standards. Reduced risks to human health and an increase in the number of waterbodies fit for fishing and swimming are expected to result from these improvements.

Risks:

The proposed changes to the NPDES and WQS regulations will reduce adverse water quality impacts from dischargers discharging to waterbodies not meeting water quality standards, thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	08/23/99	64 FR 46057
Final Action	05/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Tribal, Federal

Additional Information:

SAN No. 4294

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BILLING CODE 6560–50–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 a 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 discriminating 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 two significant actions of a regulatory nature. One has been published for public comment and the other will be published for public comment.

The Commission proposes to issue legislative regulations to provide detailed guidance for employers and employees on the status of consideration paid for a waiver of rights and claims under the laws it enforces. These issues were addressed by the United States Supreme Court's decision in Oubre v. Entergy Operations, Inc., 522 U.S. 422 (1998). The proposed rule would provide guidance on the meaning and implications of the Oubre decision. The proposed rule is titled ''Waivers of Rights and Claims: Tender Back of Consideration,'' and was published for public comment (NPRM) on April 23, 1999, 64 FR 19952. The Commission is now assessing all comments received in response to this NPRM.

The second significant action of a regulatory nature being considered by the Commission is amendment of its regulation governing federal sector equal employment opportunity, 29 CFR 1614.203, to reflect the 1992 amendments of section 501 of the Rehabilitation Act of 1973. Congress amended section 501 to state that the nondiscrimination standards of Title I of the Americans with Disabilities Act apply to section 501 of the Rehabilitation Act.

(Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chairwoman of the Agency. The statement has not been reviewed or approved by the other members of the Commission).

EEOC

PROPOSED RULE STAGE

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138. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

Priority:

Other Significant

Legal Authority:

PL 102-569, The Rehabilitation Act Amendments of 1992; 42 USC 2000e-16; 29 USC 794a

CFR Citation:

29 CFR 1614

Legal Deadline:

None

Abstract:

The Commission proposes to change its Federal sector equal employment opportunity regulations to implement the Rehabilitation Act Amendments of 1992. The 1992 amendments provide that the standards used to determine if title I of the Americans with Disabilities Act has been violated will apply to complaints of nonaffirmative action employment discrimination under section 501 of the Rehabilitation Act.

Statement of Need:

The Commission promulgated its latest regulation under section 501 of the Rehabilitation Act in April 1992, several months before Congress enacted the 1992 Rehabilitation Act Amendments. The Commission is thus proposing to amend its section 501 regulation, found at 29 CFR 1614.203, to implement the Rehabilitation Act Amendments.

Summary of Legal Basis:

Pursuant to sections 501 and 505 of the Rehabilitation Act, the Commission is authorized to issue such regulations as it deems necessary to carry out its responsibilities under the Act. The proposed regulatory revisions are not required by statute or court order.

Alternatives:

The Commission has consulted with stakeholders and has considered their suggested alternatives in developing this regulatory proposal. In addition, EEOC will publish the proposed regulatory amendments for public comment and will consider all offered alternatives prior to adoption of a final rule.

Anticipated Cost and Benefits:

The proposed regulatory changes will enhance enforcement of the statutory requirements. Federal agencies and individuals will have a clearer understanding of their respective obligations and rights under the Rehabilitation Act. It is not anticipated that this proposal will result in increased costs.

Risks:

The proposed regulatory changes will lessen the risk of noncompliance with statutory requirements by identifying and providing detailed guidance on the appropriate legal standards governing Federal sector claims of nonaffirmative action employment discrimination under section 501 of the Rehabilitation Act. This proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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EEOC

FINAL RULE STAGE

139. WAIVERS OF RIGHTS AND CLAIMS: TENDER BACK OF CONSIDERATION

Priority:

Other Significant

Legal Authority:

5 USC 522; 29 USC 628; 42 USC 2000e; 42 USC 12101; 29 USC 206(d)

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

Following the United States Supreme Court's decision in Oubre v. Entergy Operations, Inc., 522 US 422 (1998), the Commission has developed proposed regulatory guidance on the status of consideration paid for a waiver of rights and claims under the laws it enforces.

Statement of Need:

The Equal Employment Opportunity Commission (EEOC or Commission) is proposing to adopt legislative regulations addressing issues relating to the ''tender back of consideration'' in connection with waivers of rights and claims under the Age Discrimination in Employment Act of 1967 (ADEA). This issue was addressed by the United States Supreme Court in Oubre v. Entergy Operations, Inc., 522 U.S. 422 (1998). In that decision, the Supreme Court held that an individual was not required to return (tender back) consideration (such as improved severance benefits, extra money, or early retirement) for a waiver in order to allege a violation of the ADEA. Prior to the Supreme Court's decision in Oubre, the Federal courts of appeals were split on the issue of whether an individual who signed a waiver agreement was required to tender back any consideration paid by the employer in order to bring a claim under the ADEA. The Commission's proposed legislative rule would provide detailed regulatory guidance to the public on the tender back issue addressed by the Supreme Court's Oubre decision.

The ADEA was amended by title II of the Older Worker Benefits Protection Act of 1990 (OWBPA) to regulate the use of waivers for employees 40 years of age or older. Title II of OWBPA sets forth the statutory requirements for a valid waiver of rights under the ADEA. The Commission conducted a negotiated rulemaking in 1995 and 1996 on ADEA waivers under OWBPA. The Rulemaking Committee considered, but agreed not to resolve, the tender back issue, and it was not included in the regulatory language recommended by the Committee to the Commission. EEOC promulgated a final regulation on ADEA waivers at 29 CFR 1625.22 on June 5, 1998, 63 FR 30624. The preamble to the final regulation confirmed that the issues raised in the Supreme Court's Oubre decision would not be addressed in that regulation, but that the tender back issue would be covered in other EEOC guidance.

Since the enactment of OWBPA, employer and employee representatives have expressed continuing interest in receiving guidance on the issue of waiver agreements. The use of waiver agreements in the workplace is an increasingly common practice, particularly in connection with layoffs and reductions-in-force. The Supreme Court recognized in Oubre that requiring tender back of consideration, as a condition of bringing an ADEA suit, could frustrate the purposes of the statute and lead to evasion of OWBPA's waiver requirements. Because of the importance of the tender back issue to both employers and employees, and based on input from stakeholders, the Commission believes that the public would benefit from regulatory guidance in this area.

Summary of Legal Basis:

Section 9 of ADEA authorizes the Commission to issue such rules and regulations as it may consider necessary or appropriate for carrying out the Act. This regulatory proposal is not required by statute or court order.

Alternatives:

The Commission will consider all alternatives offered by public commenters.

Anticipated Cost and Benefits:

Providing a clear outline of what is and is not permissible concerning issues raised by the Supreme Court's Oubre decision will reduce employment disputes and save both employers and employees time and unnecessary costs. In addition, regulatory guidance on the issue of waiver agreements should result in increased voluntary resolution of potential employment disputes, and thereby reduce the likelihood of protracted and costly litigation. Finally, when necessary, regulatory guidance on tender back of consideration paid under waiver agreements will ensure that employees are able to challenge the validity of such agreements. It is not anticipated that any costs will arise from issuing the proposed regulatory guidance.

Risks:

Regulatory guidance on tender back issues will lessen the risk that employees will be forestalled from challenging the validity of waivers under the laws enforced by EEOC in the event that they are unable to tender back consideration. The Commission has a substantial interest in addressing this risk. The right of individual employees to challenge waiver agreements is essential to implement the strong public interest in eradicating discrimination in the workplace and is also a vital part of the statutory enforcement scheme of the ADEA, as well as the other laws enforced by the

Commission. The proposed regulation does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/23/99	64 FR 19952
NPRM Comment Period End	06/22/99	
Final Action	07/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Federal

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BILLING CODE 6570–01–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 2000 are to continue to issue regulations that reflect the President's philosophy of being consistent, sensible, and do not place an undue burden on the public. Further, GSA's regulations are being written in a plain language, question and answer format, to make the regulations easier to read and understand.

Toward that end, GSA is improving its regulatory system by establishing the Federal Management Regulation (FMR) as the successor regulation to the Federal Property Management Regulations (FPMR). As parts of the FPMR are updated and rewritten, they are being moved into the FMR. The FMR will provide Federal managers with streamlined regulatory material they need to efficiently manage real and personal property and administrative services.

Content changes will also bring the FMR into conformance with recommendations from the National Partnership for Reinventing Government to reduce regulations and use plain language. Parts of the Federal Travel Regulation have already been issued in the new plain language format and the effort continues. Completion is anticipated by the end of calendar year 1999.

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 (the Act), 42 United States Code (U. S. C.) 2451 et seq., which laid the foundation for NASA's mission. The Act authorizes NASA, among other things, to conduct space activities devoted to peaceful purposes for the benefit of humankind; to preserve the leadership of the United States in aeronautics and space science and technology; and 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 space transportation systems, including the Space Shuttle, and the International Space Station; 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, robotic, 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 1998 Strategic Plan, is to explore, use, and enable the development of space for human enterprise; to advance and communicate scientific knowledge and understanding of the Earth, the solar system, and the universe, and use the environment of space for research; and 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 (FY) 2000.

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. Major revisions are not expected in FY 2000, except to conform to FAR changes that are currently being promulgated in Part 12, Acquisition of Commercial Items; Part 25, Foreign Acquisitions; 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 will be published. For instance, NASA is developing a risk-centered approach to acquisition that will affect acquisition planning, contract structure, contractor surveillance, and other contract management areas, which will result in NFS revisions.

To reduce the time and cost spent by the Agency and by our science and industry partners in the procurement of basic and applied research, NASA is focusing on streamlining our processes. To go forward in this effort, regulations governing Grant and Cooperative Agreements at 14 CFR Parts 1260, 1273, and 1274 are being rewritten to incorporate improvements and streamlining initiatives.

NASA is working on revising its environmental policy and procedures regulations, which appear at 14 CFR Subparts 1216.1 and 1216.3. Changes are being considered to streamline and clarify the Agency's policy, and its implementation of the National Environmental Policy Act (NEPA) process.

NASA is continuing consideration of revisions to the cross-waiver of liability in NASA contracts and agreements, involving activities such as launch services.

NASA is also continuing consideration of a new regulation that would clarify, and provide procedures for exercising, its claims authority under 42 U.S.C. 2473(c)(13), section 203(c)(13) of the Act, as amended, especially as applied to Agency functions such as launches of NASA missions.

BILLING CODE 7510–01–F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) issues regulations directed to other Federal agencies and to the public. Records management regulations directed to Federal agencies concern proper management and disposition of Federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Governmentwide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA's regulatory priorities for fiscal year 2000 are (1) developing regulations relating to storage standards for archival records and measures to protect underground records storage facilities from catastrophic fires; (2) reinventing our program for periodically reviewing all NARA regulations; and (3) reviewing, updating and streamlining NARA regulations relating to the Freedom of Information Act, records declassification, and use of NARA facilities.

NARA

FINAL RULE STAGE

140. AGENCY RECORDS CENTERS

Priority:

Other Significant

Legal Authority:

44 USC 2104 (a); 44 USC 3103

CFR Citation:

36 CFR 1228.222

Legal Deadline:

None

Abstract:

NARA is revising the regulations on facility standards for records centers in 36 CFR part 1228, subpart I. The current regulation cites obsolete industry standards and has not been revised since the early 1980's. This rulemaking action revises standards for environmental conditions, with particular emphasis on storage areas for archival material; incorporates standards for the storage of nontextual records; prescribes new physical security and fire detection and suppression standards; and establishes environmental and security requirements for new agency records centers.

Statement of Need:

This regulation is required to ensure that Federal records are stored in facilities meeting the appropriate environmental, physical security and fire safety standards to maintain the records for their required retention period. Permanently valuable records need to be stored in environmental conditions that will preserve the records for extended periods of time while temporary records require a different level of environmental storage conditions. The previous standards did not distinguish between the environmental storage conditions for temporary records and for permanently valuable records. In addition, the previous standards do not reflect current information relative to fire safety or to the proper long term storage of permanently valuable records.

Summary of Legal Basis:

This regulation reflects the legal requirements for agencies to maintain records in a manner to insure that the records are available for the appropriate retention period. The National Archives and Records Administration (NARA) is required by law to assist Federal agencies in the development of standards and guidelines for the appropriate management of Federal records storage conditions for Federal records. The Archivist of the United States is also statutorily responsible for insuring that Federal agencies are maintaining records in an appropriate manner.

Alternatives:

The current standards in 36 CFR 1228 do not adequately distinguish between storage requirements for temporary records and for permanently valuable records. Further, the draft international standards do not provide the appropriate storage conditions for the preservation and protection of Federal records. An alternative to this regulation change would be to state in the regulations only the statutory requirements for storage of Federal records in the appropriate environmental conditions. Since agencies are permitted to maintain their own records, NARA would then be required to prepare and issue a records storage guide describing the appropriate environmental conditions for records storage facilities. This alternative, however, would reduce the effectiveness of the regulation since the specific environmental limits would be contained in nonmandatory guidance.

Anticipated Cost and Benefits:

There are costs associated with bringing existing facilities up to the new standards and, in some cases, replacing existing facilities that can not be brought up to the performance requirements of the new standards. It is expected that the existing facilities that store permanently valuable records, for the most part, will have to be replaced since replacing the facility is more cost effective than attempting to renovate the facility. For facilities storing temporary records, it is expected that most of these facilities can be renovated to comply with the new standards. Agencies that arrange for their own storage of records will be required to maintain facilities meeting the new standards. The agencies that contract for this service will be required to include the standards in their contracts with private companies.

Risks:

Failure to follow these regulations could result in records that are not properly maintained and, as a result, not available for use when they are required. In the case of permanently valuable records, failure to maintain the records in facilities meeting the revised standards could result in unique, valuable information being permanently lost. Information relative to the expenditure of funds could be lost; documentation of significant decisions with wide ranging effects on the public could be unavailable; and the lack of information could result in inefficient Government operations while trying to recreate the information or in fruitless searches for the information.

Timetable:

Action	Date	FR Cite
NPRM	04/30/99	64 FR 23504
NPRM Comment Period End	07/07/99	64 FR 30276
Final Action	11/00/99	
Final Action Effective	11/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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RIN: 3095–AA81

NARA

141. STORAGE OF FEDERAL RECORDS

Priority:

Other Significant

Legal Authority:

44 USC 2907; 44 USC 3103

CFR Citation:

36 CFR 1220; 36 CFR 1222; 36 CFR 1228; 36 CFR 1236

Legal Deadline:

None

Abstract:

NARA's records center program will convert to a totally reimbursable program on October 1, 1999 (FY 2000). This regulation will update records management regulations relating to the storage of Federal records.

Statement of Need:

The Administration has decided that NARA's records center program will become fully reimbursable in FY 2000. In the past, only about 30 percent of NARA's records center program was reimbursable. Seventy percent of the program relied on direct appropriations to provide storage space and records center services to other Federal agencies. This change in policy is intended to ensure that NARA has sufficient resources to provide adequate storage and reference services and to meet increasing demands for records center space and services. Aligning the costs of records center services with those Federal agencies that use the services will lead to greater emphasis on records management activities throughout the Federal Government.

Summary of Legal Basis:

Under the Federal Records Act (44 U.S.C. 2907) NARA has the authority, but is not required, to operate the records center program. The records center program will continue, but on a reimbursable basis effective October 1, 1999.

Alternatives:

This approach was adopted by the Administration after consideration of all available alternatives. OMB has stipulated that NARA is to be the sole source for agency records center services through FY 2002 for agencies currently using NARA records centers. Agencies currently storing records in agency or private sector records centers may continue to do so. After FY 2002, agencies may choose to store records with NARA, a private sector records center, another agency's records center, or establish its own agency records center pursuant to guidelines that NARA will issue.

Anticipated Cost and Benefits:

While costs will increase for individual agencies, the overall cost to the Government will not increase. The new emphasis on records management may result in lowered costs for the storage of Federal records as records retention periods are reviewed and revised. The reimbursable program will allow for more and higher quality records center storage space and improved services to agencies. NARA's goal is to provide agencies with the best balance of service and cost.

Risks:

Management controls will be established to ensure that the program is achieving its intended objectives. Legislation is required to establish a revolving fund that will be used to finance the records center operations. The reimbursable program will be monitored by NARA staff and audited by OMB.

Timetable:

Action	Date	FR Cite
NPRM	04/30/99	64 FR 23510
NPRM Comment Period End	06/29/99	
Final Action	11/00/99	
Final Action Effective	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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RIN: 3095–AA86

BILLING CODE 7515–05–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 improvements that will enable the Federal Government to recruit, manage and retain the high quality, diverse workforce needed by agencies to deliver their respective missions to the American public.

This Administration has developed an outstanding record in managing the largest workforce in the Nation — a record that includes reinventing Federal human resource management systems, downsizing the Federal workforce by over 370,000 to its lowest point in 30 years, and at the same time focusing on improving quality, effectiveness and customer service. Continued progress toward Governmentwide improvements now depends largely upon the passage of legislation which currently is in varying stages of discussion that would provide the tools needed to make more profound improvements in Federal human resource management. Pending passage of legislation, OPM will continue to use its regulatory authority whenever regulations are the appropriate vehicle to achieve our goal of an effective, merit-based civil service system. However, we are also mindful of the dangers of over-regulating. Excessive regulation in the area of Federal human resources management creates obstacles that stand in the way of the innovation and creativity that Federal managers need to lead and motivate the workforce and to operate programs more effectively. We seek an appropriate balance of minimizing regulation to ensure flexibility, innovation and excellence, while preserving the merit-based civil service system that serves as the cornerstone of our democracy.

Clearly, under the President's leadership, we are now a Government that does work better and cost less. We are also a Government that leads with compassion and an understanding of the real every day needs of the people who form the backbone of our workforce. Ours is a commitment not only to the workforce of today which continually strives to balance the needs of work and family, but to the safety and well-being of those who represent the workforce of tomorrow. With that in mind we will be proposing regulations to enable Federal employees to use up to 12 weeks of sick leave each year to care for a family member with a serious health condition.

We will soon be issuing regulations to permit agencies to use appropriated funds to reduce child care costs for lower income Federal employees. Striving to provide affordable, safe child care for our workforce is not only our moral obligation, it is simply good management. When human resource systems are designed to address employee needs, agencies immediately benefit by better recruitment and retention of qualified personnel which can result in significant recruitment and training cost savings, lower absenteeism and improved employee morale.

We must also open wide the doors of opportunity to every segment of our society. The President addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment. OPM fully supports the Task Force's recommendation that the Government's hiring standards for individuals with psychiatric disabilities parallel the hiring standards of individuals with mental retardation and severe physical disabilities. Regulations will soon be promulgated to implement both this recommendation and the President's Executive Order which directed the Office of Personnel Management to implement changes necessary to improve Federal employment policy for adults with disabilities.

Finally, we remain committed to the principle of effective performance management, a principle that starts with the Government's top management. The Senior Executive Service is the linchpin of our civil service system, and we owe these dedicated executives a performance appraisal system that is flexible enough to adapt to varying needs, improves linkages with agency strategic planning and emphasizing results, and that allows consideration of customer and employee satisfaction measures.

In our management of the Federal Employees Health Benefits Program, we will continue to look for opportunities to lead the Nation by implementing policies and regulations that ensure fair and effective treatment of those in need of health care.

Overall, the Office of Personnel Management will continue to improve 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 truly serves our citizens.

OPM

PROPOSED RULE STAGE

142. PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

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 4315

CFR Citation:

5 CFR 430, subpart C

Legal Deadline:

None

Abstract:

Proposed revision of SES regulations at 5 CFR 430, subpart C, will focus on (1) increasing agency flexibility to develop SES appraisal systems tailored to their needs, (2) improving linkages with agency strategic planning and emphasizing results, (3) allowing consideration of customer and employee satisfaction measures, and (4) simplifying agency submission requirements for approval of appraisal systems.

Statement of Need:

A regulatory proposal is the result of extensive stakeholder discussions about improving SES performance management, the need to focus on results, and agencies' needs for greater flexibility.

Summary of Legal Basis:

The legal basis for these regulations is 5 U.S.C. 4315, which authorizes the Office of Personnel Management to prescribe regulations to implement performance appraisal in the SES.

Alternatives:

While it may be possible to do this by legislation, we have not yet determined that this would be a more efficient or effective way to meet the objectives.

Anticipated Cost and Benefits:

There are no anticipated costs associated with the publication of revised regulations on SES performance appraisal. Revised regulations would provide additional flexibility for agencies.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	
Final Action	04/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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OPM

143. ● ABSENCE AND LEAVE: SICK LEAVE

Priority:

Other Significant

Legal Authority:

5 USC 6311

CFR Citation:

5 CFR 630

Legal Deadline:

None

Abstract:

The Office of Personnel Management is proposing regulations to expand the use of sick leave for family care purposes. Under the proposed regulations, an employee would be able to use a total of up to 12 weeks of sick leave to care for a family member with a serious health condition.

Statement of Need:

A regulatory proposal is necessary because currently employees can use only 13 days of sick leave for family care or bereavement purposes. The proposed regulations increase the amount of sick leave that may be used to care for a family member with a serious health condition.

Summary of Legal Basis:

The legal basis for these regulations is 5 U.S.C. 6311, which authorizes OPM to prescribe regulations necessary for the administration of annual and sick leave.

Alternatives:

While it is possible to do this by legislation, it would be more efficient and effective to do it by regulation. Legislation is not really necessary, and regulation allows for future flexibility.

Anticipated Cost and Benefits:

Based on our experience under the current sick leave program, we estimate that the cost of the new sick leave policy will be less than $80 million annually. This estimate is based on the assumption that 0.5 percent of the total Federal workforce will use the maximum amount of sick leave provided under the new policy.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	11/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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OPM

144. ● AGENCY USE OF APPROPRIATED FUNDS FOR CHILD CARE COSTS FOR LOWER INCOME FAMILIES

Priority:

Other Significant

Legal Authority:

PL 106-58

CFR Citation:

5 CFR 792

Legal Deadline:

None

Abstract:

The Office of Personnel Management is issuing a proposed rule to authorize the use of Federal agency appropriated funds for child care tuition assistance for lower income Federal employees. The rule will apply to employees who enroll their children in licensed and/or regulated center-based child care or family child care homes. Federal families are more challenged than ever before to meet the expenses of child care. This law will give lower income Federal families financial relief with their child care expenses. It is left to the discretion of the agencies to use appropriated funds from their salaries and expense accounts to be used for this purpose. Agencies will make the determinations about lower income eligibility. OPM will provide guidance on the implementation of this rule. OPM is required to prepare a report for Congress on the results of the implementation of this law no later than September 1, 2000.

Statement of Need:

A regulatory proposal is necessary to meet the requirement set forth in Section 643, subpart (c) of Pub. L. 106-58 that states: REGULATIONS — The Office of Personnel Management shall, within 180 days after the enactment of this Act, issue regulations necessary to carry out this section.

Summary of Legal Basis:

Section 643 of Pub. L. 106-58 authorizes the use of appropriated funds to assist lower income Federal workers to access child care services. This law, enacted by Congress, became effective on September 29, 1999, and remains in effect for one year. The law enables Federal agencies, for the first time, to assist their civilian employees with costs of child care.

Alternatives:

The regulation is required by public law.

Anticipated Cost and Benefits:

The law permits Federal agencies to use appropriated funds from their salaries and expense accounts to assist lower income Federal employees with the costs of child care. Employees can

benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes. Benefits to the agencies include better recruitment and retention of qualified personnel, lower absenteeism and improved employee morale. Improved retention can result in significant recruitment and training cost savings to agencies. Over the past ten years, anecdotal evidence from on-site federally sponsored child care centers has shown that more and more employees consider the availability of affordable child care as a major reason for choosing one job over another.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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OPM

145. ● APPOINTMENTS OF PERSONS WITH DISABILITIES

Priority:

Other Significant

Legal Authority:

E.O. 13124

CFR Citation:

5 CFR 213; 5 CFR 315

Legal Deadline:

None

Abstract:

The regulations will create a new Governmentwide excepted appointing authority for persons with psychiatric disabilities, with noncompetitive conversion to the competitive service; amend the excepted service appointing authorities for individuals with mental retardation and severe physical disabilities; and make technical corrections. The regulations will help further the President's goal of assuring equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

Statement of Need:

The regulations will create a new Governmentwide excepted appointing authority for persons with psychiatric disabilities, with noncompetitive conversion to the competitive service. The regulations will also make technical corrections. Noncompetitive conversion is authorized under Executive Order 13124. The regulations will help further the President's goal of assuring equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

Summary of Legal Basis:

OPM has the authority under Civil Service Rule 6.1 to except positions from the competitive service when it determines that the appointments to these positions through competitive examination are not practicable. Noncompetitive conversion is authorized under Executive Order 13124, which amended Executive Order 12125.

Alternatives:

After reviewing the current Governmentwide excepted appointing authorities, it was apparent that no current authorities were defined broad enough to encompass persons with psychiatric disabilities

Anticipated Cost and Benefits:

Any costs are reflected in the expenses of an agency when hiring an individual under the authority. The benefit is the increase in persons with psychiatric disabilities employed in the workforce

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

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. The PBGC protects the pensions of nearly 42 million working men and women in about 44,000 private defined benefit plans, including about 2,000 multiemployer plans.

Under the single-employer program, the 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 1998, the PBGC was trustee of almost 2,700 plans and paid $848 million in benefits to about 209,000 people during 1998. Another 263,000 people will receive benefits when they retire in the future.

Most terminating single-employer plans terminate with sufficient assets to pay all benefits. The 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 8.8 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. The 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.

The PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by the PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, the 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)).

The 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 encourage the establishment and maintenance of defined benefit pension plans; (5) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible; and (6) 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 the PBGC by underfunded single-employer plans, (3) provides the 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 the PBGC.

In May 1996, the President submitted the Retirement Savings and Security Act (RSSA) to Congress. The RSSA would have expanded coverage, increased portability and worker protection, and simplified pension law. The proposal included an increase in the guarantees in the multiemployer insurance program to address inflation since 1980 and expansion of the 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 and the Taxpayer Relief Act of 1997 included many of the RSSA provisions but did not include the increase in the multiemployer guarantee or the expansion of the missing participant program. These provisions are contained in several bills that were introduced in the House and Senate in 1997, 1998, and 1999 and remain legislative objectives.

Many workers are not saving enough, through personal savings or a 401(k) or other defined contribution plan, for a secure retirement. About half of all workers have no employment-based pension coverage. In businesses with fewer than 100 employees, only about 20 percent of workers are covered by any retirement plan. Traditional pension plans, i.e., defined benefit plans, provide a predictable lifetime benefit, guaranteed by the PBGC. Yet the defined benefit system is stagnating.

In early 1998, the Administration proposed a new, simplified defined benefit plan-the Secure Money Annuity or Retirement Trust (SMART)-for employers with 100 or fewer employees. SMART combines the advantages of traditional defined benefit plans and defined contribution plans, while removing some of the major obstacles that discourage small business from adopting defined benefit plans. (The SMART proposal is contained in the Income Security Enhancement Act of 1999 (S. 8), the Employee Pension Portability and Accountability Act of 1999 (H.R. 1213), and the Retirement Security Act of 1999 (H.R. 1590).) For workers, SMART provides predictable benefits for life, guaranteed by PBGC, portability, and a chance to share in favorable investment experience. For employers, SMART offers more predictable contributions and reduced administrative costs.

Additional Administration proposals to encourage defined benefit plans include reduced PBGC premiums for new plans and improved benefit guarantees for owners of small businesses (these can be severely limited under current law).

- *Reduced premiums for newly established plans.* For small employers, a flat-rate per participant premium of $5 (rather than $19) and no variable rate premium during the first five plan years of a plan

established by a small employer. For larger employers, phase-in of the variable rate premium ($9 per $1,000 of unfunded vested current liability) in newly established plans at 20% per year.

- *Improved benefit guarantees for owners of small businesses.* For an owner with less than 50% ownership, the guarantee limits would be the same as for non-owner participants. After a plan has been in effect for ten years, owners with a 50% or greater ownership interest would have the same guarantee limits as other participants.

Regulatory and Deregulatory Initiatives

The PBGC issued regulations implementing the Retirement Protection Act through the end of 1996. In FY 1997 through FY 1999, the PBGC focused on changes that would simplify the rules and reduce regulatory burden. The PBGC:

- Reduced penalties for late premiums that are paid before the PBGC notifies the plan of the delinquency (statement of policy, December 2, 1996).
- Extended the time limits for various actions required to terminate a fully funded single-employer plan in a ''standard termination'' (final rule, November 7, 1997).
- Stopped the reduction of monthly benefits under its actuarial recoupment method once the nominal amount of the benefit overpayment is repaid (final rule, May 29, 1998).
- Provided participants with benefits valued up to $5,000 in PBGC-trusteed plans with the choice of receiving their benefit in the form of an annuity or a lump sum (final rule, July 17, 1998).
- Proposed to simplify its valuation assumptions by adopting a single set of assumptions for allocation purposes (proposed rule, October 26, 1998).
- Extended the filing date for PBGC premiums to match the latest Form 5500 filing date (final rule, December 14, 1998).
- Proposed to amend its premium regulation to encourage self-correction of premium underpayments by making it easier to qualify for safe-harbor penalty relief (proposed rule, May 26, 1999).

The PBGC is continuing to review its regulations to look for further simplification opportunities.

The PBGC's regulatory plan for October 1, 1999, to September 30, 2000, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

146. ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1341; 29 USC 1301(a); 29 USC 1344; 29 USC 1362

CFR Citation:

29 CFR 4044 subpart B

Legal Deadline:

None

Abstract:

The Pension Benefit Guaranty Corporation is considering amending its benefit valuation and asset allocation regulations by adopting more current mortality tables and otherwise simplifying and improving its valuation assumptions and methods.

Statement of Need:

The PBGC's regulations prescribe rules for valuing a terminating plan's benefits for several purposes, including (1) determining employer liability and (2) allocating assets to determine benefit entitlements. The PBGC's interest assumption for valuing benefits, when combined with the PBGC's mortality assumption, is intended to reflect the market price of single-premium, nonparticipating group annuity contracts for terminating plans. In developing its interest assumptions, the PBGC uses data from surveys conducted by the American Council of Life Insurance. The PBGC currently uses a mortality assumption based on the 1983 Group Annuity Mortality Table in its benefit valuation and asset allocation regulations (29 CFR parts 4044 and 4281).

In May 1995, the Society of Actuaries Group Annuity Valuation Table Task Force issued a report that recommends new mortality tables for a new Group Annuity Reserve Valuation Standard and a new Group Annuity Mortality Valuation Standard. In December 1996, the National Association of Insurance Commissioners adopted the new tables as models for determining reserve liabilities for group annuities. The PBGC is now considering incorporating the new tables into its regulations and making other modifications.

Summary of Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Cost estimates are not yet available. However, the PBGC expects that this regulation will not have a material effect on costs.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	03/19/97	62 FR 12982
ANPRM Comment Period End	05/19/97	
NPRM	03/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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BILLING CODE 7708–01–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 1999 Regulatory Plan

Section 7(a) of the Small Business Act states that SBA may provide financing to small businesses ''directly or in cooperation with banks or other financial institutions.'' Today, SBA guarantees loans through approximately 7,000 lenders. Of these lenders, fourteen currently are Small Business Lending Companies (SBLCs) that are not otherwise regulated by Federal or state chartering, licensing, or similar regulatory control. SBA examines or audits these SBLCs periodically.

In view of SBA's desire to manage its guaranteed loan portfolio more effectively, along with recent increases in loan volume, SBA expects to increase its SBLC oversight. To that end, SBA continues to draft regulations that govern the oversight and operation of the SBLC Program.

SBA's 2000 Regulatory Plan

Small Business Lending Company Oversight Regulations

As discussed earlier as part of SBA's 1999 Regulatory Plan, SBA's drafting process with regard to the SBLC program continues.

Business Loan Programs — Multi-Lender Securitizations

Also, SBA seeks to allow small volume SBA Lenders to get less costly means of financing their small business loan-making while protecting the safety and soundness of the 7(a) program. SBA is drafting a rule to aid in such cost savings. The rule is intended to level the playing field between large and small volume Lenders and will have a long-term benefit of increasing the number of small business loans.

Business Loan Program: Modifications to CDC Operations

Another important change to an SBA loan program will be a new rule modifying the operating rules applicable to certified development companies (CDCs). There are currently approximately 270 active CDCs. In 1998, CDCs made approximately four thousand 504 loans to small businesses. SBA will publish a proposed rule to allow active CDCs to service locations that do not receive adequate 504 loans. SBA hopes that this will encourage active CDCs to provide 504 services to underserved areas. Thus, additional small businesses and the local economies in which they operate will benefit.

New Markets Venture Capital Program

This fall, SBA believes that a bill based on a Presidential initiative designed to bring small business economic growth to previously underserved areas (''new markets'') will be introduced in Congress. SBA expects to issue regulations based on this bill when and if it is enacted into law. The regulations would implement the New Markets Venture Capital Program, which would help spur economic development in some of America's under-invested communities. The rule would initiate a public-private partnership encouraging venture capital investing and intensive technical assistance to small businesses in low and moderate income areas.

Local Economic Development and For-Profit CDCs

Finally, SBA's Office of Financial Assistance plans to publish a ''Notice of Intent'' to develop a regulation to better define the term ''local economic development'' and the organizational and program requirements CDCs must satisfy to comply with this concept. As part of this rulemaking, for-profit CDCs' organizational requirements will be dealt with specifically to ensure that they comply with Congressional intent for the program.

SBA

PROPOSED RULE STAGE

147. SMALL BUSINESS LENDING COMPANY OVERSIGHT REGULATIONS

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(b)

CFR Citation:

13 CFR 120

Legal Deadline:

None

Abstract:

This rulemaking would amend 13 CFR part 120 to update the rules regarding Small Business Lending Company (SBLC) oversight and expand the SBLC Program.

Statement of Need:

Section 7(a) of the Small Business Act states that the Small Business Administration (SBA) may provide financing to small businesses ''directly or in cooperation with banks or other financial institutions.'' Today, SBA guarantees loans through approximately 7,000 lenders. Of these lenders, 14 are Small Business Lending Companies (SBLCs) that are not otherwise regulated by Federal or State chartering, licensing, or similar regulatory control. SBA examines or audits these SBLCs periodically. Congressional and Administration policy to privatize SBA lending and recent increases in loan volume require that SBA increase its SBLC oversight. To that end, SBA will draft regulations that govern the oversight and expansion of the Small Business Lending Company Program.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

This rulemaking amends and expands SBA's existing regulations on the SBLC Program.

Anticipated Cost and Benefits:

This rulemaking is designed to clarify SBA's oversight responsibilities in the SBLC Program. It will also facilitate access by new potential small business lenders to the SBLC Program. No costs to the Government or the SBLCs

associated with this rulemaking will result. However, benefits from improving access to the SBLC Program will accrue to the general economy through the creation of greater opportunity for small business loans, creation of jobs, and increased tax revenues.

Risks:

This regulation addresses no risks to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/00	
NPRM Comment Period End	03/00/00	
Final Action	05/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SBA

148. ● BUSINESS LOAN PROGRAMS—MULTI-LENDER SECURITIZATIONS

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6); 15 USC 634(a)

CFR Citation:

13 CFR 120

Legal Deadline:

None

Abstract:

This regulation will allow multiple lenders to pool and securitize the unguaranteed portion of 7(a) loans (''multi-lender securitizations'').

Statement of Need:

SBA published a final rule, at the request of Congress and after appropriate rulemaking procedures, on single-lender securitizations in February 1999 (64 FR 6503). In that rule, SBA stated that it would consider multi-lender securitizations on a case-by-case basis. On July 30, 1998, SBA met with lenders, trade groups, and rating agencies to discuss multi-lender securitizations. Based on that meeting, SBA is formulating a rule which allows multi-lender securitizations based on the same framework established for single-lender securitizations.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

This rulemaking expands the single-lender securitization rules mandated by Congress.

Anticipated Cost and Benefits:

The purpose of this rule is to allow small volume SBA lenders to get less costly means of financing their small business loan-making while protecting the safety and soundness of the 7(a) program. SBA is drafting the rule to limit or eliminate costs. The rule will level the playing field between large and small volume lenders and has a long-term benefit of increasing the number of small business loans.

Risks:

This regulation addresses no risks to the public health and safety or to the environment. SBA does not anticipate substantial costs or risks associated with the proposed regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/00	
NPRM Comment Period End	03/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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SBA

149. ● BUSINESS LOAN PROGRAM; MODIFICATIONS TO CDC OPERATIONS

Priority:

Other Significant

Legal Authority:

15 USC 636(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 696(3); 15 USC 697(a)(2)

CFR Citation:

13 CFR 802; 13 CFR 810; 13 CFR 820; 13 CFR 822-825; 13 CFR 835, 837

Legal Deadline:

None

Abstract:

This would amend the rules governing CDC Area of Operations (the geographic area where SBA authorizes a CDC to make loans under SBA's development company loan program (''504 loan'')).

The rule would cover an applicant requesting to become a CDC; an existing CDC applying to expand its Area of Operations within the State in which it is chartered; an existing CDC applying to expand its Area of Operations beyond the State in which it is chartered into a contiguous bisected local economic area (''Local Economic Area''); and an existing CDC applying to expand its Area of Operations outside the State in which it is chartered into another State beyond a Local Economic Area.

This rule also revises when SBA considers a county ''adequately served'' (when the 504 loan activity within a county precludes the county from being available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request). In some cases, counties would be available for inclusion in a new CDC's Area of Operations or an existing CDC's expansion request under the proposed rule that are not available under the current regulations.

The rule would clarify under what circumstances and conditions a CDC may contract out its management and staff functions. It also would address the purposes for which a CDC may use its net income generated in different States. The rule would eliminate a limited liability company from the types of organizations that may apply to become a CDC.

Finally, the rule would expressly authorize CDCs to establish Loan Committees and set forth conditions under which they may be used.

Statement of Need:

Since the inception of the Certified Development Company Program (''504 Program''), no CDC has been certified to operate permanently in more than one State, except for relatively few circumstances when a CDC's operations are in an area local to the CDC which is bisected by a State line. Given the low 504 lending volume in several parts of the country, SBA believes that it is in the best interests of underserved communities to permit active CDCs in good standing to permanently expand their Areas of Operations beyond their State of incorporation and beyond a Local Economic Area. SBA proposes to call such a CDC a ''Foreign CDC'' (a CDC that is operating as a foreign corporation in another State and is permitted by SBA under certain circumstances to include in the CDC's permanent Area of Operations counties in that State that are located beyond a Local Economic Area). SBA will ensure that the congressional intent for CDCs is followed and that they are formed by local citizens whose primary purpose is to improve their community's economy.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

This rulemaking expands CDC operations, allowing 504 services to reach more small businesses.

Anticipated Cost and Benefits:

This rule modifies the operating rules applicable to certified development companies (CDCs). There are currently approximately 270 active CDCs. In 1998, CDCs made approximately 4000 504 loans to small businesses. The proposed rule would allow active CDCs to apply to service locations that are not receiving adequate 504 loan activity. SBA hopes that this will encourage active CDCs to provide 504 services to underserved areas. Thus, additional small businesses and the local economies in which they operate will benefit.

Risks:

This regulation addresses no risks to the public health and safety or to the environment. SBA does not anticipate substantial costs or risks associated with the proposed regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

None

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SBA

150. ● NEW MARKETS VENTURE CAPITAL PROGRAM

Priority:

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

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

NMVC Bill introduced in Congress in September 1999.

Abstract:

The New Markets Venture Capital (NMVC) program will help spur economic development in some of America's under-invested communities through a public-private partnership encouraging venture capital investing and intensive technical assistance to small businesses in low- and moderate-income areas.

Statement of Need:

This initiative provides equity-type capital to smaller businesses located in low- and moderate-income areas whose needs are more modest than the typical recipient of SBIC financing ($50,000 - $300,000, vs. $300,000 - $5 million for SBICs) and where significant technical assistance is an essential element of investment.

Summary of Legal Basis:

Not yet required by statute or court order. An NMVC bill is expected to be introduced in Congress in the fall of 1999.

Alternatives:

SBA expects that Congress will construct a statute based on a Presidential initiative to create this program. The NMVC program will confer benefits and is not designed to address a risk for which there may be alternative solutions.

Anticipated Cost and Benefits:

This rulemaking will require a small SBA staff to administer. No Federal agency other than SBA will incur costs. This program will benefit small businesses by providing equity-type capital and specialized technical assistance to previously underserved small businesses in low- and moderate-income areas.

Risks:

This regulation addresses no risks to the public health and safety or to the environment. SBA does not anticipate substantial costs or risks associated with the proposed regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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SBA

151. ● LOCAL ECONOMIC DEVELOPMENT AND FOR-PROFIT CDCS

Priority:

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

Legal Authority:

15 USC 695

CFR Citation:

13 CFR 120

Legal Deadline:

None

Abstract:

The Office of Financial Assistance proposes to publish a ''Notice of Intent'' regarding a proposed regulation to better define ''local economic development'' and the organizational and program requirements CDCs must satisfy in order to be in compliance with this concept. As part of the regulation, for-profit CDCs' organizational requirements will be dealt with specifically to ensure that they are in compliance with the congressional intent for the program.

Statement of Need:

This regulation is needed to better define ''local economic development'' and the organizational and program requirements CDCs must satisfy in order to be in compliance with this concept.

Summary of Legal Basis:

This rulemaking is not required by any statute or court order.

Alternatives:

SBA is exploring possible alternatives. The rulemaking will solicit comments geared towards developing alternatives.

Anticipated Cost and Benefits:

There may be minimal opportunity costs to Lenders associated with this rulemaking. It will allow Lenders to reinvest revenues from their operations in their local communities for the benefit of small businesses.

Risks:

This rulemaking addresses no risks to public health and safety or to the environment. SBA does not anticipate economic or financial risks. If there were such risks, the magnitude of these risks compared to those of other SBA programs would be minimal.

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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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. Generally, SSA's regulations do not impose burdens on the private sector or on State or local governments. Our regulations codify the requirements for eligibility and entitlement to benefits under the programs that we administer.

Our six entries for the Regulatory Plan represent areas of major importance to the administration of the retirement, survivors, disability, and SSI benefit programs.

Included in this year's Plan is a proposed regulation that will provide more choices for people with disabilities who seek Return-to-Work services so that they may become self-sufficient. This proposed regulation parallels provisions of pending legislation, the Work Incentives Improvement Act of 1999, which would remove barriers to work for individuals with disabilities.

We are currently preparing two final regulations to implement several elements of a major agency initiative known as ''process unification,'' which is designed to produce one set of adjudicative standards for all levels of disability review within SSA. 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 under age 50 has the capacity to perform no more than the full range of sedentary work.

Providing world-class service to our customers remains a principal objective of SSA. One of the items in the Plan—Expansion of the Use of Video Teleconference Technology in Hearings Before Administrative Law Judges of the Social Security Administration—is expected to improve customer service by providing faster access to a hearing.

We list one regulatory initiative, Assessing Attorney Representatives for Direct Payment, which parallels provisions of a legislative proposal included in the President's Fiscal Year (FY) 2000 Budget. Under this proposed regulation, SSA would, in favorably-decided cases, assess an attorney representative for withholding authorized attorney fees from a claimant's past-due Social Security benefits and paying all or part of the withheld fees directly to the attorney. This is expected to generate $19 million in additional revenues in FY 2000 to meet SSA's administrative expenses and $26 million in succeeding years.

We have also included in this year's Plan proposed regulations that would provide SSA with additional tools to strengthen the integrity of the Social Security and SSI programs. These proposed regulations would implement provisions of pending legislation, the Foster Care Independence Act of 1999 (H.R. 1802). There are several provisions in the bill that relate to program integrity. For example, one provision would give SSA the authority to administratively impose nonpayment of benefits on certain individuals who misstate or withhold material facts. Another provision would authorize SSA to obtain information from financial institutions in order to determine initial or continuing eligibility for SSI benefits.

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

152. OASDI AND SSI; EXPANSION OF THE USE OF VIDEO TELECONFERENCE TECHNOLOGY IN HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737P)

Priority:

Other Significant

Legal Authority:

42 USC 205(a); 42 USC 205(b); 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.929; 20 CFR 416.1438; 20 CFR 404.936(b); 20 CFR 404.936(c); 20 CFR 404.936(d)(8) (New); 20 CFR 404.938; 20 CFR 416.1429; 20 CFR 416.1436(b); 20 CFR 416.1436(c); 20 CFR 416.1436(d)(8) (New)

Legal Deadline:

None

Abstract:

We propose to amend our regulations to permit us to conduct hearings before an administrative law judge (ALJ) by video teleconference (VTC). We also propose to add new sections to the regulations that state an ALJ will find good cause to change the time and place of a hearing if we schedule a VTC hearing, and the individual tells us he/she does not want a VTC hearing.

Statement of Need:

Our regulations provide for a hearing in person before an ALJ. Traditionally, this has meant that the individual requesting a hearing and the ALJ were present in the same room. The proposed changes will allow us to schedule a VTC hearing without requiring prior written consent, and set out the right to decline such a hearing. We believe that conducting hearings by VTC will improve our efficiency and allow us to serve our customers better.

Providing VTC hearings is one initiative of the Hearings Process Improvement Plan we issued in August 1999. We expect that the plan, when fully implemented, will reduce the average processing time for hearings from 313 days in Fiscal Year 1999 to less than 200 days in Fiscal Year 2002. The VTC provision would aid in this reduction by eliminating much of the time some ALJ's must spend to travel to remote sites to conduct hearings face-to-face.

Summary of Legal Basis:

None.

Alternatives:

Require participation in a scheduled VTC hearing, i.e., no right to decline a VTC hearing.

Anticipated Cost and Benefits:

Improved customer service by providing faster access to a hearing.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	10/00/99	
Final Action	01/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

153. ● ASSESSING ATTORNEY REPRESENTATIVES FOR DIRECT PAYMENT (763P)

Priority:

Other Significant

Legal Authority:

42 USC 406 (Proposed Amendment)

CFR Citation:

20 CFR 404.1700 et seq

Legal Deadline:

None

Abstract:

We propose to amend our regulations on payment of the fees authorized by the Social Security Administration (SSA) or by a Federal court for services an attorney representative provided to a claimant for Social Security benefits. SSA would, in favorably decided cases, assess an attorney representative for withholding from a claimant's past-due Social Security benefits and paying all or part of the authorized fee directly to the attorney. SSA would assess 6.3 percent of the amount subject to withholding and direct payment, and deduct the assessment from the amount payable to the attorney.

Statement of Need:

Currently, SSA does not assess a charge for approving, withholding, and certifying the direct payment of the attorney's fee. This proposal would allow SSA to receive compensation from attorneys for the services we provide.

Summary of Legal Basis:

None at this time. SSA has included this proposal in our Fiscal Year 2000 legislative agenda.

Alternatives:

None.

Anticipated Cost and Benefits:

SSA expects to achieve $19 million administrative savings the first year.

Risks:

We have not identified any risks associated with the changes.

Timetable:

Action	Date	FR Cite
NPRM	06/00/00	
Final Action	09/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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SSA

154. ● ANTI-FRAUD PROVISIONS (765P)

Priority:

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

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

Undetermined at this time.

Abstract:

These regulations would implement new authorities to be granted to SSA upon enactment of H.R. 1802, the Foster Care Independence Act of 1999, to strengthen the integrity of the SSI and OASDI programs. Currently, the bill is pending in the Senate after passing the House on June 25, 1999. One provision concerns adding a new penalty of non-payment of SSI and/or OASDI benefits for individuals found to have made a material statement or representation concerning eligibility for benefits that the individual knew was false or misleading. Another provision would bar for a specified period of time representatives and health-care providers from the program, if they are found to have helped commit fraud.

Statement of Need:

Eliminating fraud and abuse in Social Security's programs is a vital goal of SSA. SSA's Strategic Plan asserts zero tolerance for fraud and abuse, and states that we will increase our attention on deterring fraudulent activities. This reflects our ideal that we must remain vigilant if we are to fulfill our role as capable stewards of the public trust. These regulations would implement anti-fraud legislation included in the Foster Care Independence Act of 1999, now pending in congress.

Summary of Legal Basis:

Undetermined at this time.

Alternatives:

Undetermined at this time.

Anticipated Cost and Benefits:

Undetermined at this time.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	09/00/00	
Final Action	09/00/01	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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SSA

155. ● WORK INCENTIVES IMPROVEMENT ACT (767P)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 405 (proposed amendment); 42 USC 1383 (proposed amendment)

CFR Citation:

Not Yet Determined

Legal Deadline:

Section 201 of S. 331—within one year of enactment, including necessary regulation.

Sections 211 and 212 of S. 331—upon enactment.

Abstract:

One of SSA's most important initiatives is to assure that Social Security and SSI beneficiaries with disabilities who want to work have the opportunity to do so. Individuals with disabilities face multiple barriers in attempting to return to work. The provisions in the Work Incentive Improvement Act of 1999 would remove such barriers by, for example, providing the opportunity for disability beneficiaries to obtain, from an approved vocational rehabilitation provider of their choice, the help they need to go to work.

Statement of Need:

This regulatory action will be necessary to implement the provisions of the legislation currently pending in Congress. The specific provisions of S. 331 requiring rulemaking are shown below.

Section 201 would establish the Ticket to Work and Self-Sufficiency Program, requiring regulation of the following:

- Outcome Payment and Milestone-Outcome payment systems
- Program Manager/Employment Network standards
- Employment Network services
- Individual Work Plan requirements
- Suspension of continuing disability reviews based on work activity for beneficiaries using a Ticket, requiring revision of current CDR regulations.

Section 211 would suspend CDRs based on work activity for beneficiaries receiving Title II disability benefits for at least 24 months, requiring revision of current CDR regulations.

Section 212 would provide for expedited reinstatement of disability benefits terminated due to work activity based on a request within 5 years.

Section 221 would require regulation of requirements for the operation of a Work Incentives Specialist corps within SSA.

Section 302 would require regulation of a demonstration project to evaluate a program to reduce Title II disability benefits by $1 for every $2 of earnings above a level to be determined by the Commissioner, including waiver of current benefit provisions and procedures for the conduct of the demonstration projects in selected areas.

Summary of Legal Basis:

Undetermined at this time. Various provision of the WIIA will require this regulatory action.

Alternatives:

None—this regulatory action will be necessary to implement Administration-sponsored legislation presently pending in Congress.

Anticipated Cost and Benefits:

Anticipated costs are undetermined at this time. The anticipated benefits of this legislation include allowing individuals with disabilities to seek the services necessary to obtain employment and reduce their dependency on cash benefit programs, including SSI and SSDI.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	04/00/00	
Final Action	10/00/00	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

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SSA

Final Rule

156. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE; DETERMINING DISABILITY AND BLINDNESS; REVISION TO MEDICAL-VOCATIONAL GUIDELINES (599F)

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 will make 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. Process unification is an ongoing initiative designed to foster similar results on similar cases at all stages of the administrative review process, from the initial decision through hearings and appeals, by the consistent application of laws, regulations and rulings. Where needed, clarifying our intent in our regulations is an important part of process unification.

Summary of Legal Basis:

None.

Alternatives:

None.

Anticipated Cost 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	01/00/00	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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SSA

157. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; EVALUATING OPINION EVIDENCE (624F)

Priority:

Other Significant

Legal Authority:

42 USC 405(a); 42 USC 405(b); 42 USC 902(a); 42 USC 1382C; 42 USC 221

CFR Citation:

20 CFR 404.1502; 20 CFR 416.927; 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

Legal Deadline:

None

Abstract:

These changes will 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. Process unification is an ongoing initiative designed to foster similar results on similar cases at all stages of the administrative review process, from the initial decision through hearings and appeals, by the consistent application of laws, regulations and rulings. Where needed, clarifying our intent in our regulations is an important part of process unification.

Summary of Legal Basis:

None.

Alternatives:

None.

Anticipated Cost 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	11/00/99	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

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 Commodity Exchange 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.

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;
- Costs and benefits 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 2000, the Commission's significant rulemaking activities will involve addressing risks of fire associated with ignition of upholstered furniture by small open flames, a standard for multi-purpose lighters to make those products resistant to operation by young children, and entrapment risks to young children in bunk beds. These projects are described in detail below.

All three of the rulemaking proceedings in the Commission's FY 2000 regulatory plan are related to protection of vulnerable populations. Upholstered furniture fires disproportionately kill and injure children, the elderly, and families and individuals with lower incomes.

With regard to multi-purpose lighters, children younger than five 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 reported to the Commission from the fires resulting from children playing with multi-purpose lighters were the children who started the fires. The proposed bunk bed rule is intended to reduce the hazard that young children can be suffocated or strangled when they become entrapped in the beds' structure or become wedged between the upper bunk and a wall.

The emphasis on these three rulemaking activities in the Commission's FY 2000 regulatory plan is consistent with the Commission's statutory mandate and its criteria for setting priorities. Additionally, the Commission's FY 2000 regulatory plan supports the President's goal to reduce costs of health care by preventing injuries to individuals who are among the most vulnerable to being injured in incidents associated with the use of consumer products.

CPSC

PROPOSED RULE STAGE

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158. 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 developed a draft standard to address ignition of upholstered furniture by small open-flame sources. On March 2, 1998, the Commission voted to defer action on small open-flame sources and gather additional information on the potential toxicity of flame-retardant chemicals that might be used to meet a standard. A public hearing on this subject was held on May 5-6, 1998. The staff is analyzing data from the hearing and completing other technical studies. In CPSC's 1999 appropriations legislation Congress directed the Commission to contract with the National Academy of Sciences for a 12-month independent study of potential health hazards associated with the use of flame retardant chemicals that might be used in upholstered furniture fabrics to meet a CPSC standard. This contract was awarded in January 1999. Upon completion of this study, the staff will present alternatives for future action by the Commission. CPSC is also

considering possible impacts of flame retardant chemical use on worker safety and the environment. At the CPSC staff's request, the National Institute of Occupational Safety and Health will assess potential worker exposure to and risks from certain flame retardant chemicals that may be used by textile and furniture producers to comply with an upholstered furniture flammability standard. The CPSC staff is also working with the Environmental Protection Agency to consider possible controls on flame retardant compounds used in residential upholstered furniture fabrics, under that agency's Toxic Substances Control Act Authority.

Statement of Need:

In 1996, approximately 650 deaths, more than 1,600 injuries, and about $250 million in property damage resulted from 13,100 residential fires in the United States in which upholstered furniture was the first item to ignite. This total includes fires ignited by small open-flame sources, large open-flame sources, and cigarettes. Small open-flame fires accounted for an average of approximately 90 deaths, 420 injuries and $40 million in property losses each year from 1992 to 1996.

The total societal cost attributable to upholstered furniture fires was approximately $3.75 billion in 1996. A significant portion of that total — $560 million — was associated with upholstered furniture fires ignited 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 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 result in several actions, one of which could be the development of a mandatory standard requiring that upholstered furniture sold in the United States meet mandatory labeling requirements, resist ignition, 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 such 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 would adequately address the risk of fire and substantial compliance with such a standard is likely to result; and

(4) The Commission could terminate the proceeding and withdraw the ANPRM.

Anticipated Cost 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 $500 million. Again, depending upon the test requirements, a small open-flame standard could also reduce cigarette-ignited fire losses, the societal cost of which was over $2 billion in 1996. 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 $3.75 billion in 1996.

Societal costs associated with upholstered furniture fires are among the highest associated with any product subject to the Commission's authority. A standard has the potential to reduce these societal costs.

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	12/18/97	
Commission Voted To Defer Action Pending Results of Toxicity Hearing	03/02/98	
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals	03/17/98	63 FR 13017
NAS Study Completed (required by Congress)	01/00/00	
Commission Decision on NPRM	To Be	Determined

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

FINAL RULE STAGE

159. REQUIREMENTS FOR CHILD-RESISTANCE OF MULTI-PURPOSE LIGHTERS

Priority:

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

Legal Authority:

15 USC 2051 Consumer Product Safety Act

CFR Citation:

16 CFR 1212

Legal Deadline:

Final, Statutory, December 31, 1999, Unless the time is extended by the Commission, this rule must either be

issued or the proposal must be withdrawn by December 31, 1999.

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 consumer product safety rule requiring multi-purpose lighters to resist operation by children. The Commission began this proceeding after granting a petition.

A mandatory product safety rule for multi-purpose lighters, also known as grill lighters, utility lighters, and micro-torches, would require these lighters to have a child-resistant mechanism to prevent operation by most children younger than 5 years of age. Child resistance would be measured by a panel of children who would attempt to operate lighters that would not produce a flame. The standard would include lighters marketed for a wide range of general household uses, such as igniting fuel for fireplaces, charcoal or gas-fueled grills, and camping equipment.

On September 30, 1998, a notice of proposed rulemaking (NPRM) was published in the Federal Register. On August 4, 1999, a supplemental NPRM was published, seeking comment on a change that would require the test lighters to be given to the panel of children with the lighters' on-off switches in the on, or unlocked position.

Statement of Need:

The Commission staff has obtained information about 178 incidents occurring from January 1988 to August 6, 1998 in which children younger than 5 years of age started fires using multi-purpose lighters. These fires resulted in 29 deaths and 71 injuries. Because these data are actual incidents rather than national estimates, the extent of the total problem may be greater.

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 child-play. About half of all of the fatalities in the fires resulting from children playing with multi-purpose lighters were the children who started the fires. About 25 percent of the 71 persons injured in fires started by children with multi-purpose lighters were hospitalized for treatment.

Annual sales of multi-purpose lighters have grown from one million in 1985 to 20 million in 1998. With sales growing at a rate estimated to be 5 percent to 10 percent a year, it is expected that fires started with these products by children under 5 will also increase. Staff testing of lighters currently on the market indicated child resistance levels ranging from a low of 4 percent to a high of 41 percent, still far below the 85 percent required of cigarette lighters under the Commission's cigarette lighter standard.

Fires started by young children playing with multi-purpose lighters are not addressed by any voluntary standard or other voluntary program.

Summary of 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 NPRM 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; and

(4) The Commission could terminate the proceeding and withdraw the NPRM.

Anticipated Cost and Benefits:

Based on available fire incident and sales information, the estimated cost to society of fires started by children playing with multi-purpose lighters is about $35 million a year. This estimate includes the costs associated with loss of life, medical treatment, lost income, pain and suffering, and property damage. A safety standard for multi-purpose lighters with a required child-resistance of 85 percent would provide estimated gross benefits of at least $27 million a year. Costs of compliance are expected to result in increased consumer expenditures of around $17 million per year, resulting in net benefits of over $10 million annually. This annual net benefit will increase if sales of multi-purpose lighters increase.

Risks:

The Commission has information indicating that from January 1988 through August 6, 1998, children younger than five years of age started at least 178 fires using multi-purpose lighters. These fires resulted in 29 deaths and 71 injuries. Based on available fire incident and sales information, the Commission staff estimates that the total cost to society of these fires is about $35 million a year.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/97	62 FR 2327
ANPRM Comment Period End	03/17/97	
NPRM	09/30/98	63 FR 52397
NPRM Comment Period End	12/14/98	
Supplemental NPRM	08/04/99	64 FR 42302
Second NPRM Comment Period End	10/18/99	
Staff Sends Briefing Package to Commission	11/00/99	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

160. REQUIREMENTS FOR BUNK BEDS

Priority:

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

Legal Authority:

15 USC 2051 Consumer Product Safety Act; 15 USC 1261 Federal Hazardous Substances Act

CFR Citation:

16 CFR 1213; 16 CFR 1500; 16 CFR 1513

Legal Deadline:

Final, Statutory, March 3, 2000, Unless the time is extended by the Commission, the NPRM must either be issued as a final rule or the proposal must be withdrawn.

Abstract:

On March 3, 1999, the Commission published a notice of proposed rulemaking (NPRM) and proposed mandatory rules that would contain performance requirements for bunk beds to reduce the hazard that children can be suffocated or strangled when they become entrapped in the beds' structure or become wedged between the upper bunk and a wall. The proposed rule contains requirements for the presence of guardrails, the height and extent of guardrails, and the height of, and the openings in, the beds' end structures to address entrapment hazards.

On July 9, 1999, the Commission published a notice requesting comment on an additional requirement addressing entrapment in end structures.

Statement of Need:

Bunk beds have been long recognized as a potential cause of children's deaths. From January 1990 through October 23, 1998, CPSC received reports of 89 bunk-bed-related deaths of children under age 15. Of the 89 fatalities, 56 (64%) resulted from entrapment. Over 96% (55 of 57) of those who died in entrapment incidents were age 3 and younger, and all but one were younger than 5. There is an ASTM voluntary standard addressing entrapment deaths in bunk beds. Nevertheless, using statistical methodology, the CPSC estimated that about 10 bunk-bed-related entrapment deaths have occurred in the United States each year since 1990.

Generally, these deaths involve suffocation or strangulation when a child either becomes wedged between the upper bunk's structure or mattress and a wall or becomes trapped by the head when the child's torso slips through an opening in the bed that the head cannot pass through. CPSC is also aware of an incident where a child inserted his head through an opening in the end structure of the bed, moved to another part of the opening where the head could not be pulled directly out, and then lost his footing and was strangled. The proposed standard addresses all these scenarios.

Summary of Legal Basis:

The Federal Hazardous Substances Act (FHSA) authorizes the regulation of unreasonable risks of injury associated with articles intended for use by children that present mechanical (or electrical or thermal) hazards. FHSA sec. 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). The hazards associated with bunk beds that are described above are mechanical. See FHSA sec. 2(s), 15 U.S.C. 1261(s). The Consumer Product Safety Act (CPSA) authorizes the regulation of unreasonable risks of injury associated with ''consumer products,'' which include bunk beds — whether intended for the use of children or adults. CPSA sec. 3(a)(1), 15 U.S.C. sec. 2052(a)(1). Thus, bunk beds intended for the use of adults can be regulated only under the CPSA, while bunk beds intended for the use of children potentially could be regulated under either the FHSA or the CPSA.

Alternatives:

The Commission considered two alternatives to the proposed rule:

(a) Defer to the voluntary standard.

(b) Third-party certification.

Anticipated Cost and Benefits:

The CPSC estimates that the present value of the benefits of averting the entrapment fatalities addressed by the voluntary standard ranges from about $175 to $350 per noncomplying bed. If the standard prevents all of the deaths addressed, the benefits would be much higher than the costs of implementing the standard. In fact, the net benefits per otherwise noncomplying bed, over its expected product life, would range from a low of $135 ($175 - $40) to a high of $335 ($350 - $15). The benefits of these provisions are about 4 to 23 times their costs. The Commission's staff expects a mandatory standard to be highly effective.

Risks:

The estimated total cost to society from entrapment deaths to children in the upper bunk and end structures of bunk beds that would be addressed by the proposed rule is from $6.75 million to $16.75 million per year.

Timetable:

Action	Date	FR Cite
ANPRM	01/22/98	63 FR 3280
ANPRM Comment Period End	04/07/98	
Staff Sends Briefing Package to Commission	12/16/98	
Commission Decision	02/03/99	
NPRM	03/03/99	64 FR 10245
NPRM Comment Period End	05/17/99	
Staff Sends Briefing Package to Commission	06/16/99	
Request for Additional Comment	07/09/99	64 FR 37051
NPRM Comment Period End	09/22/99	
Staff Sends Briefing Package to Commission	11/00/99	
Commission Decision	12/00/99	
Final Action	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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BILLING CODE 6355–01–F

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

Statement of Regulatory Priorities

The Federal Energy Regulatory Commission regulates key interstate aspects of the electric power, natural gas, oil pipeline, and hydroelectric industries. The Commission chooses regulatory approaches that foster competitive markets whenever possible, assures access to reliable service at a reasonable price, and gives full and fair consideration to environmental and community impacts in assessing the public interest of energy projects.

The 1999 regulatory plan reflects the Commission's commitment to the elements of its strategic goals:
- promoting competitive markets;
- protecting customers;
- respecting the environment; and
- serving and safeguarding the public.

While much of the Commission's regulatory activity continues to be done in case-specific adjudications, the Commission has increasingly employed informal rulemaking as a critical process tool in pursuing these strategic goals and carrying out its statutory responsibilities.

The industries the Commission regulates are changing very rapidly in response to increasing competition and environmental awareness. The Commission is responding with the following integrated package of initiatives.

Energy Markets. Make natural gas and electric markets both more competitive and less costly to use. These measures will bring more of the benefits of competitive markets to more customers more quickly.
- Notice of Proposed Rulemaking (NOPR) on Formation of Regional Transmission Organizations
- NOPR on Regulation of Natural Gas Transportation Services

Energy Projects. Improve the Nation's ability to site new energy projects — primarily natural gas pipelines — quickly, fairly and (where possible) consensually. These measures will improve the Commission's ability to ensure that essential pipeline infrastructure is in place to support competitive gas markets and competitive gas-fired electric generation.
- Policy Statement on Determining Need for New Pipeline Facilities
- Final Rule on Landowner Notification
- Final Rule on Collaborative Procedures for Energy Facility Applications

Procedural Reforms. Improve the Commission's processes for handling information, complaints and communications with the public. These measures will give the Commission state-of-the-art electronic filing and encourage much greater use of informal, less costly ways of resolving regulatory issues.
- Final Rule on Complaint Procedures
- Final Rule on Off-the-Record Communications
- Pilot Program on Electronic Filing

Together, these measures will implement policies and processes that match the fast-paced, competitive energy industry of the future and the increasingly important environmental impacts of that industry.

Energy Markets

In carrying out its statutory responsibilities for economic regulation of interstate aspects of electricity and natural gas markets, the Commission is pursuing policies designed to promote competitive markets and protect customers. To support competition in electricity and natural gas markets, the Commission regulates access to and pricing of essential electricity transmission and natural gas transportation services so as to eliminate undue discrimination and mitigate market power. The Commission has two pending rulemaking initiatives to advance these important goals: one relating to formation of regional transmission organizations in the electric industry, and the other reforming regulation of the natural gas industry.

Regional Transmission Organizations; 1902-AB77, Docket No. RM99-2-000. In May 1999, the Commission issued a Notice of Proposed Rulemaking on Regional Transmission Organizations (RTOs). The Commission supports the creation of RTOs to promote efficient operation of the transmission grid, eliminate residual discrimination by transmission owners, promote grid reliability, and facilitate regional grid planning. This rulemaking advances the Commission goal of promoting competition in bulk power markets as a means of encouraging efficient operation of, and investment in, generation facilities, and thereby reducing consumer prices.

The Commission has proposed to amend its regulations under the Federal Power Act to facilitate the formation of RTOs. The Commission proposes that each public utility that owns, operates or controls facilities for the transmission of electric energy in interstate commerce make certain filings with respect to forming and participating in an RTO. The Commission also proposes certain minimum characteristics and functions that must be satisfied in order to be considered to be an RTO.

The Commission has proposed that RTOs have a minimum of four characteristics:
- independent governance;
- appropriate scope and regional configuration;
- adequate operational authority; and
- responsibility for short-term reliability.

It further proposed that RTOs would have at least these seven functions:
- designing and administering tariffs;
- providing ancillary services;
- managing congestion;
- operating an Open Access Same-Time Information System (OASIS) and determining available transmission capacity (ATC);
- monitoring markets;
- addressing a parallel path flow; and
- regional planning and expansion.

The NOPR proposes a framework for supporting and encouraging voluntary RTO formation. The NOPR invites comment on how regulatory mandates, ratemaking incentives, or other tools should be employed to advance RTO formation.

After the Commission issues the final rule, which is expected by the end of 1999, it proposes to initiate a collaborative process to facilitate RTO formation that will involve jurisdictional and nonjurisdictional utilities, state officials and other affected interest groups through regional workshops across the country. Commission staff will share information and explore processes to facilitate RTO formation.

Gas Policy Initiative; 1902-AB74, Docket No. RM98-10-000. The Commission is undertaking a natural gas policy initiative to improve the efficiency, transparency, and competitiveness of natural gas markets. Further, it is exploring expanded reliance on competitive market forces in its oversight of the natural gas transportation market.

The market-oriented goals of the natural gas initiative are to foster competitive markets and mitigate residual market power. In selecting regulatory strategies to achieve these goals, this initiative sets forth four subsidiary objectives:
- provide appropriate incentives for efficient pipeline operations, efficient customer choices, and optimal level of construction;

- monitor for discrimination and the exercise of market power;
- minimize any adverse financial impact from regulatory changes; and
- use fair and administratively efficient regulatory approaches.

As part of the natural gas initiative, the Commission issued a NOPR proposing a more market-based approach to regulation of the short-term transportation market. The primary proposals included removing the rate cap for all short-term transportation services, requiring auctions for all short-term transportation capacity, and permitting negotiation of terms and conditions of services. The Commission simultaneously issued a Notice of Inquiry (NOI) requesting comments on a variety of long-term transportation issues in light of market changes and the regulatory changes proposed in the NOPR. The NOI sought comments on whether the Commission should modify its long-term market pricing policies by moving away from traditional cost-of-service ratemaking or by modifying the current ratemaking methods.

Energy Projects

The Commission's rulemaking activities in the area of authorizing gas pipeline and hydroelectric project development are aimed at protecting the environment and the public, while at the same time serving customer interests and promoting competition. The key rulemakings in the energy projects area are: (1) a policy statement articulating the Commission's approach to determining need for new pipeline development; (2) a rulemaking to give earlier notification to landowners affected by pipeline project proposals, to facilitate their participation in project review; and (3) a rulemaking to enable pipeline certificate applicants to employ the type of pre-filing collaborative procedures that have been used successfully to identify and resolve issues in the hydroelectric licensing program.

Policy Statement on Determination of Need; 1902-AB86, Docket No. PL-3-000. As articulated in a recent policy statement, in deciding whether a proposed pipeline project is required by the public convenience and necessity, the Commission considers the effects of the project on all affected parties. This means considering not only the interests of the applicant and potential new customers, but also those of the applicant's existing customers, existing pipelines that serve the market and their captive customers, landowners, and communities. One key element of the policy is that a project must not rely on subsidies from existing customers. With a policy favoring incremental pricing, the market will decide whether a project is financially viable. Moreover, under this policy, construction projects that will have adverse effects on relevant interests can be approved only if on balance the benefits outweigh the harm.

The new policy is designed to provide incentives for pipelines to eliminate or minimize adverse effects before filing, through correctly structured financial arrangements, careful project design, and negotiations with landowners. By working out contentious issues in advance and mitigating impacts where impacts cannot be avoided, the applicant can develop a record in support of the project, reducing time required for the Commission's deliberative process.

Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements; 1902-AB83, Docket No. RM98-17-000. On October 13, 1999, the Commission issued a final rule amending its regulations under the Natural Gas Act by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also amended its regulations to provide pipelines with greater flexibility and to further expedite the certificate process.

Extension of Pre-filing Collaborative Process; 1902-AB81, Docket No. RM98-16-000. The Commission recently revised its regulations to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, prior to filing an application, of employing a collaborative process that includes environmental analysis and issue resolution. This pre-filing collaborative process is comparable to the process the Commission successfully adopted two years ago with respect to applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case.

Procedural Reforms

The Commission has undertaken several important initiatives to reform and streamline its procedures, with the goals of expediting Commission action, emphasizing use of alternative dispute resolution (ADR), and improving access to information. The key rulemaking initiatives in this area include: (1) reforms to complaint procedures to facilitate expedited review and encourage use of ADR; (2) reforms to rules governing off-the-record communications designed to enhance the Commission's access to information consistent with preserving the fairness and integrity of the decisional process; and (3) a pilot program, which will lead to a rulemaking, on electronic filing.

Complaint Procedures; 1902-AB, Docket No. RM98-13-000. The Commission recently issued revised regulations governing complaints filed under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act. The new complaint rule sets forth clear requirements for issues that must be addressed in a complaint filed at the Commission, including listing whether any informal attempts at resolution were tried and whether ADR would be appropriate. The new rule sets forth a variety of possible resolution paths, including alternative dispute resolution, arbitration, and settlement judge procedures, as well as the more traditional administrative hearing or Commission procedures. A feature of the new rule is ''fast track'' processing, which allows expedited action on complaints that clearly state why such expedition is necessary.

The complaint rule was designed to encourage and support consensual resolution of complaints, and to organize the complaint process so that all complaints are handled fairly and expeditiously. As the Commission moves toward lighter-handed methods of regulation for increasingly market-driven energy industries, it must have a fast and fair complaint process to ensure adequate protection and redress to complainants.

Off-the-Record Communications; 1902-AB80, Docket No. RM98-1-000. The Commission recently revised its regulations governing off-the-record communications between the Commission and persons outside of the Commission. The rulemaking creates one uniform set of rules regarding off-the-record communications, and clarifies the rules to permit fully informed decision making, while continuing to ensure the integrity of the Commission's decision-making process.

The new rule allows specified off-the-record communications, subject to notice and disclosure requirements that

will provide the public with notice of and access to relevant communications. For example, the rule enables more informal dialog, as may be useful, during the preparation of required environmental documentation. The rulemaking is consistent with the Commission's goals of fostering effective two-way communication with interested parties.

Electronic Filing; 1902-AB-89, Docket No. PL98-1-001. The Commission has begun implementation of its electronic filing initiative by amending its rules to permit electronic service of documents. In October 1999 the Commission is expanding this initiative to allow electronic filing of certain filing types. These steps will reduce expenses involved with paper service, such as copying and messenger services, and make information available more quickly.

Besides reducing the filing burden on industry, electronic filing will generate information more quickly for industry by making the content of filings available within minutes or hours, rather than days. Electronic notification of filings will take much less time than is necessary for paper notification, giving companies earlier access to filed information.

Information technology development within the Commission will make information available more timely through the Commission's web site and will facilitate searching for specific information within the large body of data the Commission maintains. Data will become more accurate and consistent, contributing to well-informed decision-making and streamlined workload processing.

BILLING CODE 6717–01–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 charged under the Federal Home Loan Bank Act (Bank Act) with supervising and regulating the nation's Federal Home Loan Bank (FHLBank) System. The FHLBank System comprises 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 community lending 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 lending mission. In furtherance of these statutory mandates, the Finance Board plans one significant regulatory action during 1999–2000.

The Finance Board is proposing new financial management and mission achievement regulations that would modernize policies governing the business activities of the FHLBanks and, for the first time, would establish regulatory standards for mission achievement by the FHLBanks and a definition of mission assets. The proposal includes a risk-based capital requirement, pursuant to which the amount of capital required to be maintained by a FHLBank would be based on the credit, market, and operations risks to which it is exposed, as well as a mission achievement requirement designed to eliminate the use of the FHLBanks' government sponsored enterprise advantages in issuing debt to fund arbitrage investments. The proposal also would define the responsibilities of the boards of directors and senior management of the FHLBanks, as a means of ensuring that they fulfill their duties in operating the FHLBanks in a safe and sound manner and in furtherance of their mission. The proposal is designed to enable the FHLBanks to help their members be more effective competitors in the housing finance and community lending marketplace, which in turn will assure that benefits accrue to consumers.

In addition to this regulatory initiative, 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 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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161. FHLBANK FINANCIAL MANAGEMENT AND MISSION ACHIEVEMENT REGULATION

Priority:

Other Significant

Unfunded Mandates:

This action may affect State, Local or Tribal Governments.

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:

12 USC 1422b(a); 12 USC 1431; 12 USC 1436(a)

CFR Citation:

12 CFR 917; 12 CFR 925; 12 CFR 930; 12 CFR 940; 12 CFR 950; 12 CFR 954 to 955; 12 CFR 958; 12 CFR 965 to 966; 12 CFR 980

Legal Deadline:

None

Abstract:

The Federal Housing Finance Board (Finance Board) proposed to adopt new financial management and mission achievement regulations and amend certain existing regulations for the Federal Home Loan Banks (Banks). The Finance Board has informed Congress that this regulation will be withdrawn upon the enactment of the Federal Home Loan Bank System Modernization Act of 1999 (title VI of S.900). The proposal would modernize policies governing the business activities of the Banks and, for the first time, would establish regulatory standards for mission achievement by the Banks and a definition of mission assets. The proposal includes a risk-based capital requirement, pursuant to which the amount of capital required to be maintained by a Bank would be based on the credit, market, and operations risks to which it is exposed. The risk-based capital regime builds upon the regulatory framework used by other financial institution and government-sponsored enterprise (GSE) regulators. The mission achievement requirement in the proposal would: codify the authority of the Banks to hold mortgage assets, including mortgage-backed securities; allow mortgage assets meeting certain regulatory requirements to be counted as mission assets; and eliminate the use of the Banks' GSE advantages in issuing debt to fund arbitrage investments. The proposal also sets forth in the regulation the responsibilities of the boards of directors and senior management of the Banks, as a means of ensuring that they fulfill their duties in operating the Banks in a safe and sound manner and in furtherance of their mission. The proposal will enable the Banks to help their members be more effective competitors in the housing finance and community lending marketplace, which in turn will assure that benefits accrue to consumers.

Statement of Need:

The proposed rule is intended primarily to establish mission achievement standards for the Banks and to establish a new capital structure and risk-management framework under which the Banks may more effectively pursue their public policy mission, while still ensuring the safety and soundness of the Bank System.

The Banks currently operate in accordance with the Finance Board's Financial Management Policy (FMP), under which risk management is accomplished principally through a list of specific restrictions and limitations on the Banks' investment practices and a leverage limit which prohibits Banks from incurring liabilities in the form of consolidated obligations (COs) or unsecured senior liabilities in an amount greater than twenty times their capital stock. Though this approach has served the purpose of ensuring the safety and soundness of the Bank System, it lacks the flexibility that would enable the Banks to fulfill their mission to the maximum extent.

To ensure that the risks taken by a Bank are adequately supported by capital, the proposed rule would implement, for the first time, a risk-based capital requirement for the Banks, which builds upon the risk-based capital regimes of other federal financial institution regulators.

The principal source of funding for the Banks is the COs that are issued in the global capital markets and for which the twelve Banks are jointly and severally liable. Because of the Banks' GSE status, the costs to the Banks of obtaining such funding are substantially less than the borrowing costs for comparable debt issued by other entities. The Banks pass the benefit of this funding advantage to their members through wholesale loans (called advances) priced lower than the members could otherwise obtain to provide support for housing finance, including community lending, in fulfillment of the Banks' mission.

The FMP does not expressly require the Banks to use a particular percentage of the funds obtained through the issuance of COs to provide advances to their members. In large part due to the financial burdens imposed on the Banks as a result of the savings and loan crisis, the Banks use a portion of the proceeds from COs to finance investments that the Finance Board does not consider to be adequately related to their statutory mission.

To better link the GSE advantages in the capital markets to the mission performance of the Bank System, the proposed rule would require, by January 1, 2005, that an amount equal to 100 percent of each Bank's outstanding COs be held by the Bank in core mission activities. ''Core mission activities'' would be defined as those activities that assist and enhance members' and eligible nonmember borrowers' financing of housing and community lending.

The proposed core mission activity requirement would be subordinate to the safe and sound financial operation of the Banks, as mandated by the Federal Home Loan Bank Act (Act). During any specified period in which a Bank's board of directors determines that the core mission activities requirement would be inconsistent with the safe and sound operation of the Bank, the Bank would be permitted to be out of compliance with the core mission activities requirement.

Because it allows the Banks substantially greater authority to acquire new assets and manage their risks, and to raise member capital accordingly, the proposed rule also would articulate certain minimum responsibilities of the Banks' boards of directors and senior management with regard to operating the Banks in a safe and sound manner and ensuring that the Banks achieve their statutory mission.

Summary of Legal Basis:

Under section 10 of the Act and part 935 of the Finance Board's regulations, the Banks have broad authority to make advances in support of housing finance, which includes community lending. See 12 U.S.C. 1430(a), (i), (j); 12 CFR part 935. The Banks also are required to offer two programs - the Affordable Housing Program and the Community Investment Program - to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or targeted economic development credit needs. See 12 U.S.C. 1430(i), (j); 12 CFR parts 960, 970. In addition, section 10(j)(10) of the Act, as implemented by a recently-issued Finance Board regulation, authorized the Banks to establish Community Investment Cash Advance (CICA) programs for community lending. See 12 U.S.C. 1430(j)(10); 12 CFR part 970; 63 FR 65536 (Nov. 27, 1998).

The Banks' investment authority is set forth primarily in sections 11(j) and 16(a) of the Act, which govern the investment of the Banks' surplus and reserve funds, respectively. See 12 U.S.C. 1431(h), 1436(a). Under both sections, the Banks are authorized to invest in obligations of the United States, certain obligations of Fannie Mae, Ginnie Mae or Freddie Mac, and in such securities in which fiduciary and trust funds may be invested under the law of the state in which the Bank is located. Section 11(h) also authorizes investments in the securities of certain small business investment companies. In addition, the Banks are required to have liquidity reserves in an amount equal to deposits from their members invested in obligations of the United States, deposits in banks or trust companies, and certain specified short-term advances to their members. See 12 U.S.C. 1431(g).

Currently, the Finance Board regulates the Banks' investments and investment practices through its regulations, as well as through the FMP. Section 934.1 of the regulations provides that the Banks may acquire or dispose of investments only with the prior approval of the Finance Board, or in conformity with authorizations of the Finance Board or ''stated [Finance] Board policy.'' 12 CFR 934.1. By resolution, the Finance Board adopted the FMP, in part, as its ''stated policy'' regarding permissible Bank investments. The FMP generally provides a framework within which the Banks may implement their financial management strategies in a prudent and responsible manner. See 62 FR 13146 (Mar. 19, 1997); Finance Board Res. No. 96-45 (July 3, 1996), as amended by Finance Board Res. No. 96-90 (Dec. 6, 1996), Finance Board Res. No. 97-05 (Jan. 14, 1997), and Finance Board Res. No. 97-86 (Dec. 17, 1997).

The Banks' current capital requirements are based on the asset size of, or the dollar amount of advances outstanding to, their members. Specifically, a member must maintain a minimum investment in the capital stock of a Bank in an amount equal to the greater of: (1) 1 percent of the member's mortgage assets; (2) 0.3 percent of the member's total assets; or (3) 5 percent of total advances outstanding to the member (with a somewhat higher percentage for any member that is not a ''qualified thrift lender''). See 12 U.S.C. 1426(b)(1), (b)(2), (b)(4); 1430(c), (e)(1), (e)(3); 12 CFR 933.20(a).

The proposed Financial Management and Mission Achievement regulation would build on the statutory provisions outlined here, and would supplement or replace current Finance Board regulations and the FMP on matters related to investments, mission and capital. Section 2B(a) of the Act authorizes the Finance Board to supervise the Banks and to promulgate such regulations as are necessary to carry out the provisions of the Act. This regulatory action is not required by statute or court order.

Alternatives:

As an alternative to this rulemaking, the Finance Board could choose to continue to conduct risk management at the Banks through the list of specific restrictions and limitations on the Banks' investment practices in the FMP and the current regulatory leverage limit which prohibits Banks from incurring liabilities in the form of consolidated obligations (COs) or unsecured senior liabilities in an amount greater than twenty times their capital stock. The Finance Board could decide to amend and expand the listed restrictions and limitations in the FMP, and permit the Banks to engage in other investment activities only pursuant to a staff legal interpretation of the statute,

or to decide these issues on a case-by-case basis. The Finance Board could choose not to establish a modern risk-based capital structure for the Banks, or could choose variations of the model proposed. The agency will consider all alternatives suggested by the public during the notice and comment period.

Anticipated Cost and Benefits:

Although the Finance Board cannot quantify precisely the costs and benefits of this rulemaking at this time, the agency anticipates that the regulatory amendments will benefit both the Banks and their members by giving the Banks greater operational flexibility, thereby enabling the Banks to help their members compete more effectively in the housing finance and community lending marketplace, which in turn will assure that the GSE benefit will accrue more efficiently and effectively to consumers.

Timetable:

Action	Date	FR Cite
NPRM	09/27/99	64 FR 52163
NPRM Comment Period End	12/27/99	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

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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. The Commission's 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.

Recent legislation altered significantly the Federal regulatory scheme regarding international ocean shipping. The legislation required new regulations as well as the revision of many of the Commission's substantive regulations. One of the principal changes was the elimination of the requirement that carriers file tariffs with the Commission listing their rates and charges. Carriers are now required to publish their rates in private automated systems. The Commission will assess continually its regulations implementing this requirement as well as other requirements of the new legislation.

The recent rulemaking process uncovered concern by common carriers as to the content requirements of agreements filed with the Commission. Carriers have expressed a desire for better delineation as to what matters do or do not have to be filed, and have suggested that the Commission's rules should provide protections for confidential business information, provide maximum flexibility for carriers to modify cooperative arrangements, and include guidance tailored for different types of agreements. Therefore, the Commission has initiated an inquiry to solicit comments from the ocean transportation industry and the general public to assist the Commission in formulating new rules governing content requirements.

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. In addition, the Commission currently is seeking comment on a definition of ocean 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.

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FEDERAL TRADE COMMISSION (FTC)

Statement of 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 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 unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. 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 13 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.

Children's Online Privacy Rule Initiative

The Internet offers children unprecedented opportunities for learning, recreation, and communication in ways scarcely imagined a decade ago. Despite its obvious attraction for children, the Internet is also a medium that may entail risks for children. As they use the Internet, children, like others, are often asked to provide a wide variety of personal information about themselves and their parents. Web sites and online services collect this information by such means as registration pages, order forms, contests, surveys, chat rooms, and bulletin boards. In some instances, those collecting the information have shared it with third parties, without notice to children or their parents. In addition, public posting of children's personal information makes it available to anyone on the Internet, including those who would harm children. The FTC recommended in June 1998 that Congress enact legislation after a March 1998 survey of 212 commercial children's web sites revealed that only 24 percent posted privacy policies and only one percent required prior parental consent to the collection or disclosure of children's information.

On October 21, 1998, Congress enacted the Children's Online Privacy Protection Act of 1998 (''COPPA''). Title XIII, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681–728 (Oct. 21, 1998), reprinted in 144 Cong. Rec. H11240–42 (Oct. 19, 1998). The Act prohibits unfair and deceptive acts and practices in connection with the collection and use of personal identifying information from and about children on the Internet. Section 1303 of the Act directs the FTC to adopt regulations by October 21, 1999 to prohibit unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet. The Act specifies that operators of web sites directed to children or who knowingly collect personal information from children (1) provide parents notice of their information practices; (2) obtain prior parental consent for the collection, use and/or disclosure of personal information from children (with certain limited exceptions for the collection of on-line contact information, e.g., an e-mail address); (3) provide a parent, upon request, with the ability to review the personal information collected from his/her child; (4) provide a parent with the opportunity to prevent the further use of personal information that has already been collected, or the future collection of personal information from that child; (5) limit collection of personal information for a child's online participation in a game, prize offer, or other activity to information that is reasonably necessary for the activity; and (6) establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information collected. The Act authorizes the FTC to bring enforcement actions for violations of the final rule in the same manner as for other rules defining unfair and deceptive acts or practices under section 5 of the FTC Act. In addition, section 1305 of the Act authorizes State attorneys general to enforce compliance with the final rule by filing actions in Federal court after serving prior written notice upon the FTC when feasible.

Earlier in 1999, the Commission issued a proposed rule designed to achieve the objectives of the COPPA. The proposed rule, which was subject to public comment, applies to commercial web sites directed to, or that knowingly collect information from, children under 13. With certain exceptions, these sites will have to obtain parental consent before collecting, using, or disclosing personal information from children. To inform parents of their information practices, these sites also will be required to provide notice on the site and to parents about their policies with respect to the collection, use and disclosure of children's personal information. Parental consent would have to be verifiable. Operators may develop any number of ways to implement this requirement. As part of its review of the issues raised by the comments in preparation for publishing the final rule, the Commission held a public workshop to obtain additional comment regarding the issue of appropriate mechanisms for obtaining verifiable parental consent. The proposed rule also requires sites to give parents a choice as to whether their child's information can be disclosed to third parties, and give parents a chance to prevent further use or future collection of personal information from their child. Parents must also, upon request, be given access to the personal information collected from their child and a means of reviewing that information. Both the statute and proposed rule include a ''safe harbor'' program for industry groups or others who wish to create self-regulatory

programs to govern participants' compliance. Commission-approved safe harbors will provide web site operators the opportunity to tailor compliance obligations to their business models with assurance that if they follow the safe harbor they will be in compliance with the new law. The proposed rule outlines the process by which industry groups and others may obtain certification of their guidelines.

Ten-Year Review Program

In 1992, the Commission implemented a program to review its rules and guides on a regular basis. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.* Under the Commission's program, however, rules are continually reviewed at least every ten years, not just once as usually required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a ''significant economic impact upon a substantial number of small entities.'' The program's goal is to ensure that all of the Commission's rules and guides remain beneficial and in the public interest.

As part of the ten-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 revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary or in the public interest. As a result of the review program, the Commission has repealed 48% of both its trade regulation rules and guides since 1992.

Calendar Year 1999 Reviews

As part of the Commission's ten-year review program, in 1999 the Commission initiated reviews of one statutory rule (Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR Part 307); one trade regulation rule (Trade Regulation Rule on Funeral Industry Practices, 16 CFR Part 453); and three guides (the Dog and Cat Food Industry Guides, 16 CFR Part 241, the Law Book Industry Guides, 16 CFR Part 256, and the Fuel Economy Advertising Guide, 16 CFR Part 259).

Two additional reviews, previously scheduled to commence in 1999 under the Commission's tentative review schedule, have been deferred.[1] The Commission will commence its review of the Advertising Allowance and Other Merchandising Payments and Services Guides (''Fred Meyer Guides''), 16 CFR Part 240, at a later date in the ten-year review cycle due to the press of other agency priorities. In addition, review of the Statements of General Policy or Interpretations under the Fair Credit Reporting Act (''FCRA''), 16 CFR Part 600, tentatively scheduled for this year, is also deferred until later. Congress significantly amended the FCRA, effective September 1997, and as a result, significant portions of Part 600 may require revision or have become obsolete. Commission staff has been interacting with the public on a variety of issues and continuing to assess the implications of these statutory amendments. Accordingly, the Commission has determined that it would be premature to review and amend Part 600 at this time.

All of the matters scheduled for review this year pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. For example, the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR Part 307, issued in 1987, were designed to implement a law requiring health warnings for labeling and advertising smokeless tobacco products. The regulations specify the format, type size, and style of the required warnings for both product labels and advertisements. Although the regulations, as originally promulgated, specified that utilitarian objects for personal use that are sold or given away by the smokeless tobacco industry, such as pens, pencils, clothing, or sporting goods, were not required to carry health warnings, the Commission's 1991 amendments to the regulations eliminated this exemption from the health warning requirement. This fall, the Commission will commence its regulatory review of these regulations.

Earlier this year, the Commission began its regulatory review of certain aspects of the Funeral Industry Practices Rule (''Funeral Rule''), 16 C.F.R. Part 453. The Funeral Rule, which became effective in 1984, and was amended in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state price and descriptions, but also contain specific disclosures. The rule enables consumers to select and purchase only the goods and services they want, except for those which may be required by law and a basic services fee. Also, funeral providers must seek authorization before performing some services, such as embalming. In addition to an assessment of the rule's overall costs and benefits and continuing need for the rule, the Commission's review will examine whether changes in the funeral industry warrant broadening the scope of the rule to include non-traditional providers of funeral goods or services and revise or clarify certain prohibitions in the rule. See 64 FR 24249 (May 5, 1999). In response to requests of industry members, the Commission determined to extend the comment period. A public workshop conference will be held this fall to explore issues raised in the comments submitted.

The Commission has begun a review of the Guides for the Dog and Cat Food Industry, 16 CFR Part 241 (''Dog and Cat Food Guides''). The Dog and Cat Food Guides, effective since 1969, advise industry members not to misrepresent dog or cat food in any material respect, including the composition, quality, dietary and nutritional value, or processing methods used in the manufacture or processing of dog or cat food. Industry members are also advised, *inter alia*, against misrepresenting information about the dog or cat food company (e.g., length of time in business, ranking in the industry or ownership of laboratory or other testing facilities) and using deceptive endorsements or testimonials or deceptively claiming that any dog or cat food has received an award. The Commission has published a **Federal Register** notice seeking comment on several questions concerning the Guides' provisions. See 64 FR 13368 (March 18, 1999).

The Commission has requested comments on its Guides for the Law Book Industry, 16 CFR Part 256 (''Law Book Guides''). See 64 FR 13369 (March 18, 1999). Effective since 1976, the Law Book Guides contain seventeen sections, or guides, that provide guidance

[1] In publishing the regulatory review schedule each year, the Commission indicates that the tentative timetable may be modified in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations. See, e.g., 64 FR 3668 (Jan. 25, 1999).

regarding the sale of legal reference materials to the law profession and law schools. The seventeen covered practices range from the marketing of legal reference materials to consumers, to the supplementation of these materials and billing practices employed by sellers.

In addition, the Commission has solicited comments on its Guide Concerning Fuel Advertising for New Automobiles (''Fuel Economy Guiderdquo;), 16 CFR Part 259, adopted in 1975. See 64 FR 19720 (Apr. 22, 1999). The Fuel Economy Guide is designed to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy in advertising. Since its enactment, the Fuel Economy Guide has advised marketers to disclose the established fuel economy of the vehicle as determined by EPA's Automobile Information Disclosure Act, 15 U.S.C. 2206, in advertisements that make representations regarding the fuel economy of a new vehicle. These EPA fuel economy numbers also appear on window labels attached to new automobiles. The Commission amended the Fuel Economy Guide in 1978 and 1995 to make it consistent with EPA Information Disclosure Act changes regarding fuel economy disclosures.

Final Actions and Continuing Reviews

Since publication of the 1998 Regulatory Plan, the Commission has completed several regulatory reviews. The Commission has determined to retain its warranty-related rules and guides, 16 CFR Parts 239 and 701–703, issued under the Magnuson-Moss Warranty Act, in their current form, 64 FR 19700 (April 22, 1999). The agency also has determined to rescind three industry guides that were either outdated or otherwise unnecessary in light of industry self-regulation: (1) Guides Against Deceptive Labeling and Advertising of Adhesive Compositions; (2) Guides for the Decorative Wall Paneling Industry; and (3) Guides for the Watch Industry. In addition, the Commission has completed its periodic review of the Procedures for State Application for Exemption from the Provisions of the Fair Debt Collection Practices Act and determined to amend the exemption procedures. These actions are described more fully below.

The Commission has rescinded the Guides Against Deceptive Labeling and Advertising of Adhesive Compositions, 16 CFR Part 235, which counseled against the use of terms that suggested that various adhesive products contained or had the properties of metal, solder or weld, porcelain, epoxy, and rubber if those products did not, in fact, have the same chemical or physical properties as the specified products. In rescinding the Adhesive Compositions Guides, the Commission noted that industry compliance with the Guides appeared to be satisfactory and that in the 31 years since the Guides were issued, the Commission had not received any complaints or initiated any enforcement actions relating in any way to the Guides. Further, if future deceptive practices prove to be a problem in this industry, the Commission may pursue enforcement actions under Section 5 of the FTC Act, 15 U.S.C. 45, as needed on a case-by-case basis. See 63 FR 70332 (Dec. 21, 1998).

The Commission also rescinded the Guides for the Decorative Wall Paneling Industry, 16 CFR Part 243. The Wall Paneling Guides advised manufacturers, retail distributors, and other suppliers of decorative wall panels with regard to labeling, advertising, and promoting their products in a manner consistent with section 5 of the FTC Act. The Guides were designed to protect purchasers from being misled by the appearance of a product, or by deceptive descriptions, depictions, designations, or representations in advertisements, labels, or other promotional materials. The agency's review revealed that a voluntary industry standard, effective in various versions since 1983, sets forth detailed product quality, labeling and testing requirements for a variety of wood- and veneer-finished products. The Commission determined that, although the voluntary industry standard does not expressly prohibit sellers from misrepresenting the composition of a particular wood or simulated wood product, it indeed provides an adequate basis for a common understanding among industry members through its highly specific descriptions of the qualities and characteristics of hardwood and decorative plywood products. In rescinding the Wall Paneling Guides, the Commission emphasized that industry compliance with both the Guides and the industry standard appeared to be exemplary. In the 27 years since the Guides were issued, the agency neither received any complaints nor initiated any enforcement actions relating to the Guides. Further, the Commission's ability to pursue actions against industry members for unfair and deceptive acts and practices under section 5 of the FTC Act persuaded the agency to rescind the Guides because they were no longer necessary. See 63 FR 70333 (Dec. 21, 1998).

Earlier this year, the Commission also rescinded the Guides for the Watch Industry, 16 CFR Part 245, adopted in 1968. The Watch Guides addressed claims made about watches, watchcases, watch accessories and watch bands that are permanently attached to watchcases. The Guides specifically addressed representations and markings regarding a watch's metallic composition, protective and other special features, movement and country of origin. The Commission completed its review and has concluded that the Watch Guides, which were significantly outdated, are no longer needed to resolve uncertainty among businesses over what claims are likely to be considered deceptive. The Commission determined that, in most instances, international standards provided substantial guidance to the industry regarding watch markings and claims. For those topics not addressed by international standards, principles of law articulated in FTC policy statements and pertinent Commission and court decisions on deception provide guidance regarding watch sellers' obligations to refrain from unfair or deceptive acts or practices under section 5 of the FTC Act. The Commission further noted that if deceptive practices prove to be a problem in this industry, agency investigations and law enforcement actions may be appropriate and necessary. See 64 FR 30898 (June 9, 1999).

The Commission completed its regulatory review of its warranty-related rules and guides in 1999. The review encompassed the following regulatory provisions: (1) Interpretations of Magnuson-Moss Warranty Act, 16 CFR Part 700; (2) the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR Part 701 (''Rule 701''); (3) the Rule Governing Pre-Sale Availability of Written Warranty Terms, 16 CFR Part 702 (''Rule 702''); (4) the Rule Governing Informal Dispute Settlement Procedures, 16 CFR Part 703 (''Rule 703''); and (5) Guides for the Advertising of Warranties and Guarantees, 16 CFR Part 239. The Interpretations represent the agency's views on various aspects of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, *et seq.*, and are intended to clarify the Act's requirements. They are similar to industry guides in that they are advisory in nature, although failure to comply with the Act and the Rules under the Act as elucidated by the Interpretations may result in corrective

action by the Commission. Rule 701 specifies the information that must appear in a written warranty on a consumer product. Rule 702 details the obligations of sellers and warrantors to make warranty information available to consumers prior to purchase. Rule 703 specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into a written consumer product warranty and which the consumer must use prior to pursuing any legal remedies in court. The Guides are intended to help advertisers avoid unfair or deceptive practices in the advertising of warranties or guarantees. After careful review of the comments received in response to agency requests, the Commission has determined to retain the Interpretations, Rules 701, 702, and 703 and the Guides without change.

In addition, the Commission completed its periodic review of the Procedures for State Application for Exemption from the Provisions of the Fair Debt Collection Practices Act (''FDCPA''). The FDCPA, 15 U.S.C. 1692, prohibits the use of deceptive, unfair and abusive practices by third-party debt collectors. The statute also requires that the FTC, by regulation, exempt from its requirements any class of debt collection practices within any State if the Commission determines that under the law of that State, the class of debt collection practices is subject to requirements substantially similar to those imposed by [the FDCPA], and that there is adequate provision for enforcement. Pursuant to that requirement, the Commission promulgated procedures for State applications for exemption from the provisions of the FDCPA. 16 CFR Part 901. After extensive review and consideration of public comments, the Commission determined to amend the exemption procedures to make them more convenient and less burdensome by permitting supporting documents to be submitted in either paper or electronic form and by eliminating the requirement that States submit certain information that is not essential in determining that State law and administrative enforcement offer at least as much protection as the FDCPA. See 64 FR 34532 (June 28, 1999).

Calendar Year 2000 Reviews

In calendar year 2000, the Commission expects to initiate a review of one rule and four industry guides. The rule scheduled for review in 2000 is the Telemarketing Sales Rule, 16 CFR Part 310. The guides scheduled for review in 2000 are: (1) Guides Against Deceptive Pricing, 16 CFR Part 233; (2) Guides Against Bait Advertising, 16 CFR Part 238; (3) Guides for the Household Furniture Industry, 16 CFR Part 250; and (4) Guide Concerning Use of the Word Free and Similar Representations, 16 CFR Part 251.

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 burdens on business. The Commission will continue working toward these goals. The Commission's ten-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 ten-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. In addition, the proposed Children's Online Privacy Protection Rule is consistent with the President's Statement of Regulatory Philosophy and Principles, E.O. 12866 Section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

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 to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. As stated above, since 1992 the Commission has repealed 48 percent of both its trade regulation rules and industry guides 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, Sec. 1.

Regulatory Actions

The Commission has no rules that constitute significant regulatory actions under the definition in Executive Order 12866.

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NATIONAL INDIAN GAMING COMMISSION (qNIGC)

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. Develop standards for constructing and maintaining gaming facilities operated on Indian lands.
2. Develop regulations to establish processes for the classification, review, and approval of games and devices used in tribal gaming.

NIGC

PROPOSED RULE STAGE

162. 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 Legal Basis:

The Indian Gaming Regulatory Act specifically defines both Class II and Class III gaming (25 USC 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 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 Cost 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:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/99	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Tribal

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NIGC

163. ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Priority:

Other Significant

Legal Authority:

25 USC 2710(b)(2)(E)

CFR Citation:

25 CFR 573

Legal Deadline:

None

Abstract:

It is necessary for the NIGC to promulgate regulations which ensure that tribal gaming facilities are constructed and maintained in a manner which protects the environment and the public health and safety.

Statement of Need:

The Indian Gaming Regulatory Act (IGRA) requires that an approved tribal gaming ordinance contain a provision requiring each tribal gaming facility to be constructed and maintained in a manner which adequately protects the environment and the public health and safety. (25 U.S.C. 2710(b)(2)(E)) The Commission has determined that standards are needed to ensure compliance with this statutory requirement.

Summary of Legal Basis:

IGRA expressly authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the [Act].'' (25 U.S.C. 2706(b)(10)) The Commission relies on this section of the statute to authorize the promulgation of standards for constructing and maintaining gaming facilities operated on Indian lands in a manner which adequately protects the environment and the public health and safety.

Alternatives:

The Commission has no alternative but to promulgate these environmental,

health and safety standards for gaming facilities operated on Indian lands.

Anticipated Cost and Benefits:

The potential benefits to this regulatory action are to establish and define for the regulated community the environmental, health, and safety standards it must follow in order to comply with the IGRA, regulations promulgated thereunder, and tribal gaming ordinances. This regulatory action will provide the regulated public with guidance as to the standards the Chairman will use to determine what constitutes an environmental, health, or safety problem sufficient to warrant an enforcement action.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	04/27/99	64 FR 22588
ANPRM Comment Period End	06/28/99	
NPRM	09/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Tribal

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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 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 medical, industrial, and research applications of nuclear material; 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; disposal of radioactive waste; import and export of nuclear materials; and related activities.

The NRC regulatory priority 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 and the environment. 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 proposed regulations as part of its regulatory process. The NRC has 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.

The NRC will change the provisions for safety analysis used to evaluate emergency core cooling systems (ECCS) under loss-of-coolant-accident conditions. The revised rule would allow reactor licensees to take advantage of the improved accuracy of power measurement achieved through the use of enhanced instrumentation. Specifically, licensees using improved instrumentation that reduces the uncertainties associated with power measurement could propose increases in licensed power levels in plants using the evaluation models in Appendix K of 10 CFR part 50.

NRC

Proposed Rule

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164. ECCS EVALUATIONS MODELS

Priority:

Economically 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 5841

CFR Citation:

10 CFR 50

Legal Deadline:

None

Abstract:

The proposed rule would amend the Commission's regulations by changing the provision that requires safety analyses used for evaluation of emergency core cooling system (ECCS) under loss-of-coolant-accident (LOCA) conditions be conducted at 1.02 times the licensed power for the plant. The proposed rule would allow licensees to propose increases in licensed power levels less than the current requirement. Licensees would need to demonstrate that the reduced margin for assumed power level in the analyses for their facility is justified in terms of the effect on plant risk.

Statement of Need:

The proposed rule revision would change the provision that requires safety analyses used for evaluation of emergency core cooling systems (ECCS) under loss-of-coolant-accident (LOCA) conditions be conducted at 1.02 times the licensed power for the plant. The current provision is intended to account for uncertainties in reactor power level, such as instrumentation error. Licensees have proposed using instrumentation that would reduce the uncertainties associated with measurement of reactor power, thus justifying the use of a reduced analysis margin if a licensee chooses to do so. A reduced ECCS analysis margin could be used by licensees to facilitate small, cost-beneficial increases to licensed power. If the uncertainties associated with power measurement instrumentation errors are less than 2 percent, then the current rule unnecessarily restricts operation. Therefore, the objective of this rulemaking is to allow a change to an unnecessarily burdensome and restrictive regulatory requirement.

Summary of Legal Basis:

Not applicable.

Alternatives:

Without a revision to the regulation, many nuclear power plant licensees are expected to request exemptions from the existing provision based on the improved accuracy of power measurement possible with upgraded instrumentation.

Anticipated Cost and Benefits:

The proposed rulemaking would provide the benefit of removing an unnecessarily burdensome and restrictive regulatory requirement for those licensees who wish to use the option. Economic benefits are possible in terms of replacement energy cost savings for utilities that no longer need to purchase the additional power generated as a result of a power uprate. Considered on an industry-wide basis, utilities could gain a maximum of about $430 million annually, or about $4.1 million per plant. If only 50 plant licensees pursue power uprate, they would share an annual benefit of about $205 million, still a substantial industry benefit.

Licensees electing to request a smaller margin for their analysis assumption along with a power uprate would incur analysis costs of about $140,000 to prepare their requests for NRC review, and implementation costs of about $5 to $10 million, for a total cost of $5.1 to $10.1 million. Other plants not electing to reduce their margin assumption would not be affected.

The NRC total cost of revising the rule and implementing the change is estimated to be between $150,000 and $200,000. This total does not include the cost to the NRC to review proposed power uprate amendments, or licensee justification of accuracy claims for upgraded instrumentation used for power measurement. An individual review could cost as much as $50,000 depending on plant-specific factors.

Risks:

Revising the analysis requirement by itself does not affect plant risk. Changes

to plant license limits could entail a risk impact, but for the very small changes expected to result from this rule change, the risk impact is expected to be negligible.

Timetable:

Action	Date	FR Cite
NPRM	10/01/99	64 FR 53270
NPRM Comment Period End	12/15/99	
Final Action	05/00/00	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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